



Lamoine Board of Appeals

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Minutes – October 27, 2020

Chair Griff Fenton called the meeting to order at 6:34 PM at the Lamoine Town Hall.

Present were: Board of Appeals members Brett Jones, Hancock “Griff” Fenton, Jay Fowler, Jon VanAmringe, Larissa Thomas; Code Enforcement Officer Rebecca Albright, Appellant Alan Moldawer, Board of Appeals Attorney James Collier, Jon Pottle (Party of Interest Thomas True’s attorney), and administrative assistant Stu Marckoon. Several people logged into the meeting via Zoom, including Party of Interest Thomas True. The others attending via Zoom were muted and did not address the meeting.

Minutes – September 10, 2020 – Mrs. Thomas submitted one attribution correction. Mr. Fowler moved to approve the minutes as amended. Mr. VanAmringe 2nd. **Vote in favor was 5-0.**

MacQuinn v. Planning Board – Chairman Fenton read the final paragraph in a draft order from the Board of Appeals to the Planning Board in regard to the Maine Supreme Judicial Court decision that upheld the decision of a lower court appeal by the Friends of Lamoine. He asked that the wording of the instruction to the Lamoine Planning Board include the words “as directed by the Maine Supreme Judicial Court.” Mr. VanAmringe moved to approve the order as amended. Mr. Fowler 2nd. Mr. Jones asked if he should abstain from voting on the matter as he was not sitting on the panel that decided the case. Mrs. Thomas said she had the same question. Mr. Fenton said he would see this as a new action where the board is now made up as it is formed this evening. He said all five present are board members and should vote. Attorney Collier said he concurred with the chair. **Vote in favor was 5-0, the Appeals Board members signed the order to the Planning Board.**

Moldawer v. CEO II – Mr. Fenton said he would continue to recuse himself from this matter and turned the meeting over to Mr. VanAmringe to chair. Mr. VanAmringe said that Mr. Jones, who is an alternate board member, will continue to sit as a member of the panel hearing this matter.

Mr. VanAmringe said each of the three parties (Mr. Moldawer, CEO Albright, and Thomas True via his attorney Mr. Pottle) would each have opportunities to make uninterrupted presentations. He said the Board will have the opportunity to question the presenter after each turn. He requested that questions be asked through the chair. He said he strongly discourages and would censure any personal remarks.

Mr. VanAmringe noted that the three parties made an effort to come up with a record. He said he would limit any redundant remarks as the Board has heard this information for the better part of two years. He said he would not limit parties from speaking, but would encourage them to be brief. He asked that parties not speak to opinions but just to facts.

Administrative Assistant Marckoon explained that the microphones for the Board and the appellant and CEO are feeding both the CTV channel and Zoom, but the microphones set up for the two attorneys feed only the CTV channel.

Mr. VanAmringe explained that this is considered a public meeting, but it is not a public hearing. Mr. Pottle asked if Mr. True would be allowed to speak. Mr. VanAmringe said he would. Mr. Pottle and Mr. Moldawer said they would agree to take turns using the table set up with the dual microphone.

Mr. VanAmringe said the Board has been through one appeal on this matter and this is the 2nd. He said at the previous meeting, the Board of Appeals found that the appellant had standing and the appeal could proceed. Mr. Moldawer said he understands that the Board wishes to avoid redundancy and to be brief. He asked what the effect of the decision of October 29, 2019 was in regard to the facts. Mr. VanAmringe said he would allow some latitude in regard to redundancy. He said he would not be limiting time.

Attorney Collier asked if the meeting was properly noticed. Mr. VanAmringe said it was posted properly. Mr. Collier asked if any of the sitting members had any conflict of interest. Mr. VanAmringe said there were none at the previous meeting and asked if any had appeared between that meeting and tonight. There was no response, only that chairman Fenton had recused himself.

Mr. Pottle said the record in this appeal is the focus on what the Code Enforcement Officer (CEO) had done. He said there is an issue of relevancy in some of the materials in the record, and part of the record could be discussed. Mr. Moldawer said he agreed that all materials are subject to relevancy.

Mr. VanAmringe outlined the various documents that were part of the record and asked the parties to try to keep focused on the record. CEO Albright asked if people were unable to hear attorney Pottle. Mr. Marckoon said only those attending via Zoom might not hear him as well.

Mr. Moldawer said he filed a motion regarding two memoranda that were not part of the first record. He said one was dated April 12, 2019 and the other April 16, 2019. He said those memoranda did not get included in the agreed upon record, but he plans to refer to them and would like them to be part of the record. Mr. VanAmringe said they were not part of the advance record, but might be helpful to the Board. He said the Board would accept presentations, rebuttals and questions from each party.

Mr. Moldawer thanked the members of the Board for their service to the town. He said the Board of Appeals has ruled already regarding the building height limit and the application. He said there are basic law principles involved. He said the Maine Supreme Court ruled in the Brackett case that permits are void when a Code Enforcement Officer exceeds their authority. He said if a Code Enforcement Officer and the property owner talked in regard to the interpretation of the law, the resulting permit would not be lawful if it is based on an improper determination. He said the permit would have been issued without authority, and it would be no more legal than if it were issued by the dog catcher.

Mr. Moldawer said the CEO made a point that property owners have vested property rights. He said rights apply equally to neighboring property owners. He said that since 2003 according to state statutes, determinations by the Code Enforcement Officer are reviewable by the Board of Appeals. He said that determinations by the CEO that there is no violation are also appealable and referred to the Raposa case. He said the ruling protects neighboring property owners.

Mr. Moldawer said pictures that were in the previous record were presented to all parties. He said this is an appeal of the CEO's notice of reconsideration. He said there are no facts in dispute in this case. He said the CEO has made it clear that she disagrees with the Board of Appeals decision and decided not to follow it. He said the CEO says that the Board of Appeals cannot tell her how to do her job. He said because of the refusal, the Board of Appeals is at a crossroads. He said that unless the Board upholds the appeal, this would set a precedent that the CEO can interpret the rules however she sees fit. He said if that happens, the town would enter a period of lawlessness. He said the CEO cannot make the law. He said the decisions of the Board of Appeals are final, and the CEO is not free to disregard them.

Mr. Moldawer said this is an issue of greater importance than a too tall house. He said it's a precedent to let the CEO do as she pleases. He said he would like to guide how a future Boards of Appeal does its job. He said he submitted a proposed set of findings and it was decided not to share those. He said he intended to share undisputed facts, and read from his prepared findings.

Mr. Moldawer said the Board of Appeals made it clear that to disregard the original grade on the property was in error. He said perhaps the Board was not clear enough in its first ruling about instructing the CEO to take the original grade into account in her reconsideration. He said there had been no appeal from the ruling the Board of Appeals issued on October 29, 2019. He said the CEO willfully disregarded the ruling and did not calculate anything new. He said we should not abandon common sense.

Mr. Moldawer showed photographs, saying as much as 5-feet of fill was brought in, and the measurement showed the building height was just a few inches under the 35-foot building height limit from the finished grade, which was not at all what the application had showed. Mr. Moldawer said it is undisputed that the CEO did not require the Trues to provide at their expense a measurement. He said the CEO did not request of the Selectmen to require that the Trues provide evidence of compliance. He said she took no action, but simply took the Trues' word. He said the CEO claimed that the Maine Uniform Building and Energy Code (MUBEC) supersedes the Lamoine Building & Land Use Ordinance (BLUO). He said that was a mistake. Mr. Moldawer continued to read from his proposed findings of facts.

Mr. Moldawer said this is more than a question of a house that is too tall. He said it's a question of authority of the Board of Appeals over the Code Enforcement Officer. He said the Board has a responsibility to the community that its decisions are respected. He said at a Board of Selectmen's meeting a few nights earlier, the Board of Assessors brought concerns forward about obvious violations. He said there was some diversity of

opinion as to whether code violations are ignored or investigated. He said Mr. Jones was present at the Selectmen's meeting. He said the Planning Board chair expressed views that assessors should ignore violations. He said the CEO claims the Board of Appeals cannot tell her how to do her job. He said that residents need to know that Code Enforcement is fair and that there is a process in place to investigate complaints and enforce the codes. He said it is absolutely essential that there is a process of appeals for erroneous code enforcement actions that is meaningful and is respected by everyone in that process.

Mr. Moldawer said he hopes the Selectmen are watching this. He said the Selectmen took oaths, but yet the Board shows little more than mild curiosity at the CEO's refusal to follow the Board of Appeals decision. He said it might be poor communication about what happened here. He said the Selectmen were told it was a mere suggestion to the CEO or that it was a neighborhood squabble. He said the Board of Appeals has an obligation to see that its rulings are respected.

Mr. Moldawer read the determination from the Minutes of October 29, 2019. He said the CEO's actions ignore the cited ruling. He said that the CEO indicated the MUBEC applies. He said MUBEC does not apply to the Town of Lamoine. He said it was clear in the notice of redetermination that she made no further measurements to determine the height of the structure around the average original grade. He asked why the CEO has not asked the owner or Selectmen to provide evidence of compliance. He said she knows and the owners know and we all know that the height of the structure substantially exceeds the height limit.

Mr. Moldawer said he only represents himself, but almost all of Marlboro stands behind him. He said the Board of Appeals received 19-letters about what neighbors saw. He read some of those letters. Mr. VanAmringe said Mr. Moldawer is diverging into opinion and emotions and he asked that he only speak to facts. Mr. Moldawer said the letters are facts. Mr. VanAmringe asked if those were the same letters from the first appeal or if they are new. He said if they are the same letters, the Board has seen those.

Mr. Moldawer said the CEO has to follow the Board of Appeals' rulings. He said he's asking the board to do that. He asked the Board to make a specific finding that there is one correct interpretation of the BLUO.

There were no questions of Mr. Moldawer from the Board of Appeals

CEO Albright said Mr. Moldawer made quite a commentary, but some of it was not factual. She said she did not appreciate being told that she is trying to ruin the town. She said the Board asked her to do inspections after the original grade was destroyed. She said she offered to re-measure after the last meeting, but the Board of Appeals refused to tell her to do so. She said the BLUO is clear that no building shall exceed 35-feet, but there was no specific provision for measuring a building's height. She said she has no equipment to measure except for a tape measure. He said the ordinances have huge, gaping holes. She said there are no specific inspections that detail how to measure building height.

CEO Albright said she has discussed this with the Planning Board, and there could be two inspections. She said there would have to be a specific provision and cited the Shoreland Zoning Ordinance and its requirement to have a survey of the 100-foot setback. She said she has photocopied some pages from the BLUO and it shows all the measurements that are required. She said building height is not one of those. She said none of the CEO's have ever measured a building's height. She exhibited the blue building permit card, which reflects the inspection provisions of the BLUO. She said those are the mandated measurements.

CEO Albright said the Appeals Board is a semi-judicial board and they are to uphold the ordinance. She handed out a photocopy of the administrative appeals section. She said the Board of Appeals may reverse a decision of the CEO or the Planning Board only if the decision is clearly contrary to the specific ordinance. She said there is no specific provision for measuring a building's height. She said the Board has no authority to determine how the height is measured, and asked the Board how it could continue, as it has no power over specific provisions that don't exist.

Mr. VanAmringe said the Board has some excerpts of the BLUO and section 6A on page 13 shows construction standards and section 17 on page 37 defines building height. He read section 6A regarding height. He said there certainly is a definition of building height and how one defines it. He said that was the basis of the earlier appeal ruling. He asked if CEO Albright had issued a certificate of completion. CEO Albright replied yes. Mr. VanAmringe asked if the Trues have permission to occupy the building. CEO Albright said yes, there is just one certificate.

CEO Albright said she is aware of the definition. She said she has no equipment and no requirement to take that measurement. She said there is no logistical inspection protocol. Mr. Jones said it would seem that the CEO could request proof of compliance, and it would not be out of the ordinary to do so. Mrs. Thomas said the CEO has expressed frustration that the town has not provided her with resources. She said that was not an argument when hearing the appeal the first time. She said the CEO used the MUBEC standard for determining height, and she is now expressing a different set of considerations from what she argues during the original Appeal hearing. Mr. Fowler said that after the foundation is placed, the CEO can check the lot lines and setbacks. He said at that point the CEO would be looking at the original grade. He said MUBEC compliance is the owner's responsibility.

Mr. VanAmringe said the partial copies all come from the Building and Land Use Ordinance. Mr. Jones asked if there was anything in this matter that pertains to the Site Plan Review Ordinance. CEO Albright said it all has to do with the BLUO. Mr. Fowler said the Board of Appeals can only reverse a decision if it is shown to be clearly contrary to the specific provisions BLUO. He said the Board has the right to tell somebody what they should be doing. Mr. VanAmringe said the next level of appeal is to the Superior Court within 45-days after any decision is rendered by the Board of Appeals. He said it is very clear on how to appeal; you don't go to the Board of Selectmen.

Mr. Moldawer said any party should be allowed to cross examine and question by going through the chair. Mr. VanAmringe said to Mr. Moldawer can put his questions through the rebuttal.

Mr. Pottle (the attorney for the Trues) said the default is to conduct an appeal as a de novo hearing. He said towns can choose to hear an appeal either by appellate or de novo. He said this hearing was to be on already established documents. Mr. VanAmringe said the Board feels that every appeal should be on a de novo basis. Others on the Board disagreed and Mr. VanAmringe said the BLUO requires an administrative basis. Mr. Fowler said the ordinance changed in 2013 to have this be an administrative hearing. A brief discussion followed regarding procedure.

Mr. Pottle said the Trues' permit application was never appealed. He said their certificate of completion was not appealed. He said to suggest that the CEO can demand proof of compliance from a property owner is wholly inconsistent with Maine law. He said their presentation would be divided between Mr. True and himself.

Thomas True thanked the board for the procedural rules. He said there were some insults in the presentation by Mr. Moldawer in saying that Mr. True had manipulated the ordinance. He said he contests many things. He said there has never been any evidence that shows his house is in violation. He said Mr. Moldawer had an obligation to provide that. He said he had complete plans that were submitted to the town, and he built the house according to those plans. He said the complaint was about the interpretation of how the CEO measured, and not about his house.

Mr. True said Mr. Moldawer could have appealed the plans. He said it is clear that the plans were about the final grade, and he built to that. He said the only thing that was appealed was whether the CEO measured correctly. He said the Board of Appeals intentionally used the word "reconsider" instead of "re-measure". He said one way to determine the measurement would be to require that a landowner has to hire a surveyor on all projects. He said the ordinance is not written that way. He said the town does not need to take that extra expense. He said he was never asked to survey the height. He said landowners have rights, and they went out of their way to follow the law. He said they did not add any fill under the foundation, but cut into the existing grade.

Mr. True said there is no new evidence at all. He said the appeal is not about the building height, but about what the Appeals Board instructed the CEO to do. He said there is no way to do it, to measure from the original grade. He said the CEO has done everything she can. He said the Appeals Board attorney, Mr. Collier, said he didn't think the CEO could measure from the existing grade and that the Appeals Board can't tell her how she does her job. He said the Appeals Board's job was to interpret the ordinance. He said the Board's job is done, and this should have been put to rest. He said the Board went out of its way, and e-mails show that the order was to reconsider, not to re-measure. He said there is no proof that there is a violation of anything.

Mr. Pottle said the Board of Appeals should not even be here tonight. He said when he listens to the possible remedies that does not fall into the scope of the Board of Appeals. He said the proper forum is either courts or Selectmen. He said the Appeals Board has to interpret the ordinance. He said this should go to a court, not the Board of Appeals.

He said if there is some issue with enforcement authority; that should go to the Selectmen. He said the Appeals Board has already done this.

Mr. Pottle said it would be helpful to look at the reconsideration letter that was appealed to this Board. He said there was an accurate recitation of the October 29, 2019 Board meeting. He said this is déjà vu. He said this was remanded for reconsideration, and read the reconsideration from the CEO.

Mr. Pottle said the Permit was never challenged, and the Certificate of Occupancy was never challenged. He said complaints initiated the appeal, not the permit or the certificate of occupancy or compliance. He said Mr. True is not the appeals applicant. He said the house has been measured twice, and it's not over 35-feet tall. He said the Trues cut into the existing grade for the foundation. He said the reconsideration determination talks about ways of interpreting the building height and both interpretation were stated in the letter. He said under either situation it has not been demonstrated that the True house violated the BLUO in any way. He said there is no violation; it's just not there.

He said the first appeal went through the height issues and asked what the issue was now. He said he didn't know why they are here. He said it would be the appellant's job to prove a contrary conclusion. He said that is not here. He said the challenge is to clearly show there is a height violation. He said the CEO has said there is not, and it's not in the record. He said that Mr. Moldawer said Mr. True should have to prove that he is in compliance. He said that is just plain wrong. He said the application has to prove that the project complies with the ordinance. He said Mr. Moldawer did not provide any information to prove a violation. He said the CEO was directed only to reconsider in keeping the request of the Board of Appeals. He said it was clear that the Appeals Board was not directing the COE to re-measure, but only to reinterpret the ordinance. He said this should either go to court or to the Selectmen. He said he did not think the Board of Appeals properly has jurisdiction. He said there was a written reconsideration and the letter from the CEO does not warrant an appeal. He said there is no violation – period.

There were no questions of Mr. Pottle.

Mr. Moldawer on rebuttal said the issue that confronts the Board of Appeals is whether they are limited to rendering advisory opinions and not reversing the Code Enforcement Officer. He said that is a mistaken opinion and the State Supreme Judicial Court disagrees. He said the Board of Appeals can review the correctness of CEO determinations. He said the CEO has said the Selectmen have refused to take any action. He said there was no vote taken at the November 19, 2019 Selectboard meeting for a good reason. He said the CEO had not made her redetermination yet. He said there was nothing for the Selectboard to do.

Mr. Moldawer said MUBEC incorporates the international residential building codes and talks about measuring to a grade plane, and provided a brief detailed explanation of a grade plane. He said he's not talking about every applicant having to have a survey of the original grade. He said the application did not disclose that all this fill would be

brought in. He said the Trues are asking that the Board should suspend all common sense. He said they know the grade was raised by several feet and the building well exceeds the height limit. He said the house was erected in the dead of winter and the town didn't even know that it had begun until he complained. He said there was no foundation inspection and the CEO had not paid attention to the original grades that are in the file. He said it's a simple matter to readily determine the height of the structure to the original grade. He said the permit did not indicate that a 35-foot house would be placed 5-feet of fill.

Mr. Moldawer said there was a question of failing to come forward with evidence. He said they know how tall the building is; the neighborhood had a survey done. He said he was not going to present that as it is not in evidence. He said this project pushed things to the limits and the homeowner should provide assurance to the town they are in compliance. He said the Appeals Board was appropriate in finding the original interpretation was erroneous. He said the Appeals Board asked the CEO to re-determine the height determination. He said if the ruling is reconsidered and there is a determination of no violation that is not what the town expects.

CEO Albright, on rebuttal, said this is a dead horse that has been beaten. She said she does not have measuring equipment and the ordinance has a hole that needs to be filled. She said the Board should not shoot the messenger. She said she cannot measure to original grade. She said she is not trying to be disrespectful. She said that she works for the Board of Selectmen by ordinance and they are well aware of this matter. She said the Board did not direct her to make a different determination.

Mr. Jones said that in the CEO's redetermination of November 30, 2019 it said that the Trues followed their plans. He asked how to take the definitive statements and compare them to the oral statements here. Mr. VanAmringe said they would have to take the 11/30/19 statement from the CEO and weight it and make judgment on it and do their best to honor it. Mr. Jones said the CEO indicated that the building was 18-feet 10" tall and he was curious how tall the foundation walls are. CEO Albright said she hasn't measured them, but if memory serves her correctly, the cellar wall was about 9-feet. She said the entire front (Ocean side) is at original grade. She said the measurement when she and John Holt were there, was based on rough construction.

Mr. Pottle said the redetermination letter seems consistent with the Certificate of Occupancy that was issued. He said the Trues built the project according to the approved plan, and the letter said so. He said it's that straightforward. He said that's a different issue than having certain tools. He said the building permit and certificate of occupancy did not initiate the appeal, a complaint did. He said the measurement was made from a grade plane, which was not a finished grade.

Mr. Jones said the Board heard that the measurement was from the finished grade. Mr. Pottle read the redetermination from the CEO and a brief discussion followed. Mr. Pottle said the True house is not in violation of the BLUO and the burden is that the appellant would have to provide such evidence.

Mr. Moldawer said he wanted to make a point. Mr. VanAmringe said he could not. He asked the Board if there were any questions about Mr. Pottle's rebuttal. There were none.

Mr. VanAmringe moved to find in favor of the appellant, instructing the Code Enforcement officer to measure the building height in accordance with the Building and Land Use Ordinance sections 6A and 17B and further directing that the building owner provide a third party verification and to allow access to the surveyor, paid for by the appellant. He said he would ask for a second. Mr. Jones 2nd.

Attorney Collier said the motion is wildly out of order. He said it is up to the law to prosecute any violation. He said the Board has no jurisdiction to make such an order. Mr. VanAmringe said he feels the Board did this on October 29, 2019 and it didn't get done. He said it is directing the CEO to do what is directed in the motion. He said he didn't believe this will be settled at the Appeals Board level and will end up in court. He said he would prefer to bring this to a conclusion. He said the motion clearly says that professional engineers or surveyors will have to measure. He said this will keep going until someone actually measures the thing. Mr. Jones rescinded his 2nd. There was no other 2nd to Mr. VanAmringe's motion.

Mr. Jones said the Board needs to decide on the appeal of the reconsideration. He said the motion did not address what is in front of the board. Mr. VanAmringe said he would allow a general discussion. Attorney Collier said the jurisdictional matter was decided on and it is appealable. He suggested that the Board uphold the appeal and reverse the decision of the CEO not to measure according to the decision of the board. He said a second motion would remand this back to the CEO again to re-measure the home as directed. Mr. Jones said he would like to see language with absolute clarification to the Building and Land Use Ordinance, without room for confusion.

Mr. VanAmringe said he didn't feel the town could look to the CEO as she does not have the equipment to do this. He said he is asking for a qualified third party to make the measurement if the appellant agrees to pay and the landowners allow permission. Mrs. Thomas said that exceeds the board's authority to issue a directive to require a 3rd party surveyor, and the board will end up with more appeals. Mr. VanAmringe said he drafted up his motion to give the Appeals Board something to discuss. He said he doesn't believe that the town should end up paying for a survey. He said it is up to the property owners to prove compliance. He said if this matter comes before the Board of Appeals again, he would be disinclined to hear it again. Mr. Fowler asked if this would be accepting new evidence. He said he thought this is what should have been done a year and a half ago. Mr. VanAmringe said he was trying to resolve this so it doesn't have to go to court. Mr. Fowler said the Appeals Board cannot spend any money; the Selectmen would have to approve that. Mr. VanAmringe said the BLUO appeals venue is here, and if any party is not satisfied, they can go to court.

Mr. Jones said if things are not done correctly, it'll become a court case which the Appeals Board would become involved with. He said he would like to compel the CEO to do what the Appeals Board wishes. Mr. VanAmringe asked if a third party could be asked to measure. Mr. Collier said he didn't see any room in the law to do that. He said

the Appeals Board's jurisdiction is very narrow. He said the Board can interpret the ordinance and uphold or reverse a decision. He said how the CEO decides to measure is up to the CEO. Mr. VanAmringe asked if it is unlawful to direct the CEO how to measure. Mr. Collier said yes. He said that to get anyone to prove that they are in compliance is unconstitutional. He said one is presumed to be in compliance until they are not – in other words, innocent until proven guilty. Mr. VanAmringe asked if the Board could find either in favor or against the appellant, and what could they do next. Mr. Collier said they could reverse the decision of the CEO as she clearly said no last time. He said he asked the CEO to re-measure, would she. Mrs. Thomas asked if the CEO says she has no way to measure, would it then be in the hands of the Selectboard or to court. Mr. Collier said if Mr. Moldawer comes back for a third time, they can tell him to either go away or go to court. Mrs. Thomas asked if the CEO issues another memorandum saying she could not re-measure, could Mr. Moldawer appeal. Mr. Collier said the board could re-think it and say it has no jurisdiction and Mr. Moldawer could go to court. Mrs. Thomas said the board this time determined it had jurisdiction. Mr. Collier said it was his advice to grab jurisdiction and solve it on the Appeals Board level. He said the role is limited in what direction to give the CEO. Mr. VanAmringe said he doesn't believe the Board could ultimately resolve this, but he doesn't want to create a kerfuffle. He said he should not have said at a previous meeting that it couldn't be resolved until it's measured.

Mr. Jones said he wants to address the reconsideration. He said the Board said the CEO was in error in her determination when compared to the language of the BLUO. He said we need to address that and send it back to the CEO again. Mr. Collier said that if he told you that $2 + 2 = 4$ and you said that it equals 5, he should not have to tell you why it equals 4. He said he thinks that the decision that is under appeal is a decision not to enforce. He said first, the Board should uphold the appeal, and then remand it back to the CEO and direct the CEO to re-determine the height of the True house based on the proper interpretation of the BLUO. He said a 3rd decision would be to create a findings of fact and conclusions of law. He handed the motions to Mr. VanAmringe.

Mr. VanAmringe said he withdrew his previous motion. Mr. Collier suggested a motion that the board will uphold the appeal and reverse the decision of the Code Enforcement Officer to not measure the height of the True House according to the original decision of the Board of Appeals on October 29, 2019. Mrs. Thomas so moved. Mr. Fowler 2nd.

Vote in favor was 4-0.

Mr. Collier suggested a motion to remand this to the Code Enforcement Officer and direct the CEO to re-determine the building height of the True house consistent with this board's decision today as well as the October 29, 2019 decision on the proper interpretation of the BLUO. Mrs. Thomas so moved. Mr. Fowler 2nd. **Vote in favor was 4-0.**

Mr. VanAmringe said the Findings of Facts and Conclusions of law will need to be prepared. He said there should be no ex parte communication or e-mails exchanged in this matter. Mr. Collier said he was comfortable with the findings and conclusions as he drafted. He said he started with Mr. Moldawer's document and cut it down and relooked at the record. He said he was satisfied with it. The board reviewed the findings. It was

agreed to change the name “Mary” to “Kathryn” in reference to Mrs. True. There was a brief discussion about the word “insofar”. Mr. Collier said it is understood.

Mr. Jones moved to approve the findings of facts and conclusions of law as written and amended. Mr. Fowler 2nd. **Vote in favor was 4-0.**

Next Meeting – Mr. Fenton thanked all parties in the matter, noting this is never easy. He asked when the next meeting would be. Mr. Jones said the Board still has an ordinance discussion that is unresolved and there was discussion on who has the latest version. It was agreed that the next meeting would be determined.

There being no further business, the meeting adjourned at 9:24 PM.

Respectfully submitted,

Stu Marckoon, Secretary pro-tem