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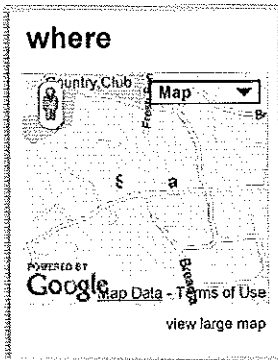
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Couple, Smithtown settle building permit suit

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By STACEY ALTHERR stacey.altherr@newsday.com



A Fort Salonga couple settled a federal civil rights lawsuit last week against the Town of Smithtown, claiming their constitutional rights were violated when they were treated differently than other applicants after they were denied a building permit to construct a planned home. Other residents, the couple say, were granted such permits for even larger homes on similar-sized lots.

The settlement, not yet finalized according to town officials, was approved unanimously at Tuesday's board meeting.

Though approved in a public meeting, the amount of the settlement was not disclosed. The board discussed the matter in an executive session earlier Tuesday.

The town attorney denied a Freedom of Information request from Newsday, saying both parties agreed to confidentiality and the deal was not finalized, but Robert J. Freeman, executive director of the state's Committee on Open Government, said that unless there is a court-ordered confidentiality agreement, the town is obligated to release the amount under standard FOIL procedures.

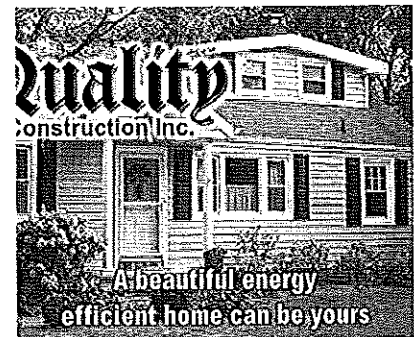
A source familiar with the case said the settlement was for \$600,000. Although he would not confirm the amount, Town Supervisor Patrick Vecchio said AIG, the town's insurance company, pays any settlement costs above a \$100,000 deductible, if in fact that would be necessary.

The lawsuit was filed in April 2008 by Carl Fallica and his wife, Helene, who were denied permits in 2001 to build a 4,210-square-foot home on their one-acre lot on Chestnut Stump Road, Carl Fallica has said. Town codes allow for building on 20 percent of one's property, according to the lawsuit, which Fallica said put the home well within the limit, but they were denied. Calls this week to the Fallicas and their attorney, Richard Cordano of Hauppauge, were not returned.

In 2003, the Fallicas won a lawsuit against the town on the permit denial - the type of suit is called an Article 78 - allowing them to build the home at the size they wanted, but they never built it.

In addition to the town, the federal lawsuit from 2008 named as defendants Town Planner Frank DeRubels and the planning department, the Board of Zoning Appeals, and the building department. It also named Robert Bonerba, who at the time of the denial was the town's chief building inspector. In an unrelated case, Bonerba pleaded guilty last year to four counts of taking bribes while he headed the department.

According to court documents, a Sept. 15, 2010, letter from Cordano to U.S. District Court Judge Leonard D. Wexler advised the court of a proposed settlement. Court documents also noted that Judge A. Kathleen Tomlinson told both parties jury selection would start on Sept. 20 unless a settlement agreement was reached.



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An earlier lawsuit in the 1990s between the Fallicas and the town over easement rights on a lot adjacent to their home was settled in favor of the town, according to the federal lawsuit.

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