

**NOTICE OF MEETING
VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING**

SCHWEMER HALL - MUNICIPAL BLDG.
7200 N. SANTA MONICA BLVD.
FOX POINT, WISCONSIN

WEDNESDAY
SEPTEMBER 25, 2024
5:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Approval of Minutes and Determinations – May 22, 2024 Meeting**
- 3. Request of Applicant Ralph Bencriscutto and Village Manager Scott Botcher to Waive the 30-Day Review Window Regarding Administrative Decisions**
- 4. Case 2024-07 8339 Lake Drive - Appeal of Administrative Decision.** The applicant is requesting an appeal of the decision of Fox Point Village Manager Scott Botcher regarding the requirement for a grading and drainage permit pursuant to section 756-7E(1) of the Fox Point Municipal Code.
- 5. Adjourn**

Published and Posted September 20, 2024

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request these services, contact the Village Clerk at (414) 351-8900. It is possible that members of, and possibly a quorum of members of, other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MAY 22, 2024**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, May 22, 2024 at 5:00 p.m. Chair Filsinger called the meeting to order at 5:01 p.m. The Assistant Village Manager took roll call. Those present included:

Nancy Filsinger, Chair
Thomas Dunst, Board Member
Mark Grady, Board Member
Scott Ratke, Board Member

Staff members also present were Attorney Luke Martell, Building Inspector Michael Rakow, and Assistant Village Manager Kevin Ausman.

Approval of Minutes March 27, 2024 Meeting and the Findings of Fact, Decision and Order

Roll call vote:

Nancy Filsinger, Chair	Aye
Thomas Dunst, Board Member	Aye
Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye

Motion by Grady and second by Dunst to approve the Minutes of the March 27, 2024 Meeting and the Findings of Fact, Decision and Order. Without objection and by unanimous consent, the March 27, 2024 meeting minutes were approved. ***Motion carried by roll call vote, 4-0.***

Approval of Minutes April 17, 2024 Special Meeting and the Findings of Fact, Decision and Order.

Roll call vote:

Nancy Filsinger, Chair	Aye
Thomas Dunst, Board Member	Aye
Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye

Motion by Grady and second by Dunst to approve the Minutes of the April 17, 2024 Special Meeting and the Findings of Fact, Decision and Order, subject to amending the action motion on page 2 of the minutes to read "Motion by Member Mark Grady to deny the application and adopt the findings of Fact and Conclusions of Law drafted by Attorney Larson consistent with that denial." Without objection and by unanimous consent, the April 17, 2024 meeting minutes were approved with amendment. ***Motion carried by roll call vote, 4-0.***

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MAY 22, 2024

CASE 2024-04: 8064 N Beach Drive.

The applicant is requesting a special exception to install an entry gate in the drive way off Beach Drive. The special exception request is made pursuant to 745-7 B.(3)(h)[2] of the Fox Point Code.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Michael Rakow stated his name and was sworn in to provide testimony by the Assistant Village Manager. Rakow explained that street yard gates require Board of Appeals and Building Board approval.

Applicant/Appellant Craig Karmazin and Kelli Gabel represented by Steve Kehl of LandWorks Landscape Services.

Applicant/Appellant Steve Kehl from LandWorks was sworn in to provide testimony by the Assistant Village Manager. Kelh explained that the request of the property owner was for resident safety aimed at limiting access onto the property.

Raj C. Triyambakaraj, 8110 N. Beach Drive, spoke in opposition.

Member of the public, Raj C. Triyambakaraj, was sworn in to provide testimony by the Assistant Village Manager. Triyambakaraj argues that the private road is narrow and a private gate may cause a problem for drivers, allowing gates creates negative precedent of aesthetics and that Fox Point is not a gated community, and that gates may impede access to properties.

Closing of Testimony: Case 2024-04

Without objection and by unanimous consent, Chair Filsinger closed testimony for Case 2024-04 at 5:22 p.m.

Motion by Ratke and second by Dunst to deny the application.

Roll call vote:

Nancy Filsinger, Chair	Aye
Thomas Dunst, Board Member	Aye
Mark Grady, Board Member	Nay
Scott Ratke, Board Member	Aye

Motion carried by roll call vote, 3-1.

CASE 2024-05: 8566 N Regent Road.

The applicant is requesting a variance pertaining to Section 745-16 B (2), concerning the B

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MAY 22, 2024**

Residence District with regard to the front yard setback of 75ft from the center of Regent Road right-a-way. The applicant is proposing to install a two-car attached garage on the home within the front yard setback.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Michael Rakow stated his name and was sworn in to provide testimony by the Assistant Village Manager. Rakow introduced the proposal encroaching into the street yard setback and variance request.

Applicant/Appellant Elizabeth Casmer, 8566 N Regent Road, and Architect Patrick Prendergast

Elizabeth Casmer and Patrick Prendergast stated their names and were sworn in to provide testimony by the Assistant Village Manager. The applicant explained that the narrow non-conforming lot does not allow for an expansion of the garage into the side yard setback. The only area to expand the structure is into the street yard setback.

Closing of Testimony: Case 2024-05

Without objection and by unanimous consent, Chair Filsinger closed testimony for Case 2024-05 at 5:53 p.m.

Motion by Grady and Second by Ratke to grant the requested variance, subject to the applicant applying for a building permit within 6 months.

Roll call vote:

Nancy Filsinger, Chair	Aye
Thomas Dunst, Board Member	Aye
Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye

Motion carried by roll call vote, 4-0.

Adjourn

Motion by Grady and second by Dunst to adjourn. All ayes; motion carried. The Board adjourned at 6:02 p.m.

Respectfully Submitted,

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MAY 22, 2024**

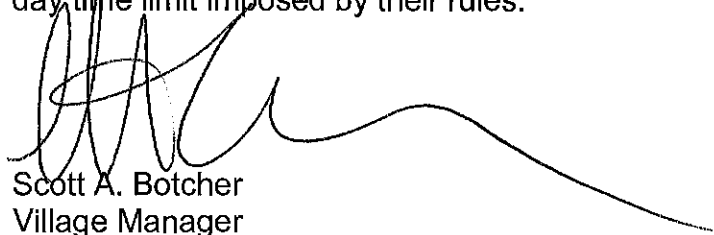
Kevin Ausman
Assistant Village Manager

DRAFT

September 17, 2024

Board of Appeals
Village of Fox Point

The Village of Fox Point and the applicant jointly request that the Board waive the 30-day time limit imposed by their rules.

A handwritten signature in black ink, appearing to read 'S. Botcher', with a long, sweeping horizontal line extending to the right.

Scott A. Botcher
Village Manager
Village of Fox Point

Kevin Ausman

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Saturday, September 14, 2024 7:32 AM
To: Kevin Ausman
Subject: Re: Board of Appeals

Good Morning Kevin

This letter is to clarify our appeal

We are appealing the decision of Scott Botcher on March 11 2024 and then confirming 7/31/24 concerning the requirement for a grading and drainage permit pursuant to section 756-7E (1) based solely on land disturbing activity exceeding 4000 sq.ft. without exemptions.

We are also waiving the 30 day window for this appeal.

Let me know if this satisfies your request

Ralph Bencriscutto

President

ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Kevin Ausman <kausman@villageoffoxpoint.com>
Sent: Friday, September 13, 2024 12:06 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>
Subject: Board of Appeals

Good afternoon Ralph:

I staff the Board of Appeals for the Village and we are in the process of preparing your request to appear at the September 25 meeting. At the direction of the Village Attorney, we are asking that you respond in writing to item number 4 on the BoA application document, which I have reattached here for you. The BoA requires specificity in regards to the decision being appealed. Specificity in this regard may appear in a form such as *"I am appealing the decision of Employee A on DATE, regarding Section ABC of Village Ordinances."* You may email a written response if you wish and we will attach that response to your application materials for the Board to consider.

Additionally, the Board of Appeals rules state that appealing an administrative decision must occur within 30 days from the date of the decision. Since this application falls outside the 30-day window based on the communications with Mr.

Botcher and Mr. Brandmeier that you have submitted, the Board further requires both you and Mr. Botcher to request in writing to the BoA that the 30-day deadline be waived. Mr. Botcher has agreed to waive the 30-day deadline so that your appeal may be heard by the Board of Appeals. A written email response will suffice if you wish.

I will forward a copy of this email to Mr. Botcher and the Village Attorney so that they are aware of the status of your application to the Board of Appeals. Please let us know if you require clarification or have further questions.

Respectfully,

Kevin Ausman
Assistant Village Manager
Village of Fox Point
414.351.8900





VILLAGE OF FOX POINT
MILWAUKEE COUNTY
WISCONSIN

BOARD OF APPEALS
APPLICATION

VILLAGE HALL
7200 N. SANTA MONICA BLVD. FOX
POINT WI 53217-3505
414-351-8900
FAX 414-351-8909

1. Name of Appellant Ralph Benekis Address of Appellant 8339 N. Lake Drive
Phone Number 262 664 3166 262 632 1464 262 664 3166
E-mail Address ralph@towerenergyproducts.com Home Work Cell
2. Address of Property 8339 N. Lake Drive
Present Use of Property renovation Proposed Use of Property Housing
Owner's Name and Address if Different than Above _____
3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?
Yes ☐ No ☒ If Yes, State the Nature of Previous Appeal or Application _____
Disposition of Previous Appeal _____
Date of Decision in Previous Case _____
4. Date of Decision or Order of Administrative Official from which Appeal is Taken _____
Date of Notice of Such Decision Received by Appellant _____
5. Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:
☒ A. "Appeal Administrative Decision." Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official.
1. I have read and I understand Attachment A: Yes ☒
2. I have fully answered the questions in Attachment A and have attached additional explanations as necessary. Yes ☒
☐ B. "Request Variance." State Law Empowers the Board of Appeals to Grant a Variance to the Otherwise Applicable Requirements of the Zoning Code in Limited Circumstances.
1. I have read and I understand Attachment B: Yes ☐
2. I have fully answered the questions in Attachment B and have attached additional explanations as necessary. Yes ☐
☐ C. "Request Special Exception." The Village Code Specifies Situations When a Special Exception May be Granted.
1. I have read and I understand Attachment C: Yes ☐
2. I have fully answered the questions in Attachment C and have attached additional explanations as necessary. Yes ☐
6. Each application must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon, and the requested change or addition. A \$200 filing fee must also accompany this application.

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief. I also hereby swear and acknowledge that I have read this application and all attachments in its entirety, including the standards applicable to my application.

Signature of Appellant

Date

For Office Use Only:

Application, and related Attachment, is Fully and Properly Completed with attachments Yes / No (If "No" reject the application and await a completed application.)

Date Application Received _____ Receipt Number for \$200 Filing Fee _____

Case Number _____ Hearing Date _____

Disposition _____

Attachment A

This Attachment applies if you seek an Interpretation of Zoning Code and/or reversal of order, requirement, decision or determination (the "Decision") of administrative official.

Applicant to complete the following:

Who made the Decision? Scott Botcher

What was the Decision? WE NEED A Grading And Fill Permit Regardless of Exemptions And not doing grading.

You must attach a copy of the Decision to your Application. Have you attached the Decision? ☒ Yes Att # 3

Why do you contend the Decision was erroneous (attach additional sheets as necessary)?

See Attachments & Letter

Ralph Bencriscutto

Tower Circle Investments

8339 N Lake Dr

Fox Point WI

08/20/24

RE: Explanation of Appeal for filling and grading permit required by Scott Botcher

Scope: It is disputed that a filling and grading permit is now required for the above mentioned property. This is a 600sq.ft. addition not a new principal residence.

- 1.) On 5/1/23 a drainage plan was submitted which was below the minimum requirement of 4000 sq.ft. of land disturbing activities for erosion control. There was no grading and filling requiring a permit proposed. We agreed “ for the neighbors “ to get the erosion control permit.**
- 2.) A letter by Scott Brandmeier confirmed that with the provision that we supplied as built elevations after completion. (see attachment 1)**
- 3.) In this letter on paragraph 2 Scott states that if we exceed 4000 sq.ft. of disturbed area we will need a grading and fill permit. This is not accurate since the minimum for the erosion permit is 4000 sq.ft. that we were under and if we went over that sq.ft. of disturbed area then we already have the erosion control permit and plan to support it.**
- 4.) 12/06/23- Scott Branmeier then contacts us and states we violated the original agreement of exceeding the land disturbing scope of the erosion permit by disturbing the yard during construction, the driveway, back patio, planter etc. and we now need the grading and fill permit. This created dispute since the exemptions are clear and he was including the driveway , patio, top dressing, planters, sidewalks, landscape boulders etc. as the basis. We argued that those activities are exempt and we are required under section 285 section B,6,(1) required we re-seed the disturbed areas for erosion control which we did.
He forwarded a picture of the reasoning for the fill permit describing land disturbing activities which as you can see include the easements, most of the yard, planters, patio, sidewalks and most everything that is exempt from this permit. (See attachment 8)**
- 5.) He responded that even though the driveway and patio are exempt it doesn't mean you can add fill- that is not consistent with the exemption. Section 272-10 cites all the exemptions. (attachment 2)**
- 6.) Scott Botcher was asked to mediate the requirement for the grading and fill permit based on the definition of land disturbing activity exceeding 4000 sq.ft. He investigated the definition and decided that that definition alone was basis for the permit. (see attachment 3).**
- 7.) The application for this permit has 3 sections: 1, Grading and fill; 2, erosion control; 3, Construction site, Bluff and retaining walls. Each permit requires its own plan and application which are different. The definition of land disturbing activities is relative to**

all three but only in relating to the specific permit. The fill and grading permit requires “filling and grading activities exceeding 4000 sq.ft.” – (see attachment 4). Not just land disturbing activities. It also quantifies “land disturbing activities that required a permit” which are a reference to the exemptions. Section 2 of the same section would be relevant to erosion control without grading which is the permit we already have.

Section 3 is not relative since we are not on a ravine or bluff. Some requirements here are the same regarding site management and re-planting of grass that is disturbed.

8.) 5/21/24: To satisfy the original requirement of as-built elevations after construction we provided final elevations from the surveying engineering firm- see attachment 5,6, 7.

After providing this document which proves no changes in topography which is the basis for the permit, we were told that they wouldn't be reading the final elevations and if we didn't like the decision we can appeal.

This takes us to this point- we are appealing their decision. We asked 8 times for a meeting to resolve this in person but they both refused. I then asked Botcher to quantify the grading and fill requirement and how he calculated grading over 4000 sq.ft. in writing but he refused. All I have is his e-mail letter describing the definition of land disturbing activity. I also asked how we are supposed to submit a plan with no grading or filling for plan review- he did not answer that.

Regards- Ralph Bencriscutto

www.towerenergypartners.com

262-664-3166



VILLAGE OF FOX POINT

MILWAUKEE COUNTY
WISCONSIN

Att # 1

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT 53217-3505
414-351-8900
FAX 414-351-8909

June 13, 2023

Mr. Ralph Bencriscutto
2425 S. Memorial Drive
Racine, WI 53403

Re: Erosion Control – 8339 North Lake Drive

Dear Ralph:

I am writing with respect to the various drawings submitted to the Village for the addition at 8339 North Lake Drive. It is my understanding that you have submitted a number of iterations to fall below the threshold requiring permitting from the Village. Please note that Section 285-42 likely still requires the submittal of an erosion control plan as this may fall into the category related to construction of houses and, in your email dated June 12, 2023, indicated you are willing to pay for the erosion control fee. Please note that I am approving the proposed erosion control plan subject to the following conditions:

1. Sheet EC-1 dated May 31, 2023, submitted by your architect Stack Design Group identifies the erosion control plan for the project (this was submitted to my office on June 2, 2023). All erosion control features are required to be installed prior to the start of construction and that you are required to comply with Chapter 285 of the Village Code – particularly Section 285-42. Please be sure to install a tracking pad and the erosion control fence plus any drain inlet protection prior to the start of excavation.
2. Sheet G-2 dated May 31, 2023 and submitted by Stack Design Group on June 2, 2023, reflects over 4,000 square feet of disturbed area but has since been revised (dated June 9, 2023) and which you submitted to my on June 12, 2023 reflects approximately 2,100 square feet of disturbed area. Please note that should you disturb more than 4,000 square feet of disturbed area, the project must stop and you will be required to submit the grading and drainage permit application along with an analysis of the pre- and post-development flows in the 2-, 10- and 100-year storms.
3. **Please note that no fill is permitted to be added to the site and that a post-development as-built survey will be required to document that fill has not been added. An occupancy permit will not be issued until the as-built survey is submitted and approved.**
4. Please note that any future land disturbance activities will need to include the work performed under this permit. So, the appropriate permit applications will be determined based on the sum of the disturbed areas done under this permit plus any future disturbance. For example, should you or a subsequent resident or owner elect to add fill to the site or disturb an area that, combined with the approximate 2,100 square feet of disturbed area under this permit, exceed 4,000 square feet, the permits required would be based on the total impact to the site. Future permit requirements may include, but not be limited to grading and drainage, erosion control, and fill.

Mr. Ralph Bencriscutto
8339 North Lake Erosion Control Permit
June 13, 2023

5. All Village street trees along with any trees to remain on the property after construction shall be protected during construction and no work is permitted within the dripline of all Village street trees. Please ensure the contractor installs the appropriate fencing around the trees to protect them from construction traffic. *Please note that the Village has a clear cutting ordinance and you are not permitted to remove more than 50 percent of the trees from the lot prior to receiving approval from the Village Forester.*
6. Please inform the Village once the roof for the addition has been erected as this will trigger the change in your stormwater utility tier from Tier 1 to Tier 3 per Form 1 submitted by you on June 13, 2023.

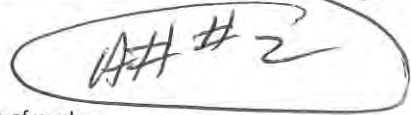
Should you have any further questions regarding this matter, feel free to contact me at 414-351-8900.

Sincerely,



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point

Cc: Mike Rakow, Building Inspector
Tom Stack, Stack Design Group



Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know

Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § 272-4.

[Added 4-13-2010 by Ord. No. 2010-03]

This

Ralph Benciscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



FW: Fill Permit

Scott Botcher <sbotcher@villageoffoxpoint.com>

Mon 8/5/2024 10:22 AM

To: Ralph Benciscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

As requested,

Scott A. Botcher

Village Manager

Village of Fox Point

414-247-6620

**From:** Scott Botcher**Sent:** Thursday, December 21, 2023 4:00 PM**To:** Ralph Benciscutto <ralphb@towerenergypartners.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>**Cc:** Michael Rakow <mrakow@villageoffoxpoint.com>**Subject:** RE: Fill Permit

Ralph,

Thank you for taking the time to meet with Scott and me. I sincerely appreciate the questions you posed and comments you made regarding our Ordinances. After doing some research and discussing this matter with our Village Attorney, I carefully considered your comments and questions and have come to the following conclusions:

The phrase "land disturbing activity" is used in several places in State statutes, and defined in those sections, and for the most part the various definitions are very similar.

Wisconsin Statutes Section 236.13(2)(ad)2. says this:

"Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

Wisconsin Statutes Section 281.33(3)(b)1. says this:

The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that: Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

Your question arises in relation to the Village Building Code, Section 756-7 E (1)(a) (2), so the most relevant definition may be from the **State Uniform Dwelling Code (UDC)**, because that is incorporated into the Village Building Code. The definition of the phrase "land disturbing construction activity" in the UDC is:

"Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit or trench dewatering, filling and grading activities. (Wisconsin Administrative Code Section SPS 320.07(46m).)

In my opinion, you have engaged in "Land disturbing activity" as defined by all three citations, above; primarily, but not exclusively, "filling" and/or "change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state" or "any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment"

As such, I agree with Mr. Brandmeier's determination and you should secure the required permits from him. As we indicated, you have the right to appeal this decision to the Board of Appeals.

Sincerely,

Scott A. Botcher
Village Manager



VILLAGE OF FOX POINT GRADING, DRAINAGE, AND EROSION CONTROL REVIEW APPLICATION

Property Owner _____ Date _____
Address _____ Phone _____
Designated Agent/Contractor _____
Address _____ Phone _____
City _____ State _____ Zip _____

The Village of Fox Point requires that grading, drainage and erosion control plans be submitted for new development and redevelopment within the Village and which fall into the categories as identified herein. In addition, any grading, drainage and erosion control application must be accompanied with Forms 1 and 3 from the Stormwater Utility Users Manual. **Applications must be submitted in the following instances and must be accompanied with the appropriate fee before the applications are reviewed:**

1. Grading and Drainage Plans – A grading and drainage plan must be submitted pursuant to Section 756-7E(1) if, among other things, a new principal building is to be constructed or a grading activity affects more than 4,000 square feet. A complete list of the activities is included in Section 756-7E(1), a copy of which is attached hereto.
2. Erosion Control Plans – An erosion control plan for new home construction must be submitted pursuant to the Department of Safety and Professional Services regulations SPS 321.125.
3. Erosion Control Plans (non-new home construction) – For all other activities that are not related to new home construction, Chapter 285, Article IV of the Village Code may apply to your activity. In particular, should your activity fall into one of the categories identified in Section 285-42A, then you are required to submit an erosion control plan which complies with Section 285-43. Sections 285-42 and 285-43 are attached hereto.

Chapter 756. BUILDING CONSTRUCTION

Article II. Building Inspector and Permits

§ 756-7. Permits.

E. Drainage.

(1) Grading of lots.

(a) A drainage plan is required:

[1] For applications for the construction of a new principal building;

[2] For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more;

[3] For applications for land disturbing activity (other than tree removal) on the face of a ravine bluff or lake bluff;

[4] For all circumstances where a fill permit is required pursuant to Chapter 272 of this Code; and

[5] When required by the Village in particular cases due to particular concerns arising in the application.

(b) The plans shall show the present and proposed grades of the lot on which it is proposed to erect the building for which a building permit is sought and of the immediately adjoining property in sufficient detail to indicate the surface water drainage before and after the completion of grading. No permit shall be issued if the erection of the building and the proposed grade shall unreasonably obstruct the natural flow of water from the surface of adjoining property or obstruct the flow of any existing ravine, ditch, drain or stormwater sewer draining neighboring property, unless suitable provision is made for such flow by means of an adequate ditch or pipe, which shall be shown on the plans and shall be constructed so as to provide continuous drainage at all times. The plan shall include a pre- and postdevelopment flow analysis which must address all of the following issues:

[1] Flows off the property in the two-, ten-, and one-hundred-year storm events in both conditions.

[2] If there will be fill brought to the site, where the excavated soils will be stockpiled until grading activities occur; also, if soils will be delivered to the site and stockpiled prior to grading, identify these locations.

[3] Identify the cuts and fills on the property.

[4] Identify the depth and width of flows at the property line, in both conditions.

[5] Identify how the stormwater that drains toward the road will be tied into the Village system.

Chapter 285. STORMWATER MANAGEMENT, EROSION CONTROL AND BLUFF REGULATION

Article IV. Construction Site Erosion Control

§ 285-42. Control of erosion and pollutants during land disturbance and development.

- A. Applicability. This section applies to the following sites of land development, demolition, redevelopment, and/or land-disturbing activities:
- (1) Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved subdivision plats.^[1]
[1]: Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).
 - (2) Those requiring a certified survey approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved certified surveys.
 - (3) Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land-disturbing activity affecting a surface area of 8,000 square feet or more.
 - (4) Those involving excavation or filling, or a combination of excavation and filling, affecting 800 cubic yards or more of dirt, sand or other excavation or fill material.
 - (5) Those involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.
 - (6) Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 600 feet or more.
 - (7) Those involving grading, removal of protective ground cover or vegetation, excavation, demolition, land filling or other land disturbing activity on slopes of 10% or more.
NOTE: Utility companies responsible for energy repair work should enter into a "memorandum of agreement" with the Village Staff clearly stating their responsibilities if their activities may be included under any of the above applicability criteria.
- B. Erosion and other pollutant control requirements. The following requirements shall be met on all sites described in Subsection A:
- (1) Site dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upslope chambers, hydrocyclones, swirl concentrators, or other appropriate controls designed and used to remove particles of 100 microns or greater for the highest dewatering pumping rate. If the water is demonstrated to have no particles greater than 100 microns during dewatering operations, then no control is needed before discharge, except as determined by the Village Staff. Water may not be discharged in a manner that causes erosion of the site or receiving channels.
NOTE: There are several ways to meet this particle size performance objective depending on the pumping rate. As an example, if the pumping rate is very low (one gallon per minute), then an inclined or vertical enlargement pipe (about eight inches in

diameter for one gallon per minute) several feet long would be an adequate control device to restrict the discharge of 100 micron, and larger, particles. As the pumping rate increases, then the "device" must be enlarged. At a moderate (100 gallons per minute) pumping rate, a vertical section of corrugated steel pipe, or concrete pipe section, or other small "tank" (about 4 ½ feet across for a 100 gallons per minute pumping rate) several feet tall would be adequate. With these pipe sections or small tanks, inlet baffles would be needed to minimize turbulence. With very large pumping rates (10,000 gallons per minute), sediment basins (about 35 feet in diameter for a pumping rate of 10,000 gallons per minute) at least three feet in depth with a simple but adequately sized pipe outlet would be needed. More sophisticated control devices (such as swirl concentrators or hydrocyclones) could be specifically fabricated that would generally be smaller than the simple sedimentation devices described above, but they would not be required.

- (2) Waste and material disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of and not allowed to be carried by runoff into a receiving channel or storm sewer system.
- (3) Tracking. Each site shall have graveled roads, access drives and parking areas, constructed as set forth in the BMP Handbook, to prevent sediment from being tracked onto public or private roadways. These areas shall be inspected and maintained each workday.
- (4) Drain inlet protection. All storm drain inlets shall be protected with a straw bale, filter fabric, or equivalent barrier meeting accepted design criteria, standards and specifications.
- (5) Sediment cleanup. All off-site sediment deposits occurring as a result of a storm event shall be cleaned up by the end of the next workday. All other off-site sediment deposits occurring as a result of construction activities shall be cleaned up by the end of that same workday. Clean up shall be done by means of a "pick-up" type sweeper; flushing is not allowed.
- (6) Site erosion control. The following criteria apply only to land development or land disturbing activities that result in runoff leaving the site:
 - (a) Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below in Subsection B(6)(c)[3]. Sheetflow runoff from adjacent areas greater than 10,000 square feet in area shall also be diverted around disturbed areas unless shown to have resultant runoff velocities of less than 0.5 foot per second across the disturbed area for the set of one-year design storms. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels.
 - (b) All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.
 - (c) Runoff from the entire disturbed area on the site shall be controlled by meeting either of the following:
 - [1] All disturbed ground left inactive for seven or more days shall be stabilized by seeding or sodding (only available prior to September 15) or by mulching or covering, or other equivalent best management practice.

- [2] For sites with more than 10 acres disturbed at one time, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least 1% of the area draining to the basin and at least three feet of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three feet. The basin shall be designed to trap sediment greater than 15 microns in size, based on the set of one-year design storms having durations from 0.5 to 24 hours. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.
- [3] For sites with less than 10 acres disturbed at one time, filter fences, straw bales, sediment traps, or equivalent best management practices shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.
- (d) Any soil or dirt storage piles containing more than 10 cubic yards of material should not be located with a downslope drainage length of less than 25 feet to a roadway or drainage channel. If remaining for more than seven days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than seven days shall be controlled by placing straw bales or filter fence barriers around the pile. In-street utility repair or construction soil or dirt storage piles located closer than 25 feet to a roadway or drainage channel must be covered with tarps or suitable alternative control if exposed for more than seven days, and the storm drain inlets must be protected with straw bales or other appropriate filtering barriers.
- (e) When the disturbed area has been stabilized by permanent vegetation or other means, temporary best management practices such as filter fabric fences, straw bales, and sediment traps shall be removed.
- (f) Sites with slopes of 12% or more may require additional or different controls than listed in Subsection B(6)(c), above. Requirements for such slopes shall be as specified by the Village in Article I of this chapter.

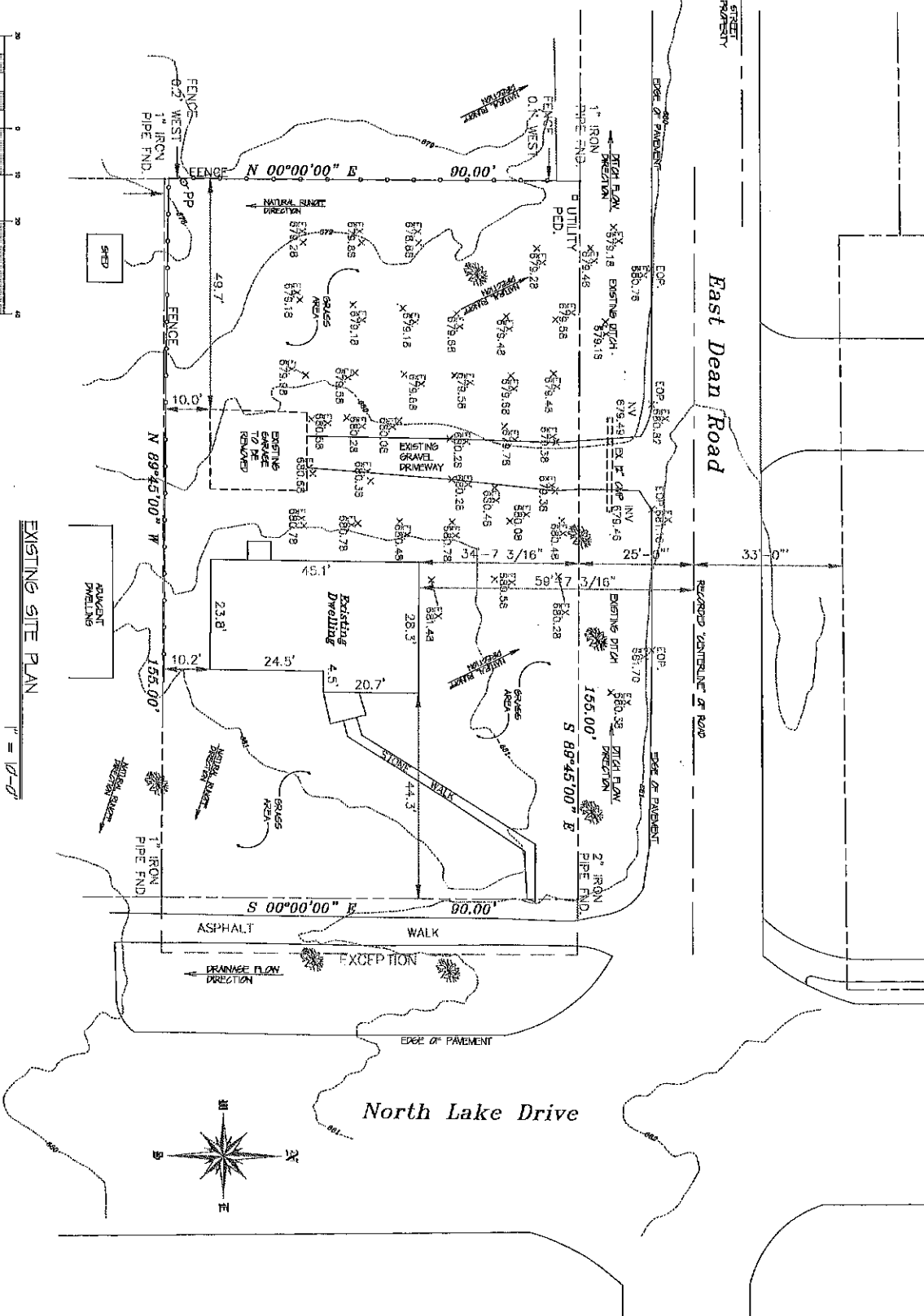
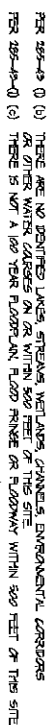
§ 285-43. Permit application; control plan; permit issuance.

- A. Permit application. No landowner or land user may commence a land disturbance or land development activity subject to this article without receiving prior approval of a control plan for the site and a permit from the Village staff. At least one landowner or land user controlling or using the site and desiring to undertake a land disturbing or land developing activity subject to this article shall submit an application for a permit and a control plan and pay an application fee to the Village staff. By submitting an application, the applicant is authorizing the Village staff to enter the site to obtain information required for a review of the control plan.
- B. Content of the control plan for land disturbing activities covering more than one acre.
- (1) Existing site map. A map of existing site conditions on a scale of at least one inch equals 100 feet showing the site and immediately adjacent areas:
- (a) Site boundaries of adjacent lands which accurately identify site location;

- (b) Lakes, streams, wetlands, channels, environmental corridors, ditches and other watercourses on or within 500 feet of the site (Note: The Village should identify sensitive local waters that may need to be further addressed by the control plan.);
 - (c) One-hundred-year floodplains, flood fringes and floodways;
 - (d) Location of the predominant soil types;
 - (e) Vegetative cover;
 - (f) Location and dimensions of stormwater drainage systems and natural drainage patterns on and immediately adjacent to the site;
 - (g) Locations and dimensions of utilities, structures, roads, highways, and paving; and
 - (h) Site topography at a contour interval not to exceed five feet.
- (2) Plan of final site conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes.
- (3) Site construction plan. A site construction plan including:
 - (a) Locations and dimensions of all proposed land disturbing activities;
 - (b) Locations and dimensions of all temporary soil or dirt stockpiles;
 - (c) Locations and dimensions of all construction site management best management practices necessary to meet the requirements of this article;
 - (d) Schedule of anticipated starting and completion dates of each land-disturbing or land-developing activity, including the installation of construction site best management practices needed to meet the requirements of this article; and
 - (e) Provisions of maintenance of the construction site best management practices during construction.
- C. Content of control plan statement for land disturbing activities covering less than one acre, but meeting the applicability requirements stated in § [285-42A](#). An erosion control plan statement (with simple map) shall be submitted to briefly describe the site and erosion controls (including the site development schedule) that will be used to meet the requirements of this article.
- D. Review of control plan. Within 45 days of receipt of the application, control plan (or control plan statement) and fee, the Village staff shall review the application and control plan to determine if the requirements of this article are met. The Village Staff shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the Village staff shall inform the applicant in writing and may either require needed information or disapprove the plan. Within 30 days of receipt of needed information, the Village staff shall again determine if the plan meets the requirements of this article. If the plan is disapproved, the Village staff shall inform the applicant in writing of the reasons for the disapproval.

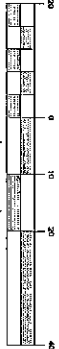
E. Permits.

- (1) Duration. Permits shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Village staff may extend the period one or more times for up to an additional 180 days. The Village staff may require additional best management practices as a condition of the extension if they are necessary to meet the requirements of this article.
- (2) Surety bond. As a condition of approval and issuance of the permit, the Village staff may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved control plan and any permit conditions.
- (3) Permit conditions. All permits shall require the permittee to:
 - (a) Notify the Village staff within 48 hours of commencing any land-disturbing activity;
 - (b) Notify the Village staff of completion of any best management practices within 14 days after their installation;
 - (c) Obtain permission in writing from the Village staff prior to modifying the control plan;
 - (d) Install all best management practices as identified in the approved control plan;
 - (e) Maintain all road drainage systems, stormwater drainage systems, best management practices and other facilities identified in the control plan;
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainageways resulting from land-developing or disturbing activities;
 - (g) Inspect the construction best management practices after each rain of 0.5 inch or more and at least once each week make needed repairs;
 - (h) Allow the Village staff to enter the site for the purpose of inspecting for compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan; and
 - (i) Keep a copy of the control plan on the site.



AH 6 - Erosion Plan Accepted

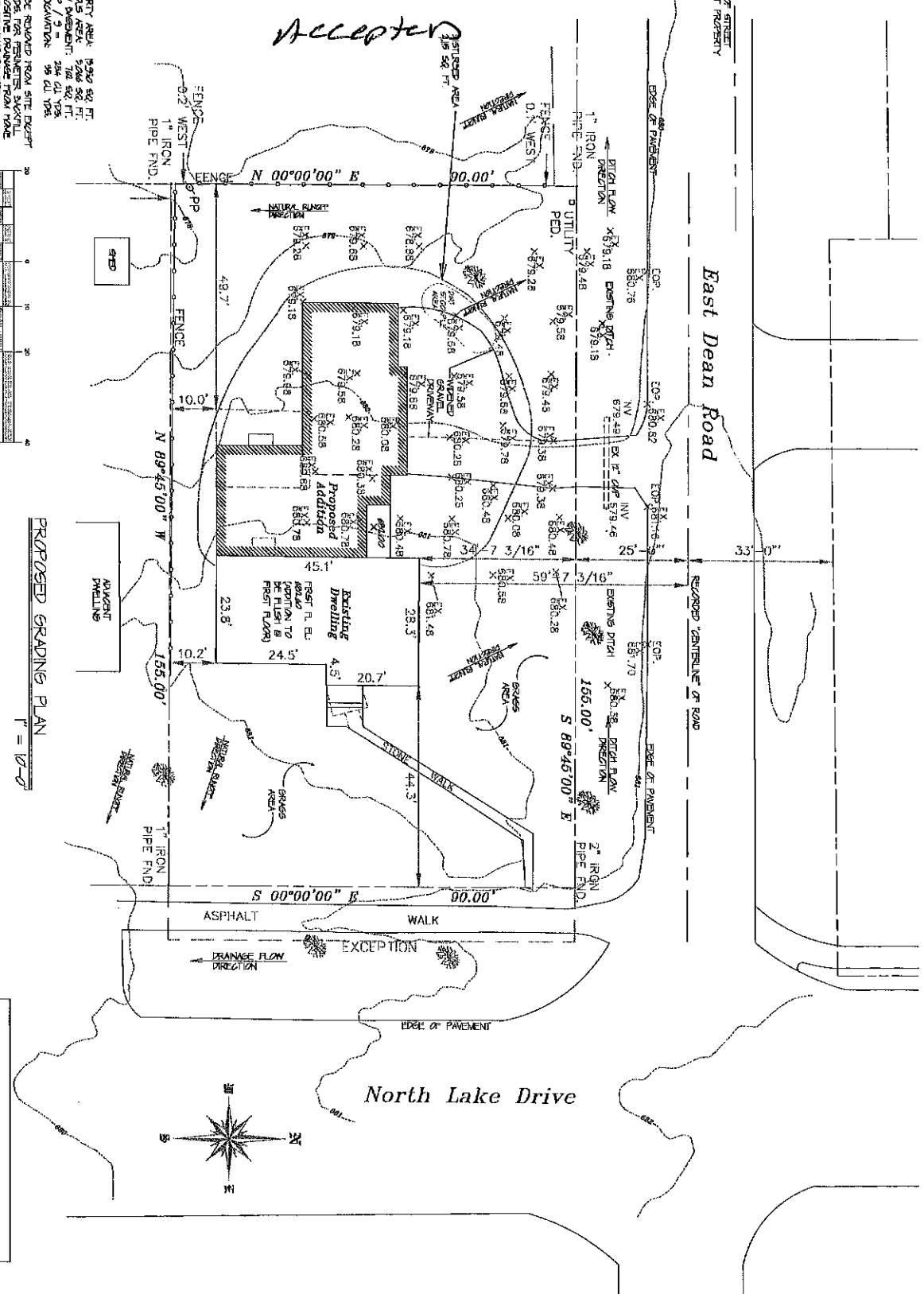
TOTAL PROPERTY AREA: 12,242 SQ. FT.
NEW IMPROVEMENTS AREA: 2,242 SQ. FT.
NEW IMPROVEMENTS PERCENT: 18.31%
7.6 x 5 DEEP / 3 = 254 CU YDS.
PROPOSED EXCAVATION: 254 CU YDS.
PROPOSED FILL: 254 CU YDS.



SCHEDULE OF LAND DISTURBANCE ACTIVITY:
START DATE: 08/01/2023
COMPLETION: 08/01/2023
FINAL GRADING WITHIN 2 WEEKS

PROPOSED GRADING PLAN
1" = 10'-0"

SHEET INDEX:
0-1 PROPOSED GRADING PLAN
0-2 EXISTING SITE PLAN



Renovation & Expansion of
Single Family Home
8333 N. Lake Drive
Fox Point, WI 53217

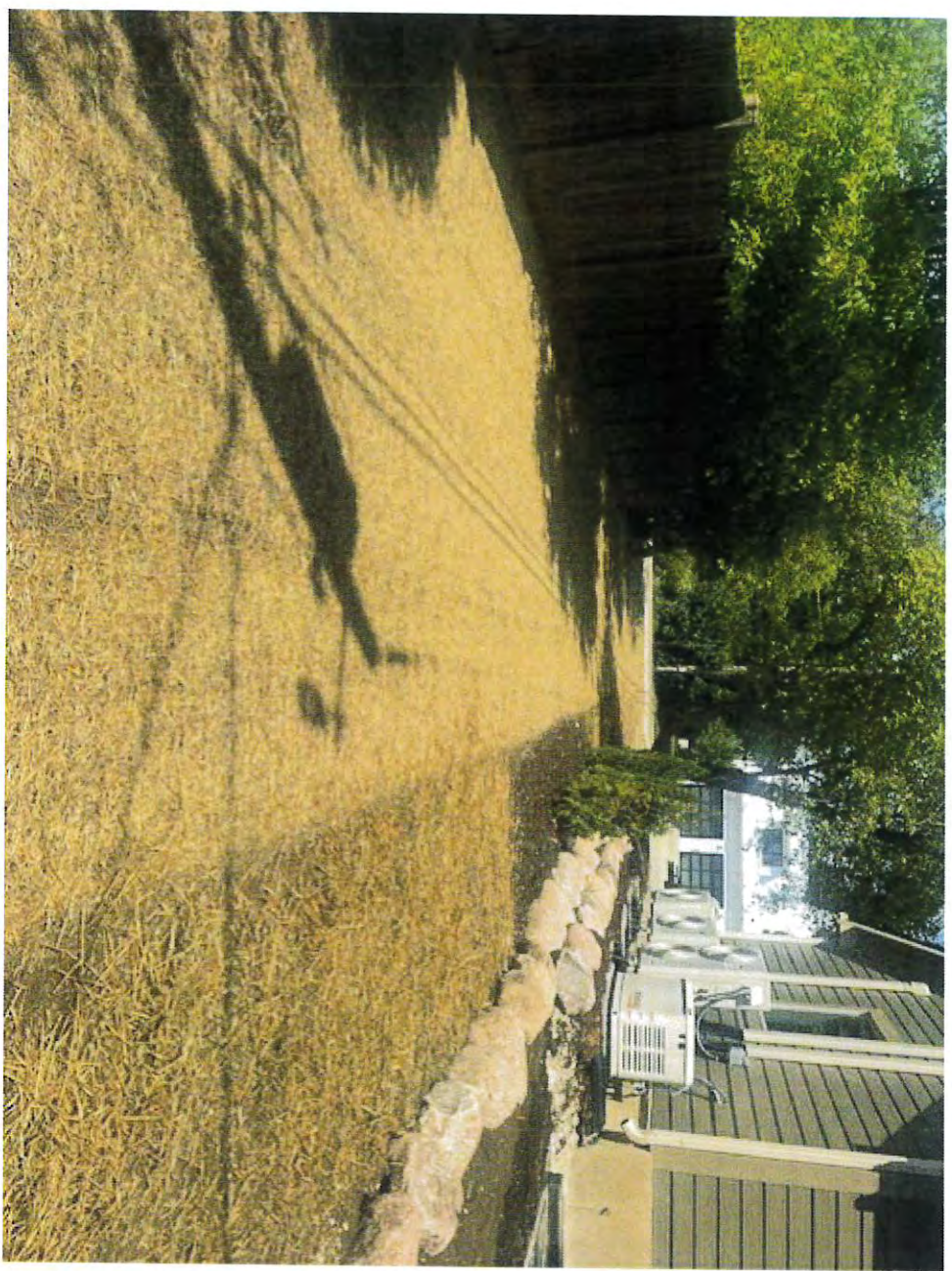
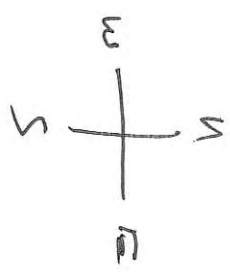
ATT #8

This picture and measurements even include the north easement which is also exempt when having to repair.

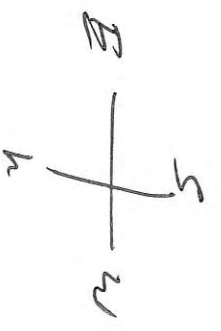


This picture is from Branmeier describing the basis for the fill permit based on the land disturbing activity during construction. This includes the addition, garage, driveway, patio, sidewalks, planters, yard seeding, landscaping – all of it.

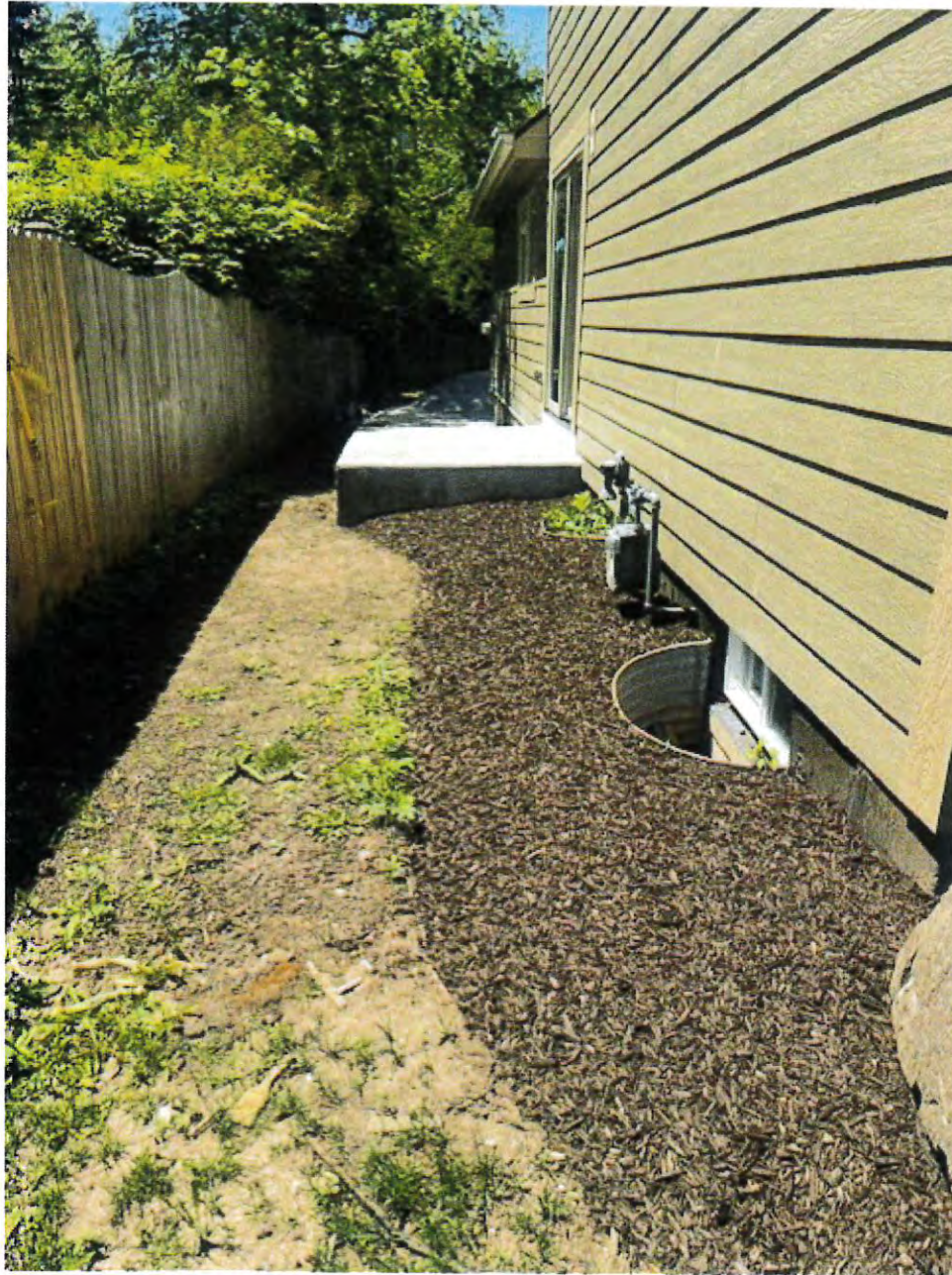
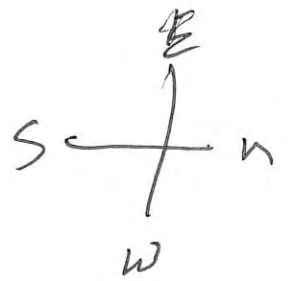
W. Erosion Control



Back Patio



S. AREA

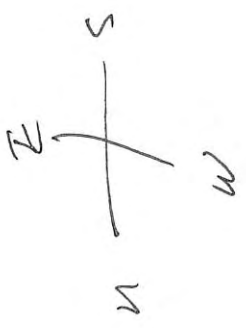


N
W + E
S

N. E Landscaping

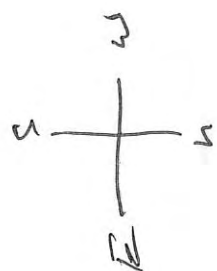


Front Entry





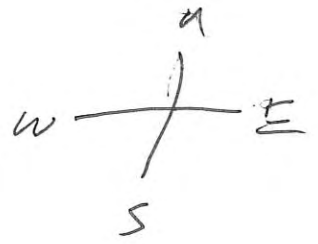
original
walkway



1
New Driveway



Driveway Border



VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 1.060669

Aug 26, 2024

8339 N LAKE DR

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	
Total:	200.00
CHECK	200.00
Check No: 1125	
Payor: TOWER CIRCLE INVESTMENTS	
Total Applied:	200.00
Change Tendered:	.00

08/26/2024 8:28 AM

Kevin Ausman

From: Scott Botcher
Sent: Thursday, September 19, 2024 9:55 AM
To: Scott Brandmeier
Cc: Kevin Ausman
Subject: FW: Fill Permit

As requested.

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620



From: Scott Botcher
Sent: Thursday, December 21, 2023 4:00 PM
To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

Thank you for taking the time to meet with Scott and me. I sincerely appreciate the questions you posed and comments you made regarding our Ordinances. After doing some research and discussing this matter with our Village Attorney, I carefully considered your comments and questions and have come to the following conclusions:

The phrase "land disturbing activity" is used in several places in State statutes, and defined in those sections, and for the most part the various definitions are very similar.

Wisconsin Statutes Section 236.13(2)(ad)2. says this:

"Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

Wisconsin Statutes Section 281.33(3)(b)1. says this:

The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site,

that: Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

Your question arises in relation to the Village Building Code, Section 756-7 E (1)(a) (2), so the most relevant definition may be from the **State Uniform Dwelling Code (UDC)**, because that is incorporated into the Village Building Code. The definition of the phrase “land disturbing *construction* activity” in the UDC is:

“Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit or trench dewatering, filling and grading activities. (Wisconsin Administrative Code Section SPS 320.07(46m).)

In my opinion, you have engaged in “Land disturbing activity” as defined by all three citations, above; primarily, but not exclusively, “filling” and/or “change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state” or “any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment”

As such, I agree with Mr. Brandmeier’s determination and you should secure the required permits from him. As we indicated, you have the right to appeal this decision to the Board of Appeals.

Sincerely,

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620



From: Ralph Bencrisutto <ralphb@towerenergypartners.com>
Sent: Friday, December 8, 2023 5:21 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Hi Scott

I'm a spec writer and have some suggestions for clarification.

As far as 756-7 E I would recommend the following:

Definition of disturbed area is the net area of proposed grading.

Exclusions: Restoration of activities that disturbed the land during the project to original grade are exempt.

Code 272- Erosion control

Definition of disturbed area is the net change in topography that will affect the natural drainage less exemptions listed in 272-10. Restoration and/ or re-grading of the area to original grade after construction activities is exempt.

Erosion control for Areas under 4000 sq.ft.

Excavation and construction activities that will result in temporary storing the excavated materials along with the disturbed land required for the moving of the same will require a mitigation permit to prevent excessive silt from migrating to the adjacent properties in the event of heavy rain. The permit will require the silt fence, covering of piled dirt and / or erosion control fabrics as appropriate to mitigate issues. After the project is completed the contractor or building owner will have 90 days to affect removal and restoration to original grade. If unusual weather or other mitigating conditions are preventing removal within this time frame and extension can be applied for providing silk mitigation procedures are maintained.

Exemptions:

The provision would be exempted if the lot was not within 50' of engineered or natural drainage that would be affected.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Thursday, December 7, 2023 4:43 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

Thank you for your email from earlier today retracting the statements you made below. I can assure you that my task is to apply the code uniformly and I appreciate the comments you have made regarding your interpretations of the code and how they should apply.

I also appreciate that you took time out of your day to meet with the Village Manager (Scott Botcher – copied) and me to discuss your perspective. Based on our discussion this afternoon, I am withdrawing the requirement to submit plans to me subject to Scott's determination. As noted, if after consulting with the Village Attorney Scott agrees with your interpretation, it would appear no permits will be required for grading and drainage. If, however, he is of the opinion that the code does apply and that you have disturbed an area in excess of the threshold then you will have to submit the necessary permits (unless you decide to appeal to the Board of Appeals to have them render a decision). Please note that if you have to hire an engineer to perform the drainage analysis, you should select one of your choosing.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>

Sent: Wednesday, December 6, 2023 4:27 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: Fill Permit

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Point.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, December 6, 2023 12:44 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was

planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

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From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Friday, December 1, 2023 4:18:01 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know

Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios or driveways, or the filling of such areas with soil after they have been removed from the Village Code, or the filling of such areas with soil after they have been removed from the
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height to change the capacity or rate of flow of water so as to adversely effect the drainage of surface
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less if the flow of water is not altered or the grading work changes the flow from a back pitch into a r from the residential structure, provided that such change does not direct flow toward another lot. This exception is to allow for minor grading and construction of planting beds, flower
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities in this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and the material complies with § 272-4.

[Added 4-13-2010 by Ord. No. 2010-08]

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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Racine, WI 53403
T (262) 632-1464
F (262) 632-3446





VILLAGE OF FOX POINT

MILWAUKEE COUNTY

WISCONSIN

VILLAGE HALL

7200 N. SANTA MONICA
BLVD.

FOX POINT WI 53217-3505

414-351-8900

FAX 414-351-8909

To: Village Board of Appeals

From: Scott Brandmeier, Director of Public Works

Through: Scott Botcher, Village Manager

Date: September 19, 2024

Re: Board of Appeals Request for Consideration of Administrative Decision Related to 8339 North Lake Drive

Mr. Ralph Bencriscutto is the owner of the parcel at 8339 North Lake Drive and is appealing an administrative decision made by Mr. Scott Botcher, Village Manager, on or about December 23, 2023. Mr. Bencriscutto has submitted his paperwork related to the appeal and both parties (the Village and Mr. Bencriscutto) have waived the requirement that any appeal of an administrative decision must be made within 30-days of the decision.

History

Mr. Bencriscutto submitted an application to the Village for approval of an addition to the existing single family residential structure on the property in mid-2022. The Building Board presumably approved the application for the addition. Subsequently, in May 2023, Mr. Bencriscutto and his design engineer (Stack Design Group) submitted an email to me inquiring what additional permits may be needed to proceed with the addition. I responded on May 23, 2023 noting that the proposed addition would require a fill permit (Chapter 272), a grading and drainage analysis (Section 756-7(E)), an erosion control permit (Chapter 285), and a culvert permit. The email and code sections/chapters are included in Attachments 1-4.

At dispute in this matter is the applicability of the aforementioned Village codes. While these are included in this memo for your benefit, the following summarizes the requirements of each of the code sections:

1. Article IV of Chapter 285 requires an erosion control permit should an individual perform "land development, demolition, redevelopment, and/or land-disturbing activities" that involve "grading, removal of protective ground cover or vegetation, excavation, land filling or other land-disturbing activity affecting a surface area of 8,000 square feet or more." This section also applies to the construction of houses, among other things.

2. Chapter 272 requires individuals to obtain a fill permit for the placement of fill on a property in the Village. Exceptions, as outlined in Section 272-10, do apply and allow for the placement of fill less than 25 cubic yards on a property and also exempts top dressing (topsoil) and the stone needed for patios and driveways.
3. Section 756-7(E) requires individuals to perform a grading and drainage analysis “for applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more” and “for all circumstances where a fill permit is required pursuant to Chapter 272.”

These code sections are in place in order to ensure that any residential infill development (or other development for that matter) within the Village does not adversely impact an adjacent property owner (e.g., changing flow patterns, increasing the amount of flow onto an adjacent property, allowing sediment and silt to flow onto an adjacent property during development, etc.).

The initial drawings submitted to the Village for review (refer to Attachment 5) depicted a disturbed area of 4,458 square feet and a net fill on the property of approximately 155 cubic yards (refer to sheet 2 of Attachment 5 – total excavation of 289 cubic yards with 134 cubic yards to be removed from the site).

Subsequent emails between Village staff, Mr. Bencriscutto and Stack Design Group made it apparent that they were trying to design and complete the project without having to obtain the necessary permits and, on June 12, 2023, Mr. Bencriscutto submitted a revised plan to the Village noting a significantly reduced disturbed area of 2,115 square feet. Please refer to Attachments 6 and 7 for the email and revised plan.

Based on the revised grading/site plan and the assurances from Mr. Bencriscutto and Stack Design Group that the development would fall below the thresholds identified in Village Code requiring the permits, I provided a conditional approval letter for the project (refer to Attachment 8). Please note the conditions identified within the letter including, but not limited to, the removal of all fill from the site (per Mr. Bencriscutto’s assurances that they would remove approximately 250 cubic yards of fill) and that if the disturbed area exceeded 4,000 square feet at any time during the project the requirements of the various sections of Village Code may be triggered and be required to be submitted prior to final approvals being issued for the project.

As the project progressed, it became readily apparent that the thresholds were being exceeded and that Mr. Bencriscutto would need to file the appropriate permit applications for the project. These conversations are noted below and included in the referenced attachments.

- A. Attachment 9 – October 25, 2023 email to Mr. Bencriscutto noting that soils are being stockpiled and larger areas are being disturbed. Attachment 9 includes the email, pictures and erosion control inspection reports.
- B. Attachment 10 – Follow up emails between Mr. Bencriscutto and Village staff on October 25, 2023 regarding the concerns noted on the site.
- C. Attachment 11 – November 6, 2023 email to Mr. Bencriscutto noting that it appears his contractor(s) are placing fill and that a permit would be needed as I had mentioned months earlier. The three pictures sent to Mr. Bencriscutto are also included in this attachment. It is important to note that on October 25, 2023, I issued a stop work order until a tracking pad was installed and the silt fence was properly re-installed. In the

emails (which spans over multiple days and messages), it is apparent that work continued in spite of the stop work order.

- D. Attachments 12 – 14 – A follow up email on November 8, 2023 noting that the tracking pad had not been installed along with pictures and the erosion control inspection reports.
- E. Attachment 15 – December 6, 2023 email to Mr. Bencriscutto explaining that, given the activities being performed at the site (as evidenced in the prior emails, reports and documentation), he would have to obtain the necessary permits prior to continuing with the project.

Subsequently, Mr. Bencriscutto threatened ethics and legal actions against staff and the Village if we were to enforce the code against him (refer to Attachment 16). I contacted Mr. Bencriscutto to speak with him about his December 6, 2023 allegations whereupon he retracted his accusations (refer to Attachment 17) and agreed to meet with Mr. Scott Botcher, Village Manager for Fox Point, and have Mr. Botcher serve as an arbiter in the matter – namely, whether the activities undertaken at his property fall within the definitions contained within Village Code (and state statute) which would require him to obtain the necessary permits. Attachment 18 summarizes the meeting with Mr. Botcher and Mr. Bencriscutto. At the meeting with Mr. Bencriscutto, he provided Mr. Botcher and me with a document contending how he interprets the Village Code. He also provided us with an email on December 8, 2023 indicating how he interpreted Village Code. Both these items are included in Attachment 19.

Mr. Botcher consulted with the Village Attorney regarding the application of Village Code in light of Mr. Bencriscutto's comments (both in his in-person meeting with Mr. Botcher and me as well as in his email correspondence). Mr. Botcher responded to Mr. Bencriscutto on December 21, 2023 providing definitions of land disturbing activities and noted that his work on the property fell within the legal definitions. Mr. Bencriscutto was then informed that he would need to obtain the necessary permits from the Village (refer to Attachment 20). In spite of Mr. Bencriscutto agreeing to have Mr. Botcher be the final arbiter in the matter and abide by his decision, Mr. Bencriscutto responded to Mr. Botcher on December 22, 2023 disagreeing with the conclusion and requesting even further documentation – in particular, whether the exemptions in Chapter 272 applied to the requirements in Chapter 285 or Section 756-7 (refer to Attachment 21).

During the course of the next couple of months, Mr. Bencriscutto continued constructing the addition to the property but did not submit the necessary permit applications for grading and drainage or fill. In early March 2024, Mr. Bencriscutto requested approval to remove a Village tree in order to expand his driveway; the request was denied as he had not submitted the permits to the Village and that his request would not be considered until he had done so. This led to a flurry of emails between Mr. Bencriscutto and staff as well as the Village President between March 7, 2024 and March 18, 2024 wherein he continued to contend he did not need to submit the permit applications because the exemptions allowed him to avoid applying for the permits. While not all of the emails are included (though they can be upon request), they boil down to the Village reiterating that the Village Code applies to his activity and Mr. Bencriscutto being of the opinion it does not. I have included his March 13, 2024 email (which contains some of the email strings from earlier in the month) as Attachment 22.

Mr. Bencriscutto disagreed with the legal interpretations provided to him in December 2023 (and reiterated in March 2024), asked the Village to (in essence) to negotiate and compromise on what needed to be submitted under the Village Code, and made demands that the Village

respond to his offer/demands. On March 19, 2024, I provided Mr. Bencriscutto a detailed explanation and summary of events leading up to our determination and the rationale supporting the decisions made by Village staff. There were additional exchanges of emails between Mr. Bencriscutto and me on March 19 and 20, 2024 and these are included in Attachments 23 and 24.

As noted in my emails to Mr. Bencriscutto, it appeared he wanted to debate the applicability of the code to his project and then began looking at other avenues to avoid having to comply, going so far as to inquire whether a land disturbing activity included agricultural activities. I responded to his questions on March 25, 2024 (Attachment 25) noting that he should define what activities he performed on his site that would fall into an agricultural classification with a definition of the same. Mr. Bencriscutto did not provide any follow up clarification to that question.

On May 21, 2024, Mr. Bencriscutto noted he obtained elevations from the surveyor for the grades on the property. I responded and noted that the survey would not be reviewed until he complied with the requirements of Village Code and submitted the necessary permit applications (Attachment 26).

On or about June 20, 2024, Village staff received a Notice of Injury Giving Rise to Claim for Damages Pursuant to Wisconsin Statute Sec. 893.801(1)(d). This was prepared by Attorney Thomas M. Devine on behalf of Tower Circle Investments and Mr. Bencriscutto as it relates to our requirement to obtain the necessary permits. This is included in Attachment 27. Mr. Bencriscutto followed up with the Village in late July and early August 2024 requesting further clarification of the information provided to him previously. On August 5, 2024, Mr. Botcher sent Mr. Bencriscutto the decision that was rendered on December 21, 2023. Mr. Bencriscutto then filed his Board of Appeals request on or about August 20, 2024.

Determination

The Village of Fox Point recognized a need to address erosion and drainage off properties and adopted Article IV of Chapter 285 (erosion control) and Section 756-7(E) of the Village Code to address these matters. Additionally, the Village recognized that the placement of fill on a property without the proper design and documentation could adversely impact surrounding property owners and, as a result, adopted Chapter 272 of the Village Code. Each of these are addressed below.

- Section 756-7(E)(1) requires a drainage plan for any application “for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more” and “for all circumstance where a fill permit is required pursuant to Chapter 272 of this Code.” Mr. Bencriscutto was required to obtain a building permit to construct the addition to the house at 8339 North Lake Drive. It is clear from the documentation in the various emails and pictures that Mr. Bencriscutto disturbed an area larger than 4,000 square feet. Therefore, Mr. Bencriscutto is required to provide a grading and drainage analysis that addresses the pre- and post-development flows per Section 756-7(E)(1)(b).
- Pursuant to Chapter 272, a fill permit is required whenever an individual places more than 25 cubic yards of fill on their property. Mr. Bencriscutto argues that two of the exceptions identified in the Chapter exclude him from having to do so: placement of top dressing and construction of driveways and patios. Top dressing is customarily

considered to be four to six inches of topsoil placed on a yard to level it out and remove little undulations within the yard. The exception provided for patios and driveways was added to the Village Code in 2010 to address situations where a property owner may remove, for example, 6-inches of soil and construct a driveway. In conversations with the Village Attorney at the time, no such exemption existed and property owners would have been required to obtain a fill permit for the placement of the driveway. The exemption certainly does not contemplate, however, the addition of one to three feet of fill beneath the concrete or asphalt driveway; that is, if fill is necessary to obtain the grade needed for proper circulation of vehicles (e.g, entering and exiting the garage, etc.), such fill needs to be considered in the analysis of whether the placement will adversely affect neighboring property owners. It is obvious that Mr. Bencriscutto has added fill to the property – though the exact amount is unknown due to his reluctance to provide the necessary drawings and permit application. Should the Board of Appeals agree that Chapter 272 applies, Mr. Bencriscutto should be required to provide a drawing of the pre-development grades and proposed post-development grades so that all parties understand how much fill has been placed on the property. The Board of Appeals should also find that the exception for driveways does not include the placement of additional fill as noted previously and that such fill needs to be included in the calculation of what has been placed on the property. Should it be determined that Mr. Bencriscutto (and/or his contractors and employees) placed more than 25 cubic yards of fill, he will be required to submit a fill permit application under Chapter 272.

- Section 285-42 notes that an erosion control application is needed for, among other things, the construction of houses and the “grading, removal of protective ground cover or vegetation, excavation, land filling or other land-disturbing activity affecting a surface area of 8,000 square feet or more.” Clearly Mr. Bencriscutto built a house (addition) on the property; further, the documentation included herein clearly shows that Mr. Bencriscutto disturbed an area larger than 8,000 square feet. While Mr. Bencriscutto already applied for and obtained the erosion control permit, it is important that the Board of Appeals evaluates the definition of “land-disturbing activity” per Section 285-39 (“any man-made change of the land surface including removing vegetation cover, excavating, filling and grading . . .”) It is my recommendation that the Board of Appeals finds that Mr. Bencriscutto’s activities do constitute a land-disturbing activity.
- Mr. Bencriscutto also seemingly contends that the exemptions in one part of the Village Code apply to other sections of the Village Code. Unless the code specifically provides for that scenario (e.g, if Chapter 285 had specific language incorporating the exemptions in Chapter 272), one cannot reasonably conclude that the exemptions in one part of the code apply to another part of the code. I am respectfully requesting that the Board of Appeals should find accordingly.
- Should the Board of Appeals find that the sections of the Village Code apply to Mr. Bencriscutto’s activities at 8339 North Lake Drive, it is my recommendation that the Board of Appeals require Mr. Bencriscutto submit the permit applications to the Village within 60 days of their decision and, further, that no occupancy permit will be issued until the permit applications have been reviewed and approved.

Attachment 1

May 23, 2023 Email to Stack Design Group

From: [Scott Brandmeier](#)
To: stackgroup@aol.com
Cc: [Michael Rakow](#); [Scott Brandmeier](#); [Scott Brandmeier](#)
Subject: RE: 8339 N Lake Drive - Building permit
Date: Tuesday, May 23, 2023 12:21:00 PM
Attachments: [image002.png](#)

Hi Tom,

Mike Rakow sent me the survey drawing last week but I was tied up with other deadlines. Based on my conversation with Mike and looking at the drawing, the addition will be built in an area that likely will require the addition of fill to the property (even if the source of the fill is from the excavation for the addition) because the grades for the addition are anywhere up to about a foot lower than the existing structure. Based on that and the grades that were submitted, here are the following permits and fees required for the addition. Please visit <https://www.villageoffoxpoint.com/149/Permits-Applications-Licenses> to download the appropriate forms for each of the permits.

1. A fill permit. The fee is \$650 plus a \$5,000 bond is required until the fill activities are completed. Please note that an additional fee may be needed if fill is being hauled into the site to account for the trucking. Please be sure to fill out the narrative portion of the permit requirements (it refers the applicant to the Village Code – you will have to list the source of the fill, hours of operation, etc.) in your application. Please also note that we are required to inform property owners within 500 feet of the subject property of the proposed fill activity and they have 21 days to comment on the proposed fill permit application. So, you should plan on getting approvals from me about 2-3 weeks after the 21 days expires.
2. A grading and drainage analysis. This requires you to address the drainage on the site and identify the pre and post-development flows. The post-development flow in the 2, 10 and 100 year storms needs to be less than the pre-development conditions. You will likely need to have a civil engineer perform this analysis. Please note that we do not send out the notifications for the fill permit until this analysis is completed as well. The fee for this is \$400.
3. An erosion control permit and drawing. This shares the same form as the grading and drainage analysis but is a separate \$400 fee. Please be sure to address the narrative requirements (e.g., if you encounter dewatering, etc.) as part of the application process. The Village Code is referenced in the application and will identify what needs to be submitted.
4. A culvert permit application (\$75 fee) for the proposed new culvert. The application should include details on the pipe and the elevations of the invert.

I have copied Sue, the DPW Admin, on this message so that she can start preparing the 500-foot buffer and mailing labels for the fill permit but we will not send out the letters until a completed application and fees are submitted to the Village.

Feel free to call or email with any questions.

Scott

Scott Brandmeier, P.E.

Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Monday, May 22, 2023 12:47 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Fwd: 8339 N Lake Drive - Building permit

Scott,

Is anything else needed for the building permit for 8339 N. Lake Drive? Please let me know if a fee is due or any additional documentation is required.

Thanks,

Tom

Stack Design Group
Direct; 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tue, May 16, 2023 3:19 pm
Subject: FW: 8339 N Lake Drive - Building permit

Scott,
Here is the info we discussed earlier. Please look over

Regards,



Michael Rakow

Building Inspector

Phone: 414-247-6622

Web: www.villageoffoxpoint.com

7200 N Santa Monica Blvd, Fox Point, WI 53217

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Monday, May 15, 2023 9:20 AM

To: Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: 8339 N Lake Drive - Building permit

Mike,

I have attached the grading plan with fill calculations and erosion control for the home at 8339 N. Lake Drive. Please let me know if anything additional is needed for the issuance of the building permit and what the fee amount is.

Thank you,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>

To: stackgroup@aol.com <stackgroup@aol.com>

Sent: Tue, Jul 12, 2022 10:27 am

Subject: RE: 8339 N Lake Drive

Thanks, see you tomorrow.

Regards,

Michael Rakow

Building Inspector



**VILLAGE OF
FOX POINT**

7200 N Santa Monica Blvd

Fox Point, WI 53217

(414) 247 6622

www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>

Sent: Tuesday, July 12, 2022 6:59 AM

To: Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive

Attached is the Site Plan for 8339 N Lake Drive with the open area calculations in square feet and percentage.

Please let me know if anything else is needed.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thu, Jul 7, 2022 3:39 pm
Subject: RE: 8339 N Lake Drive

Tom,

- I will also need the open area calculation. See 745-4B
<https://ecode360.com/14576226>
- Need to verify 70 foot setback from the centerline of Dean Rd.

Regards,

Michael Rakow
Building Inspector



7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thursday, June 30, 2022 3:38 PM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

Mike,

Attached is our Site Plan for 8339 N Lake Drive.

Please let me know if anything additional is needed.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thu, Jun 30, 2022 3:25 pm
Subject: RE: 8339 N Lake Drive

Tom,
Can you email me a copy of the site plan. I need to verify the 75 foot setback off of Dean Rd.

Regards,

Michael Rakow
Building Inspector



7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Friday, June 10, 2022 1:17 PM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

I have attached a PDF file of the revised elevations for 8339 N Lake Drive. The project was tabled at the May meeting and it is my understanding that you would have it on the June agenda if we were able to submit by today, so I dropped them off yesterday. I believe that the next meeting will be Wednesday June 15th.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: stackgroup@aol.com
To: mrakow@villageoffoxpoint.com <mrakow@villageoffoxpoint.com>
Sent: Mon, May 2, 2022 9:15 am
Subject: 8339 N Lake Drive

Attached is a PDF file with the full set of architectural drawings submitted for the Building Board meeting.

Please let me know if anything additional is needed.

Thanks,

Tom Stachowiak

Stack Design Group
Direct: 414-807-8033

Attachment 2

Chapter 272 – Solid Fill Ordinance

Chapter 272

SOLID FILL AND GRADES

§ 272-1.	Permit required; effect on natural drainage courses.	§ 272-7.	Cash deposit.
§ 272-2.	Application for permit.	§ 272-8.	Bond.
§ 272-3.	Fees.	§ 272-9.	Other permits.
§ 272-4.	Fill material.	§ 272-10.	Exceptions.
§ 272-5.	Weight of trucks.	§ 272-11.	Signage.
§ 272-6.	Issuance of permit.	§ 272-12.	Appeal.
		§ 272-13.	Violations and penalties.

[HISTORY: Adopted by the Village Board of the Village of Fox Point 4-13-2004 by Ord. No. 2004-06 (Ch. 18 of the 1961 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Streets, sidewalks and rights-of-way — See Ch. 292.

Signs — See Ch. 540.

Trees, shrubs and other plant material — See Ch. 310.

Building construction — See Ch. 756.

§ 272-1. Permit required; effect on natural drainage courses.

- A. Transporting, dumping, or placement of solid fill. No person, firm or institution, public or private, shall transport to, dump, or place upon lands, public or private, solid fill within the Village of Fox Point without first obtaining a permit therefor. In granting or denying a permit, the Village Manager, or such authority as shall from time to time be charged by the Village Board with the regulation of solid fill, shall consider the purpose for the transportation, dumping, or placement of such fill. It shall be deemed a legitimate purpose to transport, dump, or place such minimal amount of fill as reasonably necessary to accommodate the use and development of property as allowed by the applicable use regulations of the zoning district in which the property is situated. A fill permit may be denied or modified if such use can be accommodated without fill, or by a lesser amount of fill than that which is requested in the application for a permit, or if it is determined that the amount of fill presents an unnecessary or unreasonable risk of harm, particularly as to drainage and stormwater runoff to other properties in the area.
- B. Drainage. Filling operations shall not block a natural drainage course if building or development can occur consistent with the use regulations of the zoning district in which the subject property is located without filling the area of the lot which constitutes such natural drainage course. In the event building or development can only occur by the filling of a natural drainage course, such filling operation shall only be allowed if an alternate drainage course, suitable in the discretion of the Village Manager or his/her designate, is provided.
- C. Natural drainage course defined. For purposes of this section, a natural drainage course shall be deemed to mean any creek, ravine, gully, channel, hollow, swale, or depression, through or over which surface water continuously or periodically flows in its natural course.

- D. Notification. In addition to any notice requirements under any applicable state or federal law, or as otherwise provided in the Village of Fox Point Code, the Village Clerk/Treasurer, or his/her designee, shall provide notice by first class mailing to the owners or occupants of all properties within 500 feet of the subject property at least 21 days prior to any hearing, procedure, or consideration by the Village Manager, or his/her designate, of such application.

§ 272-2. Application for permit.

Application for a filling permit to transfer, dump or place solid fill within the Village of Fox Point shall be made by the owner of the lands to be filled or his designated agent in writing to the Village Manager upon an application made available by the Village. A separate hauling permit shall be obtained for each truck or vehicle hauling the fill material. The applicant shall set forth in the application the following information:

- A. Location of filling operation.
- B. Proposed routes for hauling fill.
- C. Number, type and size of trucks to be used.
- D. Proposed trucking schedule, number of days, times of day, etc.
- E. Other equipment involved in fill operation.
- F. Descriptions and source of fill material.
- G. A plan which shall include, but which shall not be limited to, a description of area where operation is to take place; intent and purpose of the plan; an estimated length of time to finish plan; engineering studies if available or if requested by the Village; plan for plantings; plan for grading; the grade of the terrain surrounding the area proposed to be filled; cross-section drawings showing the topography of the land before commencing the filling operation and upon completion of the filling operation; plan showing the number, type (genus and species) and size of all trees over six inches in diameter at breast height (dbh) that are to be removed, and depicting the tree protection zone, as defined in § 310-3A(2) of this Code, of all trees three inches or larger dbh that will remain within the areas reasonably affected by the fill operation, and depicting the exact limits of the fill operation in relation to the tree protection zone; plan for maintenance and appearance during time of inactivity; plan for shore protection; and other such requirements, tests, and surveys that may be imposed and information that may be requested by the Village concerning the fill area and access routes thereto. Any and all changes or amendments to the above plans shall be submitted to the Village for review and approval before such changes or amendments are executed.
- H. Daily cleaning and maintenance schedule for access and hauling route, including description of the personnel and equipment on site or contracted for this purpose. Applicant shall provide a description of measures to be taken to control dust, mud, ice, stormwater, etc.

§ 272-3. Fees. [Amended 12-8-2009 by Ord. No. 2009-13]

Filling permit fees shall be paid for the initial application, for any renewal annually, and for any additional review, as established by the Village Board from time to time and as shown in Chapter 63 of this Code.

§ 272-4. Fill material.

Fill material shall be clean, inert material free from organic matter, brush, garbage and material subject to organic decomposition. Fill containing items such as hollow containers, appliances and equipment subject

to subsequent collapse or settlement is prohibited. Generally, material such as earth fill and broken concrete of a size to be approved by the Village Manager and/or Director of Public Works/Village Engineer will be classified as acceptable fill subject to other permit requirements.

§ 272-5. Weight of trucks.

The Village Manager shall review the proposed truck routes and the weight of said trucks, both unloaded and loaded, and because of weight may restrict or prohibit said trucks from using certain Village streets and highways as a condition of a filling permit.

§ 272-6. Issuance of permit. [Amended 2-14-2012 by Ord. No. 2012-02]

- A. The Village Manager may issue a filling permit to each applicant when she/he is satisfied that:
- (1) The fill material meets the requirements in § 272-4 above;
 - (2) The filling operation will not create unreasonable noise, traffic or other problems detrimental to a residential community in the area of said filling;
 - (3) The tree protection zone [as defined in § 310-3A(2) of this Code] surrounding all remaining trees with a three-inch diameter at breast height (dbh) or larger within the areas reasonably affected by the fill operation will be preserved; and
 - (4) A reasonable number of appropriate trees will be planted to replace trees that are to be removed as a result of the filling activities, provided that the Village Manager shall not require that the total dbh of the replacement trees exceeds the total dbh of the trees that are removed, and the Village Manager shall also not require the planting of more three-inch dbh or larger trees than three times the number of three-inch dbh or larger trees that are removed.
- B. The permit shall not authorize any filling between the hours of 5:00 p.m. and 7:00 a.m. on weekdays or Saturdays nor at any time on Sunday or on a statutory holiday. The permit may restrict the hours of filling or the number of trucks involved based on the location of the filling operation and the traffic conditions in the area of the filling. **[Amended 8-14-2018 by Ord. No. 2018-07]**
- C. The filling permit shall be for a period of not to exceed three consecutive months but may be renewed not more than two times in a calendar year. The hauling permit shall be for a period not to exceed three consecutive months but may be renewed not more than two times in a calendar year. Renewal permits shall be subject to the conditions of the initial application. **[Amended 11-11-2014 by Ord. No. 2014-08]**
- D. Filling and hauling permits are nontransferable.

§ 272-7. Cash deposit.

The filling permit shall not be effective until the posting of a cash deposit of \$250 with the Village. Said cash deposit shall be held by the Village to ensure adequate clean up of streets and surrounding areas from spillage, debris, dust, all other material from the trucks carrying the fill, and inspection of filling operations by Village personnel. In the event the permittee or his contractor fails to clean up the streets at sufficient time intervals, the Village may clean up said streets and use such part of the cash deposit for the expense of clean up. The Village shall maintain a record of inspections conducted by Village personnel and use such part of the cash deposit for the expense of inspections. In the event that all or any portion of the initial cash deposit of \$250 is used for such cleanup or inspection, the permittee or his contractor shall post additional

sums of money so that the deposit will continue to be maintained in the amount of \$250 for the entire time period of the filling permit.

§ 272-8. Bond.

The filling permit shall not be effective until the posting of a surety bond executed by a surety company licensed to do business in Wisconsin in the sum of not less than \$5,000 or in such higher amount as is necessary in the opinion of the Village Manager for the purpose of securing the Village against any and all damages to Village property and/or unreimbursed expenses the Village may incur from such filling operations.

§ 272-9. Other permits.

The filling permit shall not be effective until all applicable county, state or federal licenses or permits are obtained and copies are provided to the Village. This section shall in no way limit the requirements of those other jurisdictions to restrict or require their approval or permit, if necessary.

§ 272-10. Exceptions.

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § 272-4. **[Added 4-13-2010 by Ord. No. 2010-08]**

§ 272-11. Signage.

Any signs shall be in accordance with Chapter 540 of the Fox Point Village Code.

§ 272-12. Appeal.

Any person, firm or institution who is denied a filling permit or whose filling operation is restricted due to noise, traffic or other conditions may appeal to the Village Board by filing a written notice of appeal with the Village Manager.

§ 272-13. Violations and penalties.

Any person, firm or institution who is engaged in filling without a permit or who fails to follow the plans submitted in the application or fails to comply with the terms and conditions of a permit issued to him shall be subject to immediate suspension of the filling permit and filling activities by the Village Manager and to the penalty provided in § 1-4 of the Fox Point Code.

Attachment 3

Chapter 285 – Stormwater Management, Erosion Control, and Bluff Regulation

Chapter 285

STORMWATER MANAGEMENT, EROSION CONTROL AND BLUFF REGULATION

ARTICLE I		§ 285-23.	Findings of fact.
Construction and Cutting on Banks of Ravines and Lake Bluff		§ 285-24.	Purpose.
§ 285-1.	Purpose.	§ 285-25.	Stormwater quality and quantity management applicability.
§ 285-2.	Definitions.	§ 285-26.	Definitions.
§ 285-3.	Basic restriction.	§ 285-27.	Technical standards.
§ 285-4.	Retaining walls.	§ 285-28.	Performance standards.
§ 285-5.	Driveways.	§ 285-29.	Permit requirements, procedures and fees.
§ 285-6.	Structure or building at foot of lake bluff or ravine bank.	§ 285-30.	Stormwater management plan.
§ 285-7.	Survey or plat required.	§ 285-31.	Maintenance agreement.
§ 285-8.	Cantilever over face of lake bluff.	§ 285-32.	Financial guarantee.
§ 285-9.	Extending over slope of ravine bank.	§ 285-33.	Fee schedule.
§ 285-10.	Release.	§ 285-34.	Enforcement.
§ 285-11.	Restriction on cutting.	§ 285-35.	Appeals.
§ 285-12.	Refuse.	ARTICLE IV	
§ 285-13.	Violations and penalties.	Construction Site Erosion Control	
§ 285-14.	Appeal.	§ 285-36.	Authority.
§ 285-15.	Applicability of other code sections.	§ 285-37.	Findings and purpose.
ARTICLE II		§ 285-38.	Applicability of regulations.
Drainage		§ 285-39.	Definitions.
§ 285-16.	Definitions.	§ 285-40.	Design criteria standards and specifications for best management practices.
§ 285-17.	Application for permit.	§ 285-41.	Maintenance of best management practices.
§ 285-18.	Drainage ditches.	§ 285-42.	Control of erosion and pollutants during land disturbance and development.
§ 285-19.	Culverts.	§ 285-43.	Permit application; control plan; permit issuance.
§ 285-20.	Installation and maintenance of culverts.	§ 285-44.	Inspection.
§ 285-21.	Obstruction of watercourses; procedure to remove or remedy.	§ 285-45.	Enforcement.
ARTICLE III		§ 285-46.	Violations and penalties.
Stormwater Management Regulations		§ 285-47.	Appeals.
§ 285-22.	Authority.	§ 285-48.	Fees.

FOX POINT CODE

ARTICLE V	§ 285-50.	Discharge exemptions.
Illicit Discharges or Connections to Storm	§ 285-51.	Connections prohibited.
Drainage System	§ 285-52.	Violations and penalties.

§ 285-49. Discharges prohibited.

[HISTORY: Adopted by the Village Board of the Village of Fox Point as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building Board — See Ch. 19, Art. II.

Subdivision of land — See Ch. 738.

Stormwater utility — See Ch. 288.

Zoning — See Ch. 745.

Trees, shrubs and other plant material — See Ch. 310.

Building construction — See Ch. 756.

Floodplain zoning — See Ch. 724.

ARTICLE I

Construction and Cutting on Banks of Ravines and Lake Bluff
[Adopted as Ch. 17 of the 1961 Code]**§ 285-1. Purpose.**

Because of the danger of erosion or increasing the erosion of the banks of ravines and the Lake Michigan bluff, and the possibility of disturbing the natural runoff of surface and percolating water which in either case could lead to the partial or complete collapse of buildings; to promote the public health, safety and welfare; to ensure proper access for fire, emergency and police vehicles; to preserve the natural beauty of the ravines and bluffs; and to protect the natural environment, the regulations hereinafter set forth are hereby established.

§ 285-2. Definitions.

- A. The definition of "building" and "structure" as presently set forth in § 745-2 of the Fox Point Village Code shall include retaining walls and driveways.
- B. "Owner" as used in this article means the owner of the property as appears in the records of the Village; in the case of joint owners or tenants in common, any one or more of such owners. The vendee under a land contract may be considered an owner.
- C. "Top of the bluff," as used in this article, means the area on a lot that is up slope of the Village of Fox Point bluff line as delineated by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) in 2003 and which is depicted on maps within the Director of Public Works/Village Engineer's office and which may be updated from time to time by SEWRPC, except as follows. Property owners may, upon application and payment of the applicable fee, request the adoption of a different "top of the bluff" area for their particular parcel on a case-by-case basis. The property owner shall submit to the Director of Public Works/Village Engineer a map which depicts this area, and no building permit or work regulated by this article shall commence unless and until the Director of Public Works/Village Engineer has approved the map submitted by the property owner. The property owner's application shall include all of the following: **[Added 12-13-2011 by Ord. No. 2011-13]**
 - (1) A topographic map, prepared by a State of Wisconsin registered land surveyor, with one-foot contour lines referred to National Geodetic Vertical Datum, which has been prepared or reaffirmed within one year of the date of the application at a scale not smaller than one inch equals 20 feet.
 - (2) The bluff line shall be depicted as the demarcation between those areas within slopes steeper than six horizontal to one vertical (6H:1V) and which transition to slopes shallower than 6H:1V measured perpendicular to the one-foot contour lines across the entire parcel.
 - (3) If the lay of the land has been obscured by improvements, such as filling or the construction of walls and pavements, the lines for analysis shall be projected through the area of the improvements using the most direct line connecting the top of bluff demarcation line where it is interrupted by the improvements.
 - (4) The topographic survey shall also include the following:
 - (a) An outline of all existing and proposed structures or proposed expansion of existing structures;

- (b) The existing property line;
 - (c) Abutting public streets and/or right-of-way lines, street pavements, drives and service walks;
 - (d) Pertinent existing landscaping features;
 - (e) Drainage structures and drainageways; and
 - (f) The SEWRPC top of the bluff line.
- (5) The area on the lot that is upslope of the line established by this procedure shall be the top of the bluff, subject to and upon the approval of the Director of the Public Works, for purposes of the pending application only.
- (6) Disclaimer. Although the foregoing procedure is intended to define the top of the bluff in a reasonable and objective manner that relates to the slope of the land, no assurance is hereby provided that such identified area is well suited for any particular use or construction. It is recommended that the property owner hire either a licensed professional geotechnical engineer or other soils expert to investigate particular soil stability and suitability for any particular uses or construction on the top of the bluff. Such investigation may show particular design requirements for construction or uses on the top of the bluff or may show that construction or uses should be away from the top of the bluff demarcation, among other possible findings. No specific representation is made herein.

§ 285-3. Basic restriction. [Amended 4-19-2010 by Ord. No. 2010-09; 12-13-2011 by Ord. No. 2011-13]

- A. Except as hereinafter provided, no building or structure shall be erected downslope from top of the bluff of the lake bluff or downslope from top of the bluff of a ravine bank or at the foot of the lake bluff or ravine in the Village of Fox Point.
- B. Notwithstanding the provisions of Subsection A, the erection, repair, and/or replacement of any publicly owned bridge, publicly owned stormwater facility, publicly owned utility facility, and any related publicly owned structure(s) (but not buildings) downslope from the top of the bluff of the lake bluff or any ravine in the Village is exempt from all requirements of this article, subject to the following. An application describing each such structure shall be submitted to the Village Board, and the Village Board shall approve the structure unless it finds in its discretion that such structure(s) will be contrary to the purposes set forth in § 285-1 of this article. A structure is "publicly owned" for purposes of this subsection if it is owned by the United States of America, State of Wisconsin, Milwaukee County, Village of Fox Point, utilities of the Village of Fox Point, Milwaukee Metropolitan Sewerage District, or the North Shore Water Commission.

§ 285-4. Retaining walls.

Retaining walls may be built farther than 25 feet from the closest point of the principal structure of the lot only if they are solely and expressly for the purpose of preventing and retarding erosion and slippage of the lake bluff or the bank of a ravine. Retaining walls may be built 25 feet or closer to the closest point of the principal structure of the lot only if they are for the primary purpose of preventing and retarding erosion and slippage of the lake bluff or the bank of a ravine; however, in this case, ancillary purposes are allowed, such as the purpose of creating a flat area or patio adjacent to the principal building. Notwithstanding the foregoing, retaining walls may be constructed in any location on a property if they are a necessary

part of a driveway access to the property, if the property would otherwise not have driveway access, as determined by the Village Building Inspector. It is suggested that retaining walls of over six feet in height be avoided because they would pose a safety hazard and constitute, unless screened from view, an aesthetically unappealing surface. Terracing is suggested as preferable, if feasible, to a retaining wall of over six feet. Before any retaining wall is built, a building permit shall be obtained and plans for retaining walls shall be submitted to the Director of Public Works/Village Engineer. If, in his opinion, the footings and method of construction and materials are adequate from an engineering standpoint to serve the purpose for which such retaining wall is being built and adequate provision is made for the flow of surface and percolating water, he shall so certify to the Building Inspector. No building permit shall be issued by the Building Inspector without such certificate.

§ 285-5. Driveways.

Before a driveway is built, a building permit shall be obtained. The grade of a driveway shall not exceed 12°, and it is suggested that a driveway be one course. Plans for a driveway shall be submitted to the Director of Public Works/Village Engineer. If in his opinion the method of construction and materials are adequate from an engineering standpoint and adequate provision is made for the flow of surface and percolating water, he shall so certify to the Building Inspector. No building permit shall be issued by the Building Inspector without such certification.

§ 285-6. Structure or building at foot of lake bluff or ravine bank.

- A. A structure or building may be built at the foot of the lake bluff where the bluff abuts on North Beach Drive or on flat land that abuts on North Beach Drive or a ravine bank.
- B. A registered professional engineer retained by the owner of the lot shall certify to the Village that the construction of the proposed building and structure(s) will be safe. The engineer shall have recognized experience and expertise in geotechnical investigations, soil mechanics, and structural and coastal engineering. Specifically, he shall certify that:
 - (1) The design of any building or structure(s), the method of constructing such building or structure(s), and the materials used therefor are structurally adequate and will protect the public health and safety.
 - (2) The proposed building and structure(s) will not in any way adversely affect the structural integrity or safety of any building or structure(s) located on adjoining or adjacent sites.
 - (3) The proposed building and structure(s) will not adversely disturb ravine or bluff slopes, interfere with surface or subsurface drainage, or create new or exacerbate existing problems of erosion and recession, assuring the continued integrity of the ravine or bluff slopes involved.
 - (4) The drainage system will protect the downhill properties or downstream properties.
 - (5) There is no danger to the proposed structure or building and its occupants from slippage of the slope above and/or below the proposed structure or building.
- C. The engineer shall make a technical report accompanying the certificate which shall include, at a minimum:
 - (1) Recommendations regarding site preparation, foundation, design, lateral earth pressure, and support of slabs on grade.
 - (2) The stability of the slope before, during, and after construction.

- (3) The effect of the construction on the natural drainage in the area, including any measures such as "weepers" which are designed to improve natural drainage in the area.
 - (4) The effect of the construction on flora and fauna.
- D. In addition to the standards contained in Chapter 19, Article II, Building Board, of this Code, no building permit for any structure on the foot of the lake bluff or ravine shall be issued unless it has been found as a fact by the Building Board by at least a majority vote, after a view of the site of the propose structure and an examination of the application papers for a building permit, that the location of the proposed structure will, when erected, not be so at variance with the structures already constructed on the neighboring properties or in the character of the immediate neighborhood as to cause a substantial depreciation in the property values of a neighboring property or of the immediate neighborhood. The Building Board shall give notice of the meeting at which it will consider an application for approval of a building or structure. Such notice shall be given to the applicant and to the owners of properties within 500 feet of the property in question; it shall be in writing and mailed not less than seven days before the day of the meeting. Persons to whom the notice is required to be given may attend the Building Board meeting and be heard.

§ 285-7. Survey or plat required.

- A. There shall be filed with the application for a building permit for any such building or structure a survey or plat of the lot drawn to a scale of one inch equals 10 feet, and with contour lines at one-foot intervals from North Beach Road or bottom of the ravine to at least 30 feet up the slope from the slope side of the building or structure, and shall show all trees with a diameter of eight inches or more located within the perimeter of the planned construction extended in all directions 50 feet or to the lot line if closer, and shall also show such trees within the area of a proposed driveway.
- B. The plan submitted with an application for a building permit for any structure or building which will be built at the foot of the lake bluff or ravine, as above provided, shall show that the planned construction will be done with minimum disturbance of soil and the natural cover thereon, such as trees, shrubs, and plants, including grasses, and shall also show adequate provision for the control and channeling of ground waters, both surface water and percolating waters.
- C. If, in the opinion of the Director of Public Works/Village Engineer, the above requirements have been met, he shall so certify to the Building Inspector. Without such certification, the Building Inspector shall not issue a building permit.

§ 285-8. Cantilever over face of lake bluff.

- A. A building or structure may be built on the flat area of a lot at the top of the bluff of the lake bluff and a portion thereof may be cantilevered over and beyond the top of the bluff. **[Amended 12-13-2011 by Ord. No. 2011-13]**
- B. All foundations or footings for such building or structure shall be on or below the surface of the flat area at the top of the bluff. **[Amended 12-13-2011 by Ord. No. 2011-13]**
- C. The cantilevered portion of such building or structure shall not exceed more than 25 feet out from the top of the bluff, and zoning setbacks in the zoning district shall be determined from the foundation and cantilevered portion. **[Amended 12-13-2011 by Ord. No. 2011-13]**
- D. In addition to the standards contained in Chapter 19, Article II, Building Board, of this Code, no building permit for any structure on the top of the bluff shall be issued unless it has been found as a

fact by the Building Board by at least a majority vote, after a view of the site of the proposed structure and an examination of the application papers for a building permit, that the location of the proposed structure will, when erected, not be so at variance with the structures already constructed on the neighboring properties or in the character of the immediate neighborhood as to cause a substantial depreciation in the property values of a neighboring property or of the immediate neighborhood. The Building Board shall give notice of the meeting at which it will consider an application for approval of a cantilevered building or structure. Such notice shall be given to the applicant and to the owners of properties within 500 feet of the property in question; it shall be in writing and mailed not less than seven days or delivered to a person on the premises not less than five days before the day of the meeting. Persons to whom the notice is required to be given may attend the Building Board meeting and be heard. **[Amended 12-13-2011 by Ord. No. 2011-13]**

- E. The plan submitted with an application for a building permit for any structure or building which will be cantilevered over and beyond the top of the bluff, as above provided, shall show that the planned construction will be done with minimum disturbance of soil and the natural cover thereon, such as trees, shrubs, and plants, including grasses, and shall also show adequate provision for the control and channeling of groundwaters, both surface water and percolating waters. **[Amended 12-13-2011 by Ord. No. 2011-13]**
- F. A registered professional engineer having the qualifications specified in § 285-6B above shall submit to the Village a certificate and accompanying technical report as specified in § 285-6B and C.
- G. If, in the opinion of the Director of Public Works/Village Engineer, the above requirements (other than Subsection D above) have been met, he shall so certify to the Building Inspector. Without such certification, the Building Inspector shall not issue a building permit.

§ 285-9. Extending over slope of ravine bank. [Amended 12-13-2011 by Ord. No. 2011-13]

- A. A building or structure may be built on the flat area of a lot at the top of the bluff of a ravine and may be extended over and beyond the top of the bluff of the ravine bank by cantilevering.
- B. All the provisions of § 285-8 apply to the building of any building or structure, a portion of which will extend over and beyond the top of the bluff of a ravine.

§ 285-10. Release.

Any lot owner whose professional engineer submits a certificate as to safety as provided in §§ 285-6, 285-8 and 285-9 above shall, as a condition for obtaining a building permit, give to the Village a release from any liability for injury to persons or damage to property arising from the slippage of soil or building or structure on the lot where the slope and construction thereon were certified as being safe. Such release shall be in a form acceptable to the Village Attorney.

§ 285-11. Restriction on cutting.

Wherever in the Village the slope of the lake bluff or the slope of the bank of a ravine averages 12° or over, no one shall prune, cut, kill, or remove any natural vegetation, including trees, shrubs, bushes, plants, flowers, and grasses, without first obtaining a permit as hereinafter provided.

- A. An application for the proposed pruning, cutting, killing, or removing shall be filed with the Village Clerk/Treasurer, which application shall give the name of the owner and address of the property on which the work is proposed, and the name of the person, company or corporation who will do the work. The Clerk/Treasurer shall refer the application to the Village Forester. The Village Forester

shall examine said application and shall view the location of the proposed work. If, after such viewing, it is the opinion of the Village Forester that the proposed work is minor in nature and primarily for the improvement and care of the plant life involved, he shall issue the permit.

- B. If after the delivery of an application to the Village Forester and a view of the premises, as above provided, the Village Forester is of the opinion that Subsection A above does not apply, he shall refer the matter to the Building Board. The Building Board shall consider the application at a duly called meeting; notice of said meeting shall be given to the applicant and to the owners of abutting lots. Such notice shall be in writing, mailed not less than six days or delivered to a person on the premises not less than five days before the day of the meeting. Persons to whom notice is required to be given may attend the Building Board meeting and be heard. If upon evidence produce at such meeting, the Building Board is of the opinion that the proposed work will not increase erosion or slippage of soil or the danger thereof and will not unreasonably and unnecessarily damage or destroy the beauty of the natural vegetation, it shall direct that the requested permit be issued. Otherwise, it shall deny such permit or may modify the proposed work and authorize the issuance of a permit if the owner agrees to such modifications.
- C. In the event of the absence or inability to act of the Village Forester, the Director of Public Works/Village Engineer shall perform the functions above given to the Village Forester.
- D. This section does not apply to the areas on which the structure is authorized to be built, the driveway, and an area extending outward from the foundation of such structure by a distance to be approved by the Director of Public Works/Village Engineer as consistent with the objective of this article of controlling erosion and preserving the natural vegetation on the slope of the bluff or ravine.

§ 285-12. Refuse.

Any refuse, which includes but is not limited to grass cuttings, branches, logs, paper, appliances and rubbish, deposited in any manner on the slope of the lake bluff or the slope of the bank of a ravine shall not be permitted and must be removed within 48 hours of deposit.

§ 285-13. Violations and penalties.

Any person violating any provision of §§ 285-11 and 285-12 shall be subject to a forfeiture of not less than \$100 and not more than \$1,000. Each act of violation and every day upon which a violation occurs or exists constitutes a separate offense.

§ 285-14. Appeal.

- A. Wherever certification by the Director of Public Works/Village Engineer is required by the foregoing provisions, any person aggrieved by the issuance of such a certificate or refusal to issue such a certificate may appeal to the Board of Appeals, and the provision of § 62.23(7), Wis. Stats., as now written or as such provision may be modified from time to time shall apply to such appeal.
- B. In respect to any matter referred to the Building Board by the above provision, appeal from its decision may be taken as provided in Chapter 19, Article II, Building Board, of the Fox Point Village Code, as now written or as it may be amended from time to time.

§ 285-15. Applicability of other code sections.

The provisions of Chapter 19, Article II, Building Board, of this Code as now in effect or as the same may be amended, modified, or recreated from time to time, shall apply to the issuance of any building permit

subject to this article. Also, in respect to any construction subject to this article, the Zoning Ordinance of the Village, Chapter 745 as it now exists, or as it may be amended, modified or re-created from time to time, shall apply.

ARTICLE II

Drainage**[Adopted as § 30P.05(9) of the 1961 Code]****§ 285-16. Definitions.**

For the purpose of this article, the following terms shall have the meanings indicated:

WATERCOURSE — Any creek, ravine, gully, channel, hollow, swale, or depression, or any artificial ditch, drain, culvert or pipe, through or over which surface water continuously or periodically flows in its natural course.

§ 285-17. Application for permit.

No person shall build, erect or construct any highway, driveway, bridge, culvert or structure or place any obstruction of any nature in, upon, across, over or through any watercourse, whether such crossing or obstruction shall be located on public or private lands, within the Village without first making application therefor and obtaining a permit so to do from the Building Inspector. Such application shall be accompanied by an application fee as described in Chapter 63 of this Code. The application must include a diagram, drawn to scale, showing the lot and adjacent Village right-of-way, the location of the proposed structure/culvert, and all trees that are two inches in diameter at breast height (dbh) or larger within the Village right-of-way and within 20 feet of any construction or excavation activity. If any tree within the Village right-of-way is removed, reimbursement and replacement are required pursuant to § 310-3F of this Code, even if such removal is authorized and is not in violation of § 310-3.

§ 285-18. Drainage ditches.

No building permit shall be issued unless the applicant certifies that a culvert will be installed under a driveway leading from the public highway to the lot prior to commencement of construction, in accordance with the ordinances of the Village and with this article.

§ 285-19. Culverts.

All culverts installed or reinstalled in any public way shall be of corrugated copper-steel, with a minimum inside diameter of 12 inches and of wall thickness as set forth by the Director of Public Works/Village Engineer. The Director of Public Works/Village Engineer can, in specific cases, allow the use of other materials.

A. The minimum length of culverts shall conform to the following:

Length of Culvert	Ditch Depth
20 feet	1 foot 9 inches
22 feet	1 foot 9 inches to 2 feet 9 inches
24 feet	2 feet 9 inches to 3 feet 9 inches
26 feet	3 feet 9 inches to 4 feet 3 inches

B. The depth of ditch shall be measured from the crown of the road to the bottom of the ditch.

§ 285-20. Installation and maintenance of culverts. [Amended 9-13-2018 by Ord. No. 2018-08]

- A. Setting of culverts. After the permit has been issued, the owner or his representative shall notify the Department of Public Works at least 48 hours prior to the setting of the culvert, and the Department shall establish the required grade of the culvert. The owner shall then have the culvert installed in accordance with the requirements set forth by the Director of Public Works/Village Engineer and, after the culvert has been installed, shall notify the Department of Public Works. After such notification, the Department of Public Works shall inspect the installation. If the installation does not conform to the requirements of the Director of Public Works/Village Engineer, the Building Inspector shall notify the owner and shall place a time limit on correcting the installation. In the event that the correction is not made in the required time, penalties as set forth by this article shall be enforced.
- B. Prohibited culvert installation. No person, firm, or corporation shall install or cause the installation of any culvert which is within or will allow access to a public right-of-way or easement in the Village unless authorized specifically by the Director of Public Works/Village Engineer. Any culvert installed in violation hereof shall be removed by the owner of the property serviced by the culvert within 10 days following written notification of such violation by the Director of Public Works/Village Engineer. If not removed within the prescribed time period, the Director of Public Works/Village Engineer shall have the culvert removed and, if necessary and warranted, a legal culvert installed. The property owner shall pay all expenses for any such removal as well as the costs involved in the installation of a legal culvert. All costs and expenses shall be charged to the property owner pursuant to § 67-17 of this Code.
- C. Continuing responsibility for culvert. Every property owner has the continuing responsibility and obligation to maintain and repair the culvert(s) servicing their property. Should any culvert reach such a condition or state of disrepair or be damaged to such extent that the flow of drainage or access by motor vehicles is affected thereby, the property owner shall take whatever actions are necessary to repair or replace said defective culvert. In the event a property owner shall fail to maintain a culvert in good repair or install a replacement culvert as required, the Director of Public Works/Village Engineer shall have the right to proceed, after notification as outlined in Subsection B to repair or replace the defective culvert at the expense of the property owner and recover all costs incurred as prescribed by Subsection B.

§ 285-21. Obstruction of watercourses; procedure to remove or remedy.

- A. No owner, occupant or person in charge of public or private land within the Village shall construct, maintain or permit to exist any obstruction in a watercourse on such land, whether such obstruction is artificial or of natural causes, which shall reduce the capacity or rate of flow of such watercourse so as to prevent or otherwise adversely affect the drainage of surface water from other lands adjacent to or in the vicinity of such land; provided, however, that no obstruction shall be prohibited by this subsection or be deemed in violation thereof if the same is due to natural causes and its removal cannot be effected at a reasonable cost by the owner, occupant or person in charge of the land on which such construction is located. **[Amended 11-11-2014 by Ord. No. 2014-08]**
- B. If any watercourse is obstructed in violation of Subsection A of this section, whether such obstruction arose before or after April 18, 1958, or was installed or maintained pursuant to a permit under this article, the owner or occupant of any lands (other than public highways and lands owned by the Village) affected or damaged by such obstruction may, in writing, request the removal or remedying thereof by such owner, occupant or person in charge of the land where such obstruction is located. If such removal or remedying is not made within six days after receipt of such written request, the owner or occupant of the lands so affected may make complaint to the Village Manager, filing at the same time a copy of the written request, and the Village Manager, after viewing the watercourse and being satisfied that the complaint is just, shall make his recommendations for the removal of such

obstruction or the taking of such remedial action as may be appropriate to maintain the capacity and rate of flow of such watercourse, and if such recommendations are not followed within 20 days after service upon the owner, occupant or person in charge of the lands of a written copy of the recommendations, the Village Board shall, after notice and hearing and determination that such removal or other remedial action is necessary to maintain the capacity or rate of flow of such watercourse or to prevent further damage, by resolution order the obstruction removed or other remedial action taken by the employees of the Village under direction of the Village Manager. The cost of such removal of the obstruction or other remedial action shall thereafter be determined, and by resolution of the Village Board, the Village Clerk/Treasurer shall be directed to place the same upon the tax roll as a special charge against the lands upon which the obstruction was located, and the same shall be collected as other special assessments are collected. Any interference with the officers, agents or employees of the Village in carrying out this section, other than by due legal proceedings, shall constitute a violation of this section.

- C. If, after viewing any such obstruction in a watercourse as is referred to in Subsection B of this section, the Village Manager shall be of the opinion that said obstruction prevents or otherwise adversely affects the drainage of a public highway or of Village-owned property, the Village Manager may, as though an "owner or occupant of any lands affected or damaged by such obstruction" under Subsection B of this section, in writing request the removal or remedying thereof by the owner, occupant or person in charge of the land where such obstruction is located, and if such removal or other remedial action is not consummated within 20 days after receipt of such written request of the Village Manager, the Village Manager shall present to the Village Board a copy of his request for such removal or other remedial action which was served upon said owner, occupant or person in charge of the land where the obstruction is located, whereupon the Village Board shall then proceed as provided for in Subsection B of this section.

ARTICLE III

Stormwater Management Regulations**[Adopted as Ch. 37 of the 1961 Code; amended in its entirety 4-12-2011 by Ord. No. 2011-05]****§ 285-22. Authority.**

- A. This article is adopted by the Village of Fox Point under the authority granted by § 61.354, Wis. Stats. This article supersedes all provisions of an ordinance previously enacted under § 61.35, Wis. Stats., that conflict with this article in relation to stormwater management regulations.
- B. The provisions of this article are deemed not to limit any other lawful regulatory powers of the same governing body.
- C. The requirements of this article do not preempt more stringent stormwater management requirements that may be imposed by any of the following:
 - (1) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under §§ 281.16 and 283.33, Wis. Stats.
 - (2) Targeted nonagricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under § NR 151.004, Wis. Adm. Code.
 - (3) The authority exercised by the Village under §§ 61.354(6) and 236.45, Wis. Stats.

§ 285-23. Findings of fact.

The Village of Fox Point finds that uncontrolled, postconstruction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled postconstruction runoff can:

- A. Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature;
- B. Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants;
- C. Alter wetland communities by changing wetland hydrology and by increasing pollutant loads;
- D. Reduce the quality of groundwater by increasing pollutant loading;
- E. Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainageways, and other minor drainage facilities;
- F. Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes;
- G. Undermine floodplain management efforts by increasing the incidence and levels of flooding; and
- H. Aggravate excessive infiltration and inflow of water into sanitary sewer connections during peak storm events causing the conveyance system to surcharge, overflow or back up into basements.

§ 285-24. Purpose.¹

This article integrates federal and state construction and postconstruction site stormwater water quality standards with duties to reasonably manage the quantity of water runoff for regional flood abatement. This article implements the Milwaukee Metropolitan Sewerage District rules on release rates for development creating more than a de minimis amount of new impervious surface, to reduce the probability of increased regional floods as the metropolitan area approaches full build-out forecast for 2050.

§ 285-25. Stormwater quality and quantity management applicability.

- A. The water quality management duties apply to property development disturbing five or more acres or property development disturbing one or more acres after March 10, 2003, and the water quantity management duties apply to development that increases impervious surface by 1/2 acre or more or disturbs an area larger than two acres, unless the site is exempt under Subsection B or C.
- B. A site meeting any one of the following criteria is exempt from stormwater quality requirements:
 - (1) Nonpoint discharges from agricultural facilities and practices.
 - (2) Nonpoint discharges from silviculture activities.
 - (3) Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 - (4) Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any aboveground structures associated with utility construction.
- C. Water quantity management.
 - (1) Water quantity management duties do not apply to:
 - (a) Residential infill where the lot is five acres or less, the development is exclusively residential, the net increase in the area of impervious surface is less than 20% of the area of the site, and each boundary of the site is contiguous to:
 - [1] Sites that contain earlier development served by sanitary sewers, streets, or public water supply, when the governmental unit receives the plans for the new development; or
 - [2] Parkland or other public land, a utility right-of-way, or a watercourse.
 - (b) Sites where the area of impervious surface after development will be 5% or less of the total area of the site.
 - (c) Recreational trails if the trail is less than or equal to 10 feet in width and has a continuous pervious buffer at least five feet wide on each side, disregarding interruption by streets, driveways, or other impervious surfaces crossing the trail.
 - (d) Sites that are riparian to Lake Michigan.
 - (e) Previously approved projects. Runoff management is not required if:
 - [1] The Village approved a development or redevelopment before the effective date of

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

the applicable requirements; and

[2] This approval had sufficient finality to create a vested right to proceed with the development.

- (f) Road construction. If the construction or reconstruction of a public road will increase impervious surface by 1/2 acre or more, then water quantity management is necessary for the net increase in impervious surface. The requirements of § 285-28C(2)(b)[1] shall apply. Water quantity management is not required for the reconstruction of public roads when the area of impervious surface is not changing.
- (g) Parking lots. Water quantity management is required for the reconstruction of parking lots only when the parking lot will be reconfigured or re-contoured. Water quantity management requirements do not apply to pavement maintenance activities, such as sealing, milling and overlaying, or pulverizing and compacting.
- (2) Notwithstanding the applicability requirements in Subsection C(1)(a), this article applies to postconstruction sites of any size that, in the opinion of the administering authority, are likely to result in runoff that exceeds the capacity of the existing drainage facilities or the level of flooding protection in a watercourse that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- D. Comity. State agencies should design and incorporate best management practices for surface water quality and stormwater quantity management for new impervious surfaces. The runoff management techniques should be the same as flood abatement plans and techniques utilized by local governments in the watershed. The lead agency preparing an environmental assessment for a federal or state project shall identify the mitigating runoff management techniques to prevent increases in peak flood flows from new impervious areas.

§ 285-26. Definitions.

For the purposes of this article, the following terms shall be defined as follows:

ADMINISTERING AUTHORITY — The Village Manager or the Director of Public Works/Village Engineer.

AGRICULTURAL FACILITIES AND PRACTICES — Has the meaning given in § 281.16, Wis. Stats.

AVERAGE ANNUAL RAINFALL — A calendar year of precipitation, excluding snow, which is considered typical.

BEST MANAGEMENT PRACTICE or BMP — Structural or nonstructural measures, practices, techniques or devices employed to:

- A. Avoid or minimize sediment or pollutants carried in runoff to waters of the state; or
- B. Manage the rate or volume of runoff.

BUSINESS DAY — A day the office of the administering authority is routinely and customarily open for business.

CEASE-AND-DESIST ORDER — A court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

COMBINED SEWER SYSTEM — A system for conveying both sanitary sewage and stormwater runoff.

CONNECTED IMPERVIOUSNESS — An impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

CRITICAL TIME — The period starting at the time of peak rainfall intensity with a duration equal to the time of concentration of the watershed.

DESIGN STORM — A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

DEVELOPMENT — The construction of buildings, roads, parking lots, and paved or unpaved storage areas.

DIVISION OF LAND — The creation from one parcel of two or more parcels of one or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

EFFECTIVE INFILTRATION AREA — The area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

EROSION — The process by which the land's surface is worn away by the action of wind, water, ice or gravity.

EXCEPTIONAL RESOURCE WATERS — Waters listed in § NR 102.11, Wis. Adm. Code.

EXTRATERRITORIAL — The unincorporated area within three miles of the corporate limits of a first, second, or third class city or within 1.5 miles of a fourth class city or village.

FINAL STABILIZATION — All land disturbing construction activities at the construction site have been completed and a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.

FINANCIAL GUARANTEE — An irrevocable letter of credit, in a form approved by the Village Attorney, or similar guarantees that are approved by the Director of Public Works/Village Engineer as to amount, and by the Village Attorney as to form, submitted to the administering authority by the responsible party to assure that requirements of this article are carried out in compliance with the stormwater management plan.

IMPERVIOUS SURFACE — Any pavement or structural element that prevents rain, surface water runoff, or melting snow from infiltrating into the ground below, including, but not limited to, roofs and paved roads, driveways, and parking lots.

INFILL AREA — An undeveloped area of land located within existing development.

INFILTRATION — The entry of precipitation or runoff into or through the soil.

INFILTRATION SYSTEM — A device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or roadside channels, designed for conveyance and pollutant removal only.

KARST FEATURE — An area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

LAND DISTURBING CONSTRUCTION ACTIVITY — Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench

dewatering, filling and grading activities.

MAINTENANCE AGREEMENT — A legal document that provides for long-term maintenance of stormwater management practices.

MEP or MAXIMUM EXTENT PRACTICABLE — A level of implementing best management practices in order to achieve a performance standard specified in this article which takes into account the best available technology, cost-effectiveness and other competing issues, such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

NEW DEVELOPMENT — Development resulting from the conversion of previously undeveloped land or agricultural land uses.

OFF-SITE — Located outside the property boundary described in the permit application.

ON-SITE — Located within the property boundary described in the permit application.

ORDINARY HIGH-WATER MARK — The meaning given in § NR 115.03(6), Wis. Adm. Code.

OUTSTANDING RESOURCE WATERS — Waters listed in § NR 102.10, Wis. Adm. Code.

PERCENT FINES — The percentage of a given sample of soil which passes through a No. 200 sieve.

PERFORMANCE STANDARD — A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

PERMIT — A written authorization made by the administering authority to the applicant to conduct land-disturbing construction activity or to discharge postconstruction runoff to waters of the state.

PERMIT ADMINISTRATION FEE — A sum of money paid to the administering authority by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

PERVIOUS SURFACE — An area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

POLLUTANT — The meaning given in § 283.01(13), Wis. Stats.

POLLUTION — The meaning given in § 281.01(10), Wis. Stats.

POSTCONSTRUCTION SITE — A construction site following the completion of land disturbing construction activity and final site stabilization.

PREDEVELOPMENT CONDITION — The extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

PREVENTIVE ACTION LIMIT — The meaning given in § NR 140.05(17), Wis. Adm. Code.

PUBLIC RIGHT-OF-WAY — Any road, alley, street, parking lot, sidewalk, plaza, mall, or pathway owned by or dedicated to a governmental unit.

RECREATIONAL TRAIL — A path that is:

- A. Distinctly set apart from a roadway, street, or sidewalk;
- B. Designed for activities such as jogging, walking, hiking, bird watching, bicycle riding, roller skating, or similar recreational activities not involving the use of motorized vehicles; and

C. Not a sidewalk according to § 340.01(58), Wis. Stats.

REDEVELOPMENT — New development that replaces older development.

REGIONAL FLOOD — The peak flow and peak elevation of water with a one-percent probability of occurring during any one year, considering rainfall time and intensity patterns, rainfall duration, area distribution, antecedent moisture, and snow melt. The common misnomer, "one-hundred-year flood or floodplain" implies a temporal element rather than a one in 100 random probability of the event.

RESPONSIBLE PARTY — Any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain postconstruction stormwater BMPs.

RUNOFF — Stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

SEPARATE STORM SEWER — A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

- A. Is designed or used for collecting water or conveying runoff;
- B. Is not part of a combined sewer system;
- C. Is not draining to a stormwater treatment device or system; and
- D. Discharges directly or indirectly to waters of the state.

SITE — The entire area included in the legal description of the land on which the land disturbing construction activity occurred.

STOP-WORK ORDER — An order issued by the administering authority which requires that all construction activity on the site be stopped.

STORMWATER MANAGEMENT PLAN — A comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.

STORMWATER MANAGEMENT SYSTEM PLAN — A comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

TECHNICAL STANDARD — A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

TIME OF CONCENTRATION — The time period for the furthest runoff from the outlet of a watershed to contribute to flow at the watershed outlet.

TOP OF THE CHANNEL — An edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

TR-55 — The United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

TYPE II DISTRIBUTION — A rainfall type curve as established in the United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

VILLAGE OF FOX POINT — When referring to the governing body and not the geographical area, means Village Board of Trustees.

WATER QUALITY MANAGEMENT — The stormwater standards and duties established under the Clean Water Act, 33 U.S.C. § 1251 et seq., parallel state law regulating the discharge of pollutants, and implementing regulations.

WATER QUANTITY MANAGEMENT — Runoff management requirements to manage the volume, timing, and peak flow rate from development or redevelopment pursuant to Chapter 13 of the Milwaukee Metropolitan Sewerage District (MMSD) rules as implemented and enforced by this municipality.

WATERS OF THE STATE — The meaning given in § 281.01(18), Wis. Stats.

§ 285-27. Technical standards.

The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of stormwater practices needed to meet the requirements of this article:

- A. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under Subchapter V of Chapter NR 151, Wis. Adm. Code.
- B. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used, provided that the methods have been approved by the administering authority.
- C. The most recent rainfall data available from the Southeastern Wisconsin Regional Planning Commission or more protective data shall be the basis for the analyses required by this article.

§ 285-28. Performance standards.

- A. Responsible party. The responsible party shall implement a postconstruction stormwater management plan that incorporates the requirements of this section.
- B. Plan. A written stormwater quality and quantity management plan in accordance with § 285-30 shall be developed and implemented for each postconstruction site.
- C. Requirements. The water quality plan required under Subsection B shall include the following:
 - (1) Total suspended solids. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the postconstruction site as follows:
 - (a) For new development, by design, reduce to the maximum extent practicable the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.
 - (b) For redevelopment, by design, reduce to the maximum extent practicable the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.
 - (c) For infill development under five acres that occurs within 10 years after October 1, 2002, by design, reduce to the maximum extent practicable the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls.

No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.

- (d) For infill development that occurs 10 or more years after October 1, 2002, by design, reduce to the maximum extent practicable the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.
 - (e) Notwithstanding Subsection C(1)(a) to (d), if the design cannot achieve the applicable total suspended solids reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.
- (2) Runoff management requirements.
- (a) The responsible party shall manage the volume, timing, and peak flow rate of runoff from development or redevelopment approved by the Village after the effective date of this chapter. The responsible party may implement runoff management requirements on a watershed basis or at individual sites.
 - (b) Standards for development; demolition or construction during redevelopment.
 - [1] For development, runoff management shall prevent increases in the regional flood and stream bank erosion rates.
 - [2] If demolition or construction during redevelopment will disturb an area larger than two acres, then the responsible party shall reduce the runoff release rate by the amount listed in the following table for the one-percent/one-hundred-year and fifty-percent/two-year storms, except as provided in Subsection C(2)(e).

Area Disturbed by Demolition or Construction	Reduction to the Existing Runoff Release Rate as of October 25, 2010
Between 2 acres and 3.5 acres	10%
From 3.5 to 5 acres	15%
Greater than 5 acres	20%

- (c) The responsible party may prepare a watershed or sub-watershed stormwater management plan or a local stormwater management plan for multiple sites considered together. These analyses shall show how runoff volume is distributed over the critical time of the watershed sufficient to comply with Subsection C(2)(b). The responsible party shall analyze runoff and determine the critical time according to guidance provided by the Milwaukee Metropolitan Sewerage District (MMSD). When evaluating how a development will affect the watercourses, the responsible party shall use models and conditions approved by the MMSD. The responsible party shall use 2020 or later land use conditions. The responsible party shall use pre-project channel conditions. The responsible party shall submit these plans and analyses to the MMSD for review and approval. Such plans are subject to approval of the MMSD, in addition to the approval of the Village.

- (d) In the absence of an approved watershed management plan that covers development at a particular site, the responsible party shall implement either site-specific maximum runoff release rates that will distribute runoff over the critical time sufficient to comply with Subsection C(2)(b)[1], calculated according to guidance provided by MMSD, or the following uniform rates:

Storm(probability/ recurrence interval)	Maximum Runoff Release Rate(cubic feet per second per acre)
1%/100-year	0.5
50%/2-year	0.15

- (e) Redevelopment may reduce the runoff release rate by an amount less than required by Subsection C(2)(b)[2] when conditions make compliance unreasonable. Relevant conditions include, but are not limited to, soil contamination, groundwater contamination, land use requirements, land availability, opportunities for off-site management, construction delays, marginal costs, and the availability of financing. In this case, redevelopment shall achieve the greatest practicable reduction.
- (f) When selecting the runoff management techniques appropriate for a particular development, responsible parties shall consider the following techniques, in order of preference:
- [1] Preservation of the natural features of development sites, including natural storage and infiltration characteristics;
 - [2] Preservation of existing natural streams, channels, and drainageways;
 - [3] Minimization of new impervious surfaces;
 - [4] Conveyance of stormwater in open vegetated channels;
 - [5] Construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to structures serving individual sites; and
 - [6] Construction of structures that provide only quantity control, with structures serving multiple sites being preferable to structures serving individual sites.
- (g) If impervious surface is removed after the effective date of this chapter, then the responsible party may reduce the degree of runoff management necessary for new impervious surface within the same watershed or sub-watershed, to the extent that the net result complies with Subsection C(2)(b). The responsible party shall implement this subsection according to guidance provided by the MMSD.
- (h) Runoff management systems may be either public or private.
- (i) The responsible party shall ensure that facilities constructed to manage runoff are maintained to preserve their effectiveness.
- (j) If a runoff management system is not constructed or maintained according to an approved site development stormwater management plan or otherwise fails to comply with

Subsection C(2)(a), then the responsible party shall construct new facilities, expand or correct previously constructed facilities, or implement other remedial action.

- (3) Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in Subsection C(3)(e) through (g).

- (a) For residential developments, one of the following shall be met:

- [1] Infiltrate sufficient runoff volume so that the postdevelopment infiltration volume shall be at least 90% of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.
- [2] Infiltrate 25% of the postdevelopment runoff from the two-year, twenty-four-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

- (b) For nonresidential development, including commercial, industrial and institutional development, one of the following shall be met:

- [1] Infiltrate sufficient runoff volume so that the postdevelopment infiltration volume shall be at least 60% of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.
- [2] Infiltrate 10% of the runoff from the two-year, twenty-four-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

- (c) Predevelopment condition shall be the same as in Subsection C(3)(b).

- (d) Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with Subsection C(3)(g). Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

- (e) Infiltration exclusions. The runoff from the following areas is prohibited from meeting the requirements of this subsection:

- [1] Areas associated with Tier 1 industrial facilities identified in § NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.

- [2] Storage and loading areas of Tier 2 industrial facilities identified in § NR 216.21(2)(b), Wis. Adm. Code.
 - [3] Fueling and vehicle maintenance areas.
 - [4] Areas within 1,000 feet up gradient or within 100 feet down gradient of karst features.
 - [5] Areas with less than three feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subsection does not prohibit infiltration of roof runoff.
 - [6] Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than five feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
 - [7] Areas within 400 feet of a community water system well as specified in § NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in § NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.
 - [8] Areas where contaminants of concern, as defined in § NR 720.03(2), Wis. Adm. Code, are present in the soil through which infiltration will occur.
 - [9] Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a three-foot soil layer with 20% fines or greater; or at least a five-foot soil layer with 10% fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subsection does not prohibit infiltration of roof runoff.
- (f) Infiltration exemptions. The following are not required to meet the requirements of this subsection:
- [1] Areas where the infiltration rate of the soil is less than 0.6 inch per hour measured at the site.
 - [2] Parking areas and access roads less than 5,000 square feet for commercial and industrial development.
 - [3] Redevelopment postconstruction sites.
 - [4] Infill development areas less than five acres.
 - [5] Infiltration areas during periods when the soil on the site is frozen.
 - [6] Roads in commercial, industrial and institutional land uses, and arterial residential roads.
- (g) Protection of groundwater quality.
- [1] Infiltration systems designed in accordance with this subsection shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to

groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with Ch. NR 140, Wis. Adm. Code. However, if site-specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

- [2] Notwithstanding Subsection C(3)(g)[1], the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(4) Protective areas.

- (a) "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this subsection, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

- [1] For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in § NR 103.04, Wis. Adm. Code, 75 feet.

- [2] For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

- [3] For lakes, 50 feet.

- [4] For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with § NR 103.08(1m), Wis. Adm. Code. This subsection does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

- [5] For less susceptible wetlands, 10% of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

- [6] In Subsection C(4)(a)[1], [4] and [5], determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in § NR 103.03, Wis. Adm. Code.

- [7] For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

- (b) This subsection applies to postconstruction sites located within a protective area, except those areas exempted pursuant to Subsection C(4)(d) of this section.

- (c) The following requirements shall be met:

- [1] Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The stormwater management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.
 - [2] Where land-disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Nonvegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.
 - [3] Best management practices such as filter strips, swales, or wet detention basins that are designed to control pollutants from nonpoint sources may be located in the protective area.
- (d) This subsection does not apply to:
- [1] Redevelopment postconstruction sites.
 - [2] Infill development areas less than five acres.
 - [3] Structures that cross or access surface waters such as boat landings, bridges and culverts.
 - [4] Structures constructed in accordance with § 59.692(1v), Wis. Stats.
 - [5] Postconstruction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.
- (5) Fueling and vehicle maintenance areas. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.
- (6) Swale treatment for transportation facilities.
- (a) Applicability. Except as provided in Subsection C(6)(b), transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section if the swales are designed to the maximum extent practicable to do all of the following:
- [1] Be vegetated. However, where appropriate, nonvegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
 - [2] Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second based on a two-year, twenty-four-hour design storm. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.
- (b) Exemptions. The administering authority may, consistent with water quality standards,

require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

- [1] An outstanding resource water.
- [2] An exceptional resource water.
- [3] Waters listed in Section 303(d) of the Federal Clean Water Act that are identified as impaired, in whole or in part, due to nonpoint source impacts.
- [4] Waters where targeted performance standards are developed under § NR 151.004, Wis. Adm. Code, to meet water quality standards.

D. General considerations for on-site and off-site stormwater management measures. The following considerations shall be observed in managing runoff:

- (1) Natural topography and land cover features such as natural swales, natural depressions, native soil-infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- (2) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (3) BMPs for water quantity management shall utilize the following techniques, in order of preference:
 - (a) Preservation of the natural features of development sites, including natural storage and infiltration characteristics;
 - (b) Preservation of existing natural streams, channels, and drainageways;
 - (c) Minimization of new impervious surfaces;
 - (d) Conveyance of stormwater in open vegetated channels;
 - (e) Construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to structures serving individual sites; and
 - (f) Construction of structures that provide only quantity control, with structures serving multiple sites being preferable to structures serving individual sites.

E. Location and regional treatment option.

- (1) The BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system within the same watershed.
- (2) Postconstruction runoff within a nonnavigable drainage way that flows into a BMP, such as a wet pond, is not required to meet water quality performance standards unless designed to provide treatment. Postconstruction BMPs may be located in nonnavigable surface waters.
- (3) Except as allowed under Subsection E(4), postconstruction runoff from new development shall meet the postconstruction performance standards prior to entering a navigable surface water.

- (4) Postconstruction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this article if:
 - (a) The BMP was constructed prior to the effective date of this article and the BMP either received a permit issued under Ch. 30, Wis. Stats., or the BMP did not require a permit under Ch. 30, Wis. Stats.; and
 - (b) The BMP is designed to provide runoff treatment from future upland development.
 - (5) Runoff from existing development, redevelopment and infill areas shall meet the postconstruction performance standards in accordance with this subsection.
 - (a) To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
 - (b) Postconstruction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state, and local regulations, such as Ch. NR 103, Wis. Adm. Code, and Ch. 30, Wis. Stats.
 - (6) The discharge of runoff from a BMP, such as a wet pond, or after a series of such BMPs is subject to this article.
 - (7) The administering authority may approve off-site management measures, provided that all of the following conditions are met:
 - (a) The administering authority determines that the postconstruction runoff is covered by a stormwater management system plan that is approved by the Village of Fox Point and that contains management requirements consistent with the purpose and intent of this article.
 - (b) The off-site facility meets all of the following conditions:
 - [1] The facility is in place.
 - [2] The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this article.
 - [3] The facility has a legally obligated entity responsible for its long-term operation and maintenance.
 - (8) Where a regional treatment option exists such that the administering authority exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the administering authority. In determining the fee for postconstruction runoff, the administering authority shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- F. Alternate requirements. The administering authority may establish stormwater management requirements more stringent than those set forth in this section if the administering authority determines that an added level of protection is needed to protect sensitive resources.
- G. Credit for removal of impervious surfaces.
- (1) Same site credit. The administering authority may use the removal of pavement, covered

structures or other impervious surfaces at the same property to calculate the net postconstruction impervious acreage and corresponding water quantity management duties. Credit may equal, but not be larger than the acreage of impervious surfaces removed when runoff release rates and detention are the best management practices utilized at the site. When best management practices with a higher order of preference are utilized in lieu of detention, equivalent credit may be granted as determined by the administering authority with the concurrence of the MMSD. Credit for reducing impervious surfaces at a site, not utilized by the development on the site, belongs to the administering authority and may be banked for allocation to other development within the watershed under Subsection G(2).

- (2) Dispersed site in same watershed credit. The administering authority may bank the removal of impervious surfaces, which individually must be 1/2 acre or more, within the same watershed, where the volume, timing and peak flow of runoff will be distributed over the critical time sufficient to assure the level of protection provided by MMSD flood abatement projects will not be reduced. The administering authority may allocate banked credit to promote a policy of smart growth. The total acreage banked or allocated, or both, shall be reported, by watershed or subwatershed, annually to the MMSD for concurrence.

§ 285-29. Permit requirements, procedures and fees.

- A. Permit required. No responsible party may undertake a land-disturbing construction activity without receiving a postconstruction runoff permit from the administering authority prior to commencing the proposed activity.
- B. Permit application and fees. Unless specifically excluded by this article, any responsible party desiring a permit shall submit to the administering authority a permit application made on a form provided by the administering authority for that purpose.
 - (1) Unless specifically excepted, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a nonrefundable permit administration fee.
 - (2) The stormwater management plan shall be prepared to meet the requirements of §§ 285-28 and 285-30, the maintenance agreement shall be prepared to meet the requirements of § 285-31, the financial guarantee shall meet the requirements of § 285-32, and fees shall be those established by the Village of Fox Point as set forth in § 285-33.
- C. Review and approval of permit application. The administering authority shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee, as follows:
 - (1) Within 30 business days of the receipt of a complete permit application, including all items as required by Subsection B of this section, the administering authority shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this article.
 - (2) If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed-upon payment of fees in lieu of stormwater management practices is made, the administering authority shall issue the permit.
 - (3) If the stormwater permit application, plan or maintenance agreement is disapproved, the administering authority shall detail in writing the reasons for disapproval.

- (4) The administering authority may request additional information from the applicant. If additional information is submitted, the administering authority shall have 20 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
 - (5) Failure by the administering authority to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed an approval of the submittal and the applicant may proceed as if a permit had been issued.
- D. Permit requirements. All permits issued under this article shall be subject to the following conditions, and holders of permits issued under this article shall be deemed to have accepted these conditions. The administering authority may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the administering authority to suspend or revoke this permit may be appealed in accordance with § 285-35.
- (1) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
 - (2) The responsible party shall design and install all structural or identify nonstructural stormwater management measures, or both, in accordance with the approved stormwater management plan and this permit.
 - (3) The responsible party shall notify the administering authority at least 10 business days before commencing any work in conjunction with the stormwater management plan, and within five business days upon completion of the stormwater management practices. If required as a special condition under Subsection E of this section, the responsible party shall make additional notification according to a schedule set forth by the administering authority so that practice installations can be inspected during construction.
 - (4) Practice installations required as part of this article shall be certified "as-built" by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the administering authority or its designee to determine if they are in accordance with the approved stormwater management plan and this article. The administering authority or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
 - (5) The responsible party shall notify the administering authority of any significant modifications it intends to make to an approved stormwater management plan. The administering authority may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
 - (6) The responsible party shall maintain all stormwater management practices until the responsibility is transferred to the Village of Fox Point, or subsequent private owners as specified in the approved maintenance agreement.
 - (7) The responsible party authorizes the administering authority to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under § 66.0627 or Subchapter VII of Ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under § 285-32.
 - (8) If so directed by the administering authority, the responsible party shall repair at the responsible

party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.

- (9) The responsible party shall permit property access to the administering authority or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (10) Where site development or redevelopment involves changes in direction, increases in the peak rate or the total volume of runoff, the administering authority may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (11) The responsible party is subject to the enforcement actions and penalties detailed in § 285-34, if the responsible party fails to comply with the terms of this permit.
- E. Permit conditions. Permits issued under this section may include reasonable and necessary conditions established by administering authority in addition to the requirements needed to meet the performance standards in § 285-28 or a financial guarantee as provided for in § 285-32.
- F. Permit duration. Permits issued under this section shall be valid from the date of issuance through the date the administering authority notifies the responsible party that all stormwater management practices have passed the final inspection required under Subsection D(4).

§ 285-30. Stormwater management plan.

- A. Plan requirements. The stormwater management plan required under § 285-29B shall contain at, a minimum, the following information:
- (1) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.
 - (2) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
 - (3) Predevelopment site conditions, including:
 - (a) One or more site maps at a scale of not less than one inch equals 100 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the regional flood (the 1% probability storm event) floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to § NR 811.16, Wis. Adm. Code.

- (b) Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- (4) Postdevelopment site conditions, including:
 - (a) Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
 - (b) Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
 - (c) One or more site maps at a scale of not less than one inch equals 100 feet showing the following: postconstruction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; postconstruction topographic contours of the site at a scale not to exceed two feet; postconstruction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainageway; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
 - (d) Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
 - (e) Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
- (5) A description and installation schedule for the stormwater management practices needed to meet the performance standards in § 285-28.
- (6) A maintenance plan developed for the life of each stormwater management practice, including the required maintenance activities and maintenance activity schedule.
- (7) Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
- (8) Other information requested in writing by the administering authority to determine compliance of the proposed stormwater management measures with the provisions of this article.
- B. Certification. All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this article.

- C. Alternate requirements. The administering authority may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under § 285-28E.

§ 285-31. Maintenance agreement.

- A. Maintenance agreement required. The maintenance agreement required under § 285-29B for stormwater management practices shall be an agreement between the Village and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.
- B. Agreement provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by § 285-30A(6):
- (1) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under § 285-29B.
 - (3) Identification of the responsible party(ies), organization or city, county, town or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under § 285-29B.
 - (4) Requirement that the responsible party(ies), organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in Subsection B(2).
 - (5) Authorization for the administering authority, its designee and the Milwaukee Metropolitan Sewerage District to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (6) A requirement on the administering authority to maintain public records of the results of the site inspections, to inform the party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
 - (7) Agreement that the party designated under Subsection B(3) of this section as responsible for long-term maintenance of the stormwater management practices shall be notified by the administering authority of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the administering authority.
 - (8) Authorization of the administering authority to perform the corrected actions identified in the inspection report if the responsible party designated under Subsection B(3) does not make the required corrections in the specified time period. The administering authority shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to § 66.0627, Wis. Stats.

§ 285-32. Financial guarantee.

- A. Establishment of the guarantee. The administering authority may require the submittal of a financial guarantee, the form and type of which shall be subject to the approval of the administering authority. The financial guarantee shall be in an amount determined by the administering authority to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the administering authority the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan or to use the funds to maintain the stormwater management practices if the responsible party does not properly do so pursuant to the approved stormwater management plan. The administering authority shall be entitled to draw on the letter of credit upon written notice to the financial institution holding the financial guarantee by the administering authority that the requirements of this article have not been met. Additional terms and conditions applicable to the financial guarantee may be depicted in the maintenance agreement.
- B. Conditions for release. Conditions for the release of the financial guarantee are as follows:
- (1) The administering authority shall release the portion of the financial guarantee established under this section that applies to construction of the stormwater practices, less any costs incurred by the administering authority to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer which are approved by the Director of Public Works/ Village Engineer and document full compliance. The administering authority may make provisions for a partial pro rata release of the financial guarantee based on the completion of various development stages.
 - (2) The administering authority shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the administering authority, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement and an approved financial guarantee.

§ 285-33. Fee schedule.

The fees referred to in other sections of this article shall be established by the Village Board and may from time to time be modified by the Village Board. A schedule of the fees established by the administering authority shall be available for review at the Village Hall.

§ 285-34. Enforcement.

- A. Any land-disturbing construction activity or postconstruction runoff initiated after the effective date of this article by any person, firm, association, or corporation subject to the provisions of this article shall be deemed a violation unless conducted in accordance with the requirements of this article.
- B. The administering authority shall notify the responsible party of any noncomplying land disturbing construction activity or postconstruction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, or additional enforcement action which may be taken; however, the notice of enforcement shall not limit or prevent the Village from pursuing different or alternative means of enforcement than as described in the notice. Any technique that effectively provides actual and verifiable notice may be used.
- C. Upon receipt of written notification from the administering authority under Subsection B, the

responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the administering authority in the notice.

- D. If the violations to a permit issued pursuant to this article are likely to result in damage to properties, public facilities, or waters of the state, the administering authority may enter the land and take corrective actions necessary to prevent such damage. The costs incurred by the administering authority plus interest and legal costs shall be paid by the responsible party.
- E. If the administering authority determines that any person is in violation of this article or a stormwater permit, the administering authority may issue a notice of violation, a stop-work order, or a cease-and-desist order, or revoke the permit, or refer the noncompliance to the Village Attorney for civil enforcement, penalties, injunctive orders or other appropriate relief.
- F. Every violation of this article is a public nuisance and subject to prosecution under § 1-4 of the Fox Point Code.
- G. The administering authority may revoke a permit issued under this article for noncompliance with the provisions of this article.
- H. Any permit revocation, stop-work order, or cease-and-desist order shall remain in effect unless retracted by the administering authority or by a court with jurisdiction.
- I. The administering authority is authorized to refer any violation of this article, or of a stop-work order or cease-and-desist order issued pursuant to this article, to the Village Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- J. Any person, firm, association, or corporation who does not comply with the provisions of this article shall be subject to the penalties described in § 1-4 of this Code. Each day that the violation exists shall constitute a separate offense.
- K. Compliance with the provisions of this article may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease-and-desist order before resorting to injunctive proceedings.
- L. When the administering authority determines that the holder of a permit issued pursuant to this article has failed to follow practices, or has failed to comply with schedules in a stormwater management plan, the administering authority or a party designated by the administering authority may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The administering authority shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to § 285-32 of this article. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

§ 285-35. Appeals.

- A. Board of Appeals. The Board of Appeals shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the administering authority in administering this article. The Board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the Board may authorize variances that are not contrary

to the public interest, and where owing to special conditions unique to the property, a literal enforcement would be an unnecessary hardship.

- B. Who may appeal. Appeals to the Board of Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Village of Fox Point affected by any decision of the administering authority.

ARTICLE IV

Construction Site Erosion Control**[Adopted 3-13-2001 by Ord. No. 2001-03 (Ch. 38 of the 1961 Code)]****§ 285-36. Authority.**

This article is adopted by the Village Board under the authority granted it in § 61.354, Wis. Stats.

§ 285-37. Findings and purpose.

- A. Findings. The Village Board finds that runoff from construction sites carries a significant amount of sediment and other pollutants to the waters of the state and the Village of Fox Point.
- B. Purpose. It is the purpose of this article to preserve the natural resources; to protect the quality of the waters of the state and Village; and to protect and promote the health, safety and welfare of the people to the extent practicable by minimizing the amount of sediment and other pollutants carried by runoff or discharged from construction sites to lakes, streams and wetlands.

§ 285-38. Applicability of regulations.

This article applies to land-disturbing and land-developing activities on land within the boundaries and jurisdiction of the Village and the public and private lands subject to extraterritorial review under Ch. 236, Wis. Stats. All state-funded or conducted construction is exempt from this article if, at a minimum, such construction activities meet the requirements contained in the "State Plan for the Control of Construction Erosion and Stormwater Runoff," which contains similar requirements as contained in this article.

§ 285-39. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AGRICULTURAL LAND USE — Use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock.

BEST MANAGEMENT PRACTICE (BMP) — A practice or combination of practices to control erosion and attendant pollution.

BMP HANDBOOK — The most recent edition of the Wisconsin Department of Natural Resources Wisconsin Construction Site Best Management Practices Handbook.

COMMERCIAL LAND USE — Use of land for the retail or wholesale sale of goods or services.

CONSTRUCTION SITE BEST MANAGEMENT PRACTICE — A best management practice used to meet the requirements of § 285-42.

CONTROL PLAN — A written description of the number, locations, sizes and other pertinent information of best management practices designed to meet the requirements of this article submitted by the applicant for review and approval by the Village staff.

EROSION — The detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

LAND-DEVELOPING ACTIVITY — The construction, demolition, and/or redevelopment of buildings, roads, parking lots, paved storage areas and similar facilities.

LAND-DISTURBING CONSTRUCTION ACTIVITY — Any man-made change of the land surface

including removing vegetation cover, excavating, filling and grading, but not including agricultural land uses such as planting, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

LANDOWNER — Any person holding title to or having any interest in land.

LAND USER — Any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes uses of his land.

RUNOFF — The rainfall, snowmelt, or irrigation water flowing over the ground surface.

SET OF ONE-YEAR DESIGN STORMS — The following rain intensities and rain volumes or corresponding values specific to the community for the storm durations of 0.5, 1, 2, 3, 6, 12 and 24 hours that occur approximately one per year. The following are typical characteristics of these one-year storms for most of Wisconsin.²

Storm Duration (hours)	Rain Intensity (inches/hour)	Average Total Rain (inches)
0.5	1.8	0.9
1	1.1	1.1
2	0.7	1.3
3	0.5	1.5
6	0.3	1.7
12	0.2	2.0
24	0.1	2.3

SITE — The entire area included in the legal description of the land on which the land disturbing or land development activity is proposed in the permit application.

STABILIZE — Make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, placing concrete or gravel or other measure.

VILLAGE PERSONNEL — Employees of the Village of Fox Point authorized by the Village Board to implement provisions of this article of the Village Code.

WATERS OF THE STATE — All lakes, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage system and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

WORKING DAY — A calendar day, except Saturdays, Sundays, and Village-observed holidays.

§ 285-40. Design criteria standards and specifications for best management practices.

All best management practices required to comply with this article shall be maintained by the applicant or subsequent landowner during the period of land disturbance and development of the site in a satisfactory manner to ensure adequate performance and to prevent nuisance conditions. The standard for maintenance of best management practices shall be set forth in the BMP Handbook or adopted by the Village.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

§ 285-41. Maintenance of best management practices.

All sedimentation basins and other best management practices necessary to meet the requirements of this article shall be maintained by the applicant or subsequent landowner during the period of land disturbance and land development of the site, in a satisfactory manner to ensure adequate performance and to prevent nuisance conditions.

§ 285-42. Control of erosion and pollutants during land disturbance and development.

A. Applicability. This section applies to the following sites of land development, demolition, redevelopment, and/or land-disturbing activities:

- (1) Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved subdivision plats.³
- (2) Those requiring a certified survey approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved certified surveys.
- (3) Those involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land-disturbing activity affecting a surface area of 8,000 square feet or more.
- (4) Those involving excavation or filling, or a combination of excavation and filling, affecting 800 cubic yards or more of dirt, sand or other excavation or fill material.
- (5) Those involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.
- (6) Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 600 feet or more.
- (7) Those involving grading, removal of protective ground cover or vegetation, excavation, demolition, land filling or other land disturbing activity on slopes of 10% or more.

Note: Utility companies responsible for energy repair work should enter into a "memorandum of agreement" with the Village Staff clearly stating their responsibilities if their activities may be included under any of the above applicability criteria.

B. Erosion and other pollutant control requirements. The following requirements shall be met on all sites described in Subsection A:

- (1) Site dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upslope chambers, hydrocyclones, swirl concentrators, or other appropriate controls designed and used to remove particles of 100 microns or greater for the highest dewatering pumping rate. If the water is demonstrated to have no particles greater than 100 microns during dewatering operations, then no control is needed before discharge, except as determined by the Village Staff. Water may not be discharged in a manner that causes erosion of the site or receiving channels.

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

Note: There are several ways to meet this particle size performance objective depending on the pumping rate. As an example, if the pumping rate is very low (one gallon per minute), then an inclined or vertical enlargement pipe (about eight inches in diameter for one gallon per minute) several feet long would be an adequate control device to restrict the discharge of 100 micron, and larger, particles. As the pumping rate increases, then the "device" must be enlarged. At a moderate (100 gallons per minute) pumping rate, a vertical section of corrugated steel pipe, or concrete pipe section, or other small "tank" (about 4 1/2 feet across for a 100 gallons per minute pumping rate) several feet tall would be adequate. With these pipe sections or small tanks, inlet baffles would be needed to minimize turbulence. With very large pumping rates (10,000 gallons per minute), sediment basins (about 35 feet in diameter for a pumping rate of 10,000 gallons per minute) at least three feet in depth with a simple but adequately sized pipe outlet would be needed. More sophisticated control devices (such as swirl concentrators or hydrocyclones) could be specially fabricated that would generally be smaller than the simple sedimentation devices described above, but they would not be required.

- (2) Waste and material disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of and not allowed to be carried by runoff into a receiving channel or storm sewer system.
- (3) Tracking. Each site shall have graveled roads, access drives and parking areas, constructed as set forth in the BMP Handbook, to prevent sediment from being tracked onto public or private roadways. These areas shall be inspected and maintained each workday.
- (4) Drain inlet protection. All storm drain inlets shall be protected with a straw bale, filter fabric, or equivalent barrier meeting accepted design criteria, standards and specifications.
- (5) Sediment cleanup. All off-site sediment deposits occurring as a result of a storm event shall be cleaned up by the end of the next workday. All other off-site sediment deposits occurring as a result of construction activities shall be cleaned up by the end of that same workday. Clean up shall be done by means of a "pick-up" type sweeper; flushing is not allowed.
- (6) Site erosion control. The following criteria apply only to land development or land disturbing activities that result in runoff leaving the site:
 - (a) Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below in Subsection B(6)(c)[3]. Sheetflow runoff from adjacent areas greater than 10,000 square feet in area shall also be diverted around disturbed areas unless shown to have resultant runoff velocities of less than 0.5 foot per second across the disturbed area for the set of one-year design storms. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels.
 - (b) All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.
 - (c) Runoff from the entire disturbed area on the site shall be controlled by meeting either of the following:

- [1] All disturbed ground left inactive for seven or more days shall be stabilized by seeding or sodding (only available prior to September 15) or by mulching or covering, or other equivalent best management practice.
 - [2] For sites with more than 10 acres disturbed at one time, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least 1% of the area draining to the basin and at least three feet of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three feet. The basin shall be designed to trap sediment greater than 15 microns in size, based on the set of one-year design storms having durations from 0.5 to 24 hours. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.
 - [3] For sites with less than 10 acres disturbed at one time, filter fences, straw bales, sediment traps, or equivalent best management practices shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.
- (d) Any soil or dirt storage piles containing more than 10 cubic yards of material should not be located with a downslope drainage length of less than 25 feet to a roadway or drainage channel. If remaining for more than seven days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than seven days shall be controlled by placing straw bales or filter fence barriers around the pile. In-street utility repair or construction soil or dirt storage piles located closer than 25 feet to a roadway or drainage channel must be covered with tarps or suitable alternative control if exposed for more than seven days, and the storm drain inlets must be protected with straw bales or other appropriate filtering barriers.
 - (e) When the disturbed area has been stabilized by permanent vegetation or other means, temporary best management practices such as filter fabric fences, straw bales, and sediment traps shall be removed.
 - (f) Sites with slopes of 12% or more may require additional or different controls than listed in Subsection B(6)(c), above. Requirements for such slopes shall be as specified by the Village in Article I of this chapter.

§ 285-43. Permit application; control plan; permit issuance.

- A. Permit application. No landowner or land user may commence a land disturbance or land development activity subject to this article without receiving prior approval of a control plan for the site and a permit from the Village staff. At least one landowner or land user controlling or using the site and desiring to undertake a land disturbing or land developing activity subject to this article shall submit an application for a permit and a control plan and pay an application fee to the Village staff. By submitting an application, the applicant is authorizing the Village staff to enter the site to obtain information required for a review of the control plan.
- B. Content of the control plan for land disturbing activities covering more than one acre.
 - (1) Existing site map. A map of existing site conditions on a scale of at least one inch equals 100 feet showing the site and immediately adjacent areas:

- (a) Site boundaries of adjacent lands which accurately identify site location;
 - (b) Lakes, streams, wetlands, channels, environmental corridors, ditches and other watercourses on or within 500 feet of the site (Note: The Village should identify sensitive local waters that may need to be further addressed by the control plan.);
 - (c) One-hundred-year floodplains, flood fringes and floodways;
 - (d) Location of the predominant soil types;
 - (e) Vegetative cover;
 - (f) Location and dimensions of stormwater drainage systems and natural drainage patterns on and immediately adjacent to the site;
 - (g) Locations and dimensions of utilities, structures, roads, highways, and paving; and
 - (h) Site topography at a contour interval not to exceed five feet.
- (2) Plan of final site conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes.
- (3) Site construction plan. A site construction plan including:
 - (a) Locations and dimensions of all proposed land disturbing activities;
 - (b) Locations and dimensions of all temporary soil or dirt stockpiles;
 - (c) Locations and dimensions of all construction site management best management practices necessary to meet the requirements of this article;
 - (d) Schedule of anticipated starting and completion dates of each land-disturbing or land-developing activity, including the installation of construction site best management practices needed to meet the requirements of this article; and
 - (e) Provisions of maintenance of the construction site best management practices during construction.
- C. Content of control plan statement for land disturbing activities covering less than one acre, but meeting the applicability requirements stated in § 285-42A. An erosion control plan statement (with simple map) shall be submitted to briefly describe the site and erosion controls (including the site development schedule) that will be used to meet the requirements of this article.
- D. Review of control plan. Within 45 days of receipt of the application, control plan (or control plan statement) and fee, the Village staff shall review the application and control plan to determine if the requirements of this article are met. The Village Staff shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the Village staff shall inform the applicant in writing and may either require needed information or disapprove the plan. Within 30 days of receipt of needed information, the Village staff shall again determine if the plan meets the requirements of this article. If the plan is disapproved, the Village staff shall inform the applicant in writing of the reasons for the disapproval.
- E. Permits.
 - (1) Duration. Permits shall be valid for a period of 180 days, or the length of the building permit or

other construction authorizations, whichever is longer, from the date of issuance. The Village staff may extend the period one or more times for up to an additional 180 days. The Village staff may require additional best management practices as a condition of the extension if they are necessary to meet the requirements of this article.

- (2) Surety bond. As a condition of approval and issuance of the permit, the Village staff may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved control plan and any permit conditions.
- (3) Permit conditions. All permits shall require the permittee to:
 - (a) Notify the Village staff within 48 hours of commencing any land-disturbing activity;
 - (b) Notify the Village staff of completion of any best management practices within 14 days after their installation;
 - (c) Obtain permission in writing from the Village staff prior to modifying the control plan;
 - (d) Install all best management practices as identified in the approved control plan;
 - (e) Maintain all road drainage systems, stormwater drainage systems, best management practices and other facilities identified in the control plan;
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainageways resulting from land-developing or disturbing activities;
 - (g) Inspect the construction best management practices after each rain of 0.5 inch or more and at least once each week make needed repairs;
 - (h) Allow the Village staff to enter the site for the purpose of inspecting for compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan; and
 - (i) Keep a copy of the control plan on the site.

§ 285-44. Inspection.

The Village Staff shall inspect construction sites at least once a month during the period starting March 1 and ending October 31, and at least two times during the period starting November 1 and ending February 28 to ensure compliance with the control plan. If land-disturbing or land development activities are being carried on without a permit, the Village staff shall enter the land pursuant to the provisions of § 66.0119, Wis. Stats.

§ 285-45. Enforcement.

A. Stop-work order. The Village Staff may post a stop-work order if:

- (1) Any land disturbing or land developing activity regulated under this article is being undertaken without a permit;
- (2) The control plan is not being implemented in a good faith manner;
- (3) The conditions of the permit are not being met; or

- (4) No permit has been issued.
- B. Revocation. If the permittee does not cease the activity forthwith upon posting of a stop-work order, the Village staff may revoke the permit, and the violator shall be subject to prosecution as provided in § 1-4 of the Village Code. Limited work, as approved by Village staff, may proceed for the limited purpose of correcting any violation, and violations shall be corrected within 10 days of the posting of a stop-work order. In the event of failure to correct the violation within 10 days, the Village staff may revoke the permit, and the violation shall be subject to prosecution under § 1-4 of the Village Code.
- C. Retraction of revocation. The Village Staff, or the Board of Appeals upon appeal, may retract the stop-work order or the revocation.
- D. Right to cure violations. Ten days after posting a stop-work order, the Village may issue a notice of intent to the permittee or landowner or land user of the Villages intent to perform work necessary to comply with this article. Village personnel may go on the land and commence the work after 14 days from issuing the notice of intent. The costs of the work performed by the Village, plus interest at the rate authorized by the Village, shall be billed to the permittee or the landowner. In the event a permittee or landowner fails to pay the amount due, the Village Clerk/Treasurer shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to § 66.0627, Wis. Stats.⁴
- E. Injunction. Compliance with the provisions of this article may also be enforced by injunction.

§ 285-46. Violations and penalties.

Any person violating any of the provisions of this article shall be subject to a forfeiture as provided in § 1-4 of the Code of the Village of Fox Point. Each day a violation exists shall constitute a separate offense.

§ 285-47. Appeals.

- A. Appeals. The Board of Appeals, created under § 745-36 of the Code of the Village of Fox Point, pursuant to §§ 62.23(7)(e) and 68.11, Wis. Stats, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Village Staff in administering this article. Upon appeal, the Board of Appeals may authorize variances from the provisions of this article which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship. The Board of Appeals shall use the rules, procedures, duties and powers authorized by statute for zoning boards of appeals in hearing and deciding appeals and authorizing variances.
- B. Who may appeal. Any applicant, permittee, landowner, land user or aggrieved party may appeal any order, decision or determination made by the Village Staff in administering this article.

§ 285-48. Fees.

Fees referred to in this article shall be established by the Village Board in a fee schedule and may, from time to time, be modified by ordinance or resolution. Fees shall be related to costs involved in handling permit applications, reviewing control plans, conducting site inspections, and administering the erosion control program.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

ARTICLE V

Illicit Discharges or Connections to Storm Drainage System
[Adopted 3-12-2002 by Ord. No. 2002-04 (Ch. 4B of the 1961 Code)]**§ 285-49. Discharges prohibited.**

No person, firm, association, or corporation may discharge, spill or dump substances or materials which are not entirely composed of stormwater into receiving bodies of water, storm sewers or drainage facilities, or onto driveways, sidewalks, parking lots or other ways that drain into the Village drainage system.

§ 285-50. Discharge exemptions.

The following activities are exempt from the provisions of this article unless found to have an adverse impact on the stormwater:

- A. Discharges authorized by a permit issued by the Wisconsin Department of Natural Resources.
- B. Discharges resulting from firefighting activities.
- C. Discharges in compliance with construction site erosion controls (Article IV of this chapter) or the stormwater management system regulations applicable to already developed or currently vacant property (Article III of this chapter).
- D. Discharges from uncontaminated groundwater, potable water source, roof drains, foundation drain and sump pump, air-conditioning condensation, springs, lawn watering or irrigation, individual residential car washing, water main and hydrant flushing and swimming pools if the water has been dechlorinated.

§ 285-51. Connections prohibited.

It shall be a violation of this article to connect a wastewater building sewer or drain to the Village drainage system.

§ 285-52. Violations and penalties.

Any person violating any of the provisions of this article shall be subject to a forfeiture as provided in § 1-4 of the Village Code. Each day a violation exists shall constitute a separate offense.

Attachment 4

Section 756-7 – Permits

§ 756-7. Permits.

- A. Permits required. No building or structure, or any part thereof, shall hereafter be built, enlarged, altered or demolished within the municipality or moved into, within or out of the municipality except as hereinafter provided, unless a permit therefor shall first be obtained by the owner or his agent from the Building Inspector. Permits required are as follows:
- (1) Building.
 - (2) Air conditioning. See § 756-34A(2).
 - (3) Wrecking or razing.
 - (4) Heating.
 - (5) Moving of buildings.
 - (6) Occupancy.
 - (7) Reroofing and residing.
 - (8) Other permits as required by governing municipality.
- B. Application for permits. Application for a building permit shall be made in writing upon a blank form to be furnished by the Building Inspector, by the owner of the subject property, the owner's agent who shall provide proof of such agency to the satisfaction of the Building Inspector, or a person having a legal and enforceable right to procure title or interest in the property as would allow the right to build thereon. With such application, there shall be submitted to the Building Inspector three complete sets of plans, specifications and three copies of a survey. A building permit shall be issued to an individual or entity who has acquired title in the property.
- (1) Survey. The survey shall be prepared and certified by a surveyor registered by the State of Wisconsin; shall be made, in no case, prior to one year prior to the issuance of a building permit; and shall bear the date of the survey. The certified survey shall also show the following:
 - (a) Location and dimensions of all buildings on the lot, both existing and proposed.
 - (b) Dimensions of the lot.
 - (c) Dimensions showing all setbacks to all buildings on the lot.
 - (d) Proposed grade of proposed structure, to city or village datum.
 - (e) Grade of lot and of road opposite lot.
 - (f) Grade and setback of adjacent buildings. If adjacent lot is vacant, submit elevation of nearest buildings on same side of the road.
 - (g) Type of monuments at each corner of lot.
 - (h) Watercourses or existing drainage ditches.

- (i) Seal and signature of surveyor.
 - (j) A clear delineation of the private property line adjacent to the Village right-of-way.
- (2) Plans and specifications. All plans and specifications must be drawn at a scale that adequately illustrates all of the required information in sufficient detail to demonstrate code compliance, to the satisfaction of the Village staff reviewing the application, on paper or cloth in ink, or by some other process that will not fade or obliterate, and shall disclose the existing and proposed provisions for water supply, sanitary sewer connections and surface water drainage. All dimensions shall be accurately figured. Drawings that do not show all necessary detail shall be rejected.
 - (a) A complete set of plans for residential construction shall consist of:
 - [1] All elevations.
 - [2] All floor plans.
 - [3] Complete construction details.
 - [4] Fireplace details (3/4 inch per foot) showing cross-section of fireplace and flues.
 - [5] Plans of garage when garage is to be built immediately or location of garage when it is to be built at a later date.
 - (b) All plans shall remain on file in the office of the Building Inspector until at least one year after the completion of the building, after which time the Building Inspector may return the same to the owner, may keep them for public record or may destroy them.
- C. Waiver of some requirements. At the option of the Building Inspector, plans, data, specifications and survey need not be submitted with an application for permit to execute minor alterations and repairs to any building, structure or equipment, provided the proposed construction is sufficiently described in the application for permit.
- D. Seal of registered engineer or architect. All plans, data and specifications for the construction of any building or structure or for any construction in connection with existing buildings and structures, other than one- and two-family residences, containing more than 50,000 cubic feet, total volume, submitted with an application for permit shall bear the seal of the registered architect or engineer. The plans shall also be stamped as approved as required by the Department of Safety and Professional Services of the State of Wisconsin. Such building or structure shall be constructed under the supervision of an architect or engineer who shall be responsible for its erection in accordance with the approved plans. No permit shall be granted for such structure unless such construction will be under the supervision of an architect or engineer, as required by the Wisconsin Statutes. A written statement to this effect shall be filed by the architect or engineer, with the Building Inspector, with the application for permit.
- E. Drainage.

(1) Grading of lots.

(a) A drainage plan is required:

- [1] For applications for the construction of a new principal building;
- [2] For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more;
- [3] For applications for land disturbing activity (other than tree removal) on the face of a ravine bluff or lake bluff;
- [4] For all circumstances where a fill permit is required pursuant to Chapter 272 of this Code; and
- [5] When required by the Village in particular cases due to particular concerns arising in the application.

(b) The plans shall show the present and proposed grades of the lot on which it is proposed to erect the building for which a building permit is sought and of the immediately adjoining property in sufficient detail to indicate the surface water drainage before and after the completion of grading. No permit shall be issued if the erection of the building and the proposed grade shall unreasonably obstruct the natural flow of water from the surface of adjoining property or obstruct the flow of any existing ravine, ditch, drain or stormwater sewer draining neighboring property, unless suitable provision is made for such flow by means of an adequate ditch or pipe, which shall be shown on the plans and shall be constructed so as to provide continuous drainage at all times. The plan shall include a pre- and postdevelopment flow analysis which must address all of the following issues:

- [1] Flows off the property in the two-, ten-, and one-hundred-year storm events in both conditions.
- [2] If there will be fill brought to the site, where the excavated soils will be stockpiled until grading activities occur; also, if soils will be delivered to the site and stockpiled prior to grading, identify these locations.
- [3] Identify the cuts and fills on the property.
- [4] Identify the depth and width of flows at the property line, in both conditions.
- [5] Identify how the stormwater that drains toward the road will be tied into the Village system.

(2) Stormwater drains. No dwelling shall be erected nor shall existing provisions for conveyance of water from the roof of any dwelling be altered or replaced unless provision is made to convey water from the roof of the dwelling in such a manner that such water will not, directly or indirectly, pass thence into the sanitary sewer system. No stormwater or surface water drains may be connected with the sanitary sewer system, whether installed above or below the surface of the ground.

F. Building Inspector to issue permit.

- (1) If the Building Inspector finds that the proposed building will comply in every respect with this chapter, other municipal ordinances, and all laws of the State of Wisconsin, and lawful orders issued pursuant thereto, he shall issue a building permit. After being approved, the plans and specifications shall not be altered in any respect which involves any of the above-mentioned ordinances, laws or orders or which involves the safety of the building, except with the written consent of the Building Inspector filed with such application.
- (2) In case adequate plans are presented, the Building Inspector, at his discretion, may issue a permit for a part of the building before receiving the plans and specifications of the entire building. It shall be unlawful to commence work on any building or alteration before the building permit has been issued. The issuance of a permit upon the plans and specifications shall not prevent the Building Inspector from thereafter requiring the correction of errors in said plans and specifications or from preventing building operations being carried on thereunder when in violation of any ordinances of the municipality or laws of the State of Wisconsin or lawful orders issued pursuant thereto.
- (3) For the construction of buildings requiring approval of the Department of Safety and Professional Services of the State of Wisconsin, no permit shall be issued until such approved plans are received by the Building Inspector.

G. Inspector may revoke permits.

- (1) The Building Inspector may revoke any permit, occupancy permit or approval issued under the regulations of this chapter and may stop construction or use of approved new materials, equipment, methods of construction, devices or appliances for any of the following reasons:
 - (a) Whenever there is a violation of any regulation of this chapter or of any other ordinance, law or lawful orders or Wisconsin Statute relating to the same subject matter.
 - (b) Whenever the continuance of any construction becomes dangerous to life or property.
 - (c) Whenever there is any violation of any condition or provision of the application for permit or of the permit.
 - (d) Whenever, in the opinion of the Building Inspector, there is inadequate supervision provided on the job site.
 - (e) Whenever any false statement or misrepresentation has been made in the application for permit, plans, drawings, data, specifications or certified lot or plot plan on which the issuance of the permit or approval was based.
 - (f) Whenever there is a violation of any of the conditions of an approval or occupancy given by the Building Inspector for the use of any new materials, equipment, methods of construction devices or appliances.

- (2) The notice revoking a permit, occupancy permit or approval shall be in writing and may be served upon the applicant for the permit, owner of the premises and his agent, if any, and on the person having charge of construction.
 - (3) A revocation placard shall also be posted upon the building structure, equipment or premises in question by the Building Inspector.
 - (4) After the notice is served upon the persons as aforesaid and posted, it shall be unlawful for any person to proceed thereafter with any construction operation whatsoever on the premises and the permit which has been so revoked shall be null and void, and before any construction or operation is again resumed, a new permit, as required by this chapter, shall be procured and fees paid therefor, and thereafter the resumption of any construction or operation shall be in compliance with the regulation of this chapter.
- H. Fees. Before receiving a building permit, the owner or his agent shall pay the applicable fee as described in Chapter 63 of this Code. In applying the provisions of this chapter in respect to new work, existing buildings, alterations and repairs, the physical value of the work shall be determined by the Building Inspector on the basis of current costs or as otherwise provided in the local ordinance.
- I. Expiration and renewal. **[Added 5-14-2013 by Ord. No. 2013-03]**
- (1) Permit expiration. Permits that are subject to the Wisconsin Administrative Code SPS Chapter 320 shall expire as described therein. All other permits shall expire 24 months from the date of issuance of the permit, unless a shorter duration is prescribed by other applicable laws or ordinances. All work depicted in the approved plans shall be completed prior to the expiration of the permit, except as follows. The Building Inspector may extend in writing the duration to no later than June 1 following the expiration date, for the sole purpose of completing exterior seeding, sodding, planting and related site work depicted in the approved plans, in the event the Building Inspector finds that weather conditions unreasonably inhibit or prevent completion of such work during the term.
 - (2) Permit renewal. In the event the work is not completed as required prior to the expiration of the permit, the permit may be renewed pursuant to this subsection if all of the conditions and requirements of this subsection are satisfied. The permit holder must apply for renewal prior to the expiration of the permit, or within 30 days following the expiration of the permit. The renewal application must be for completion of the same work, with the same plans, as was initially approved when the initial permit was issued; unless such initial plans were later revised and approved by all applicable authorities of the Village, in which case the renewal application shall be for completion of the revised work and revised plans, as previously approved by the Village. The fee described in Chapter 63 of this Code shall be paid for the renewal permit, except that the amount shall be calculated based upon the work that remains to be done, not based upon all of the work contemplated by the initial permit application. No more than one renewal permit may be granted for any project. The Village Building Inspector may grant renewal permit applications upon finding that the conditions of this subsection are satisfied, without conducting further review or referral of the matter, and in particular, the review and referral contemplated by Chapter 19, Article II, Building Board, of this

Code shall not apply to a renewal application under this subsection. All conditions imposed on the initial permit shall carry forward and apply to the renewal permit, even if not specifically stated therein. The Building Inspector may impose reasonable conditions upon any renewal permit granted pursuant to this subsection, including, but not limited to, conditions designed to ensure that all exterior site work and exterior structure work on the project is promptly completed, and conditions designed to eliminate or reduce any adverse impacts of the construction project on surrounding properties.

Attachment 5

Initial Site Plans



ARCHITECTURE

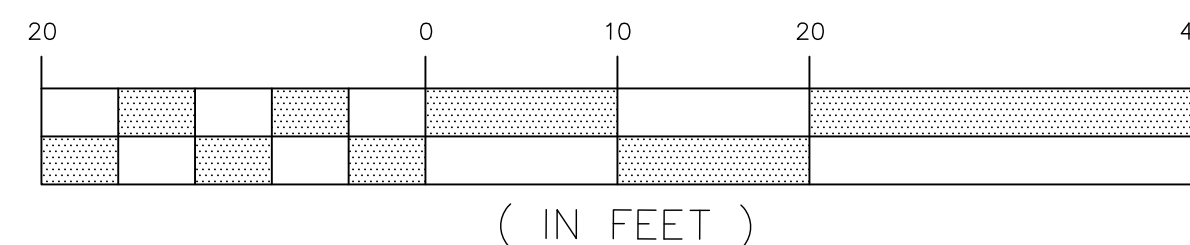
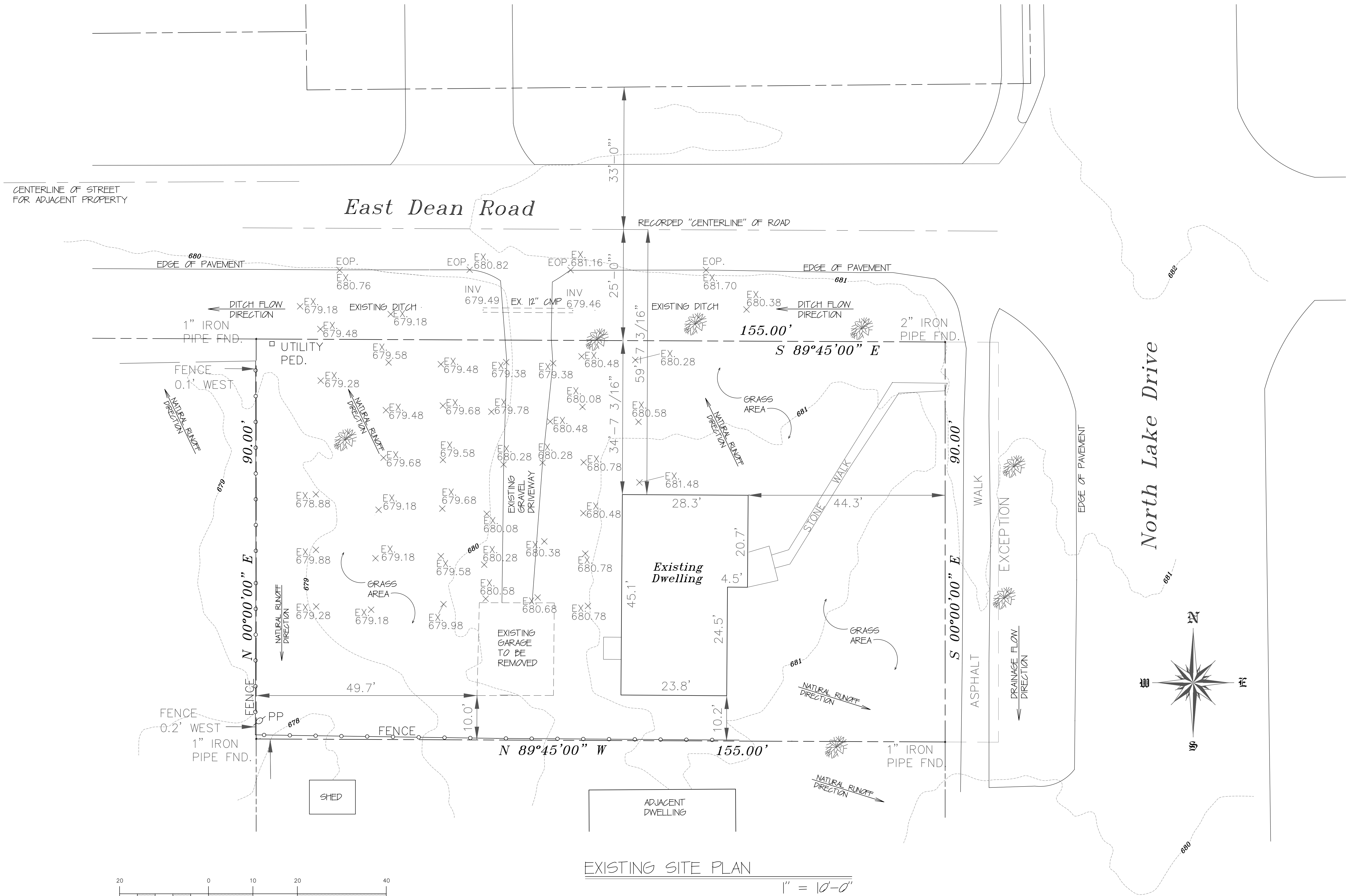
413 NORTH SECOND STREET
MILWAUKEE, WI 53203-3111
414-807-8033 FAX: 414-224-8034

Renovation & Expansion of
Single Family Home
8339 N. Lake Drive
Fox Point, WI 53217

05-31-23

GRADING PLAN

G-1



PER 285-43 (1) (b) THERE ARE NO IDENTIFIED LAKES, STREAMS, WETLANDS, CHANNELS, ENVIRONMENTAL CORRIDORS OR OTHER WATER COURSES ON OR WITHIN 500 FEET OF THIS SITE.

PER 285-43-(1) (c) THERE IS NOT A 100 YEAR FLOODPLAIN, FLOOD FRINGE OR FLOODWAY WITHIN 500 FEET OF THIS SITE.



ARCHITECTURE

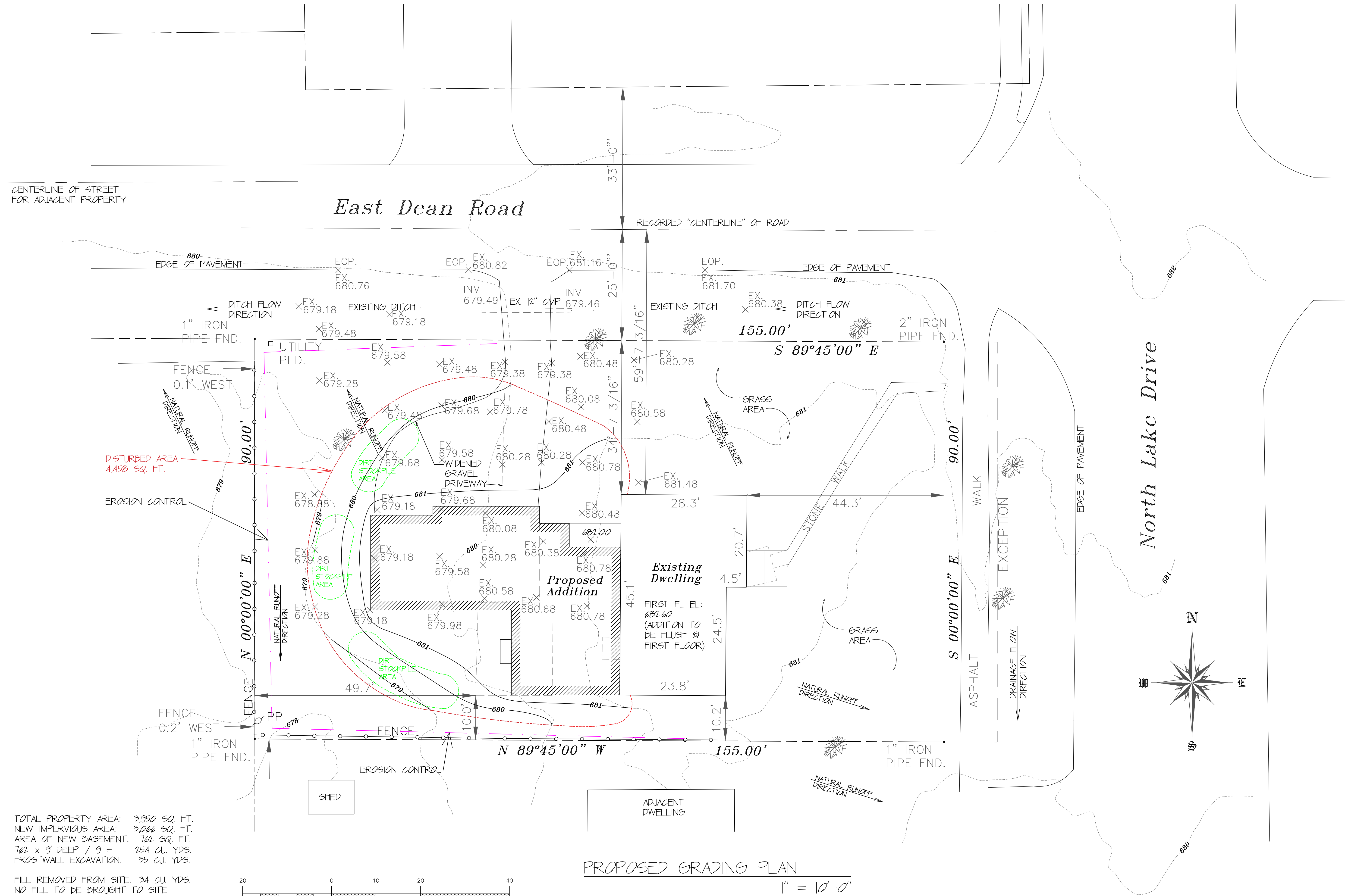
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Renovation & Expansion of
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05-31-23

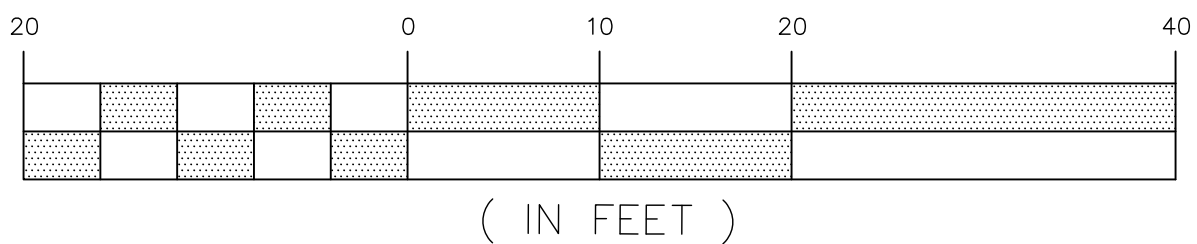
GRADING PLAN

G-2



TOTAL PROPERTY AREA: 13,950 SQ. FT.
NEW IMPERVIOUS AREA: 3,066 SQ. FT.
AREA OF NEW BASEMENT: 762 SQ. FT.
762 x 9 DEEP / 9 = 254 CU. YDS.
FROSTWALL EXCAVATION: 35 CU. YDS.

FILL REMOVED FROM SITE: 134 CU. YDS.
NO FILL TO BE BROUGHT TO SITE

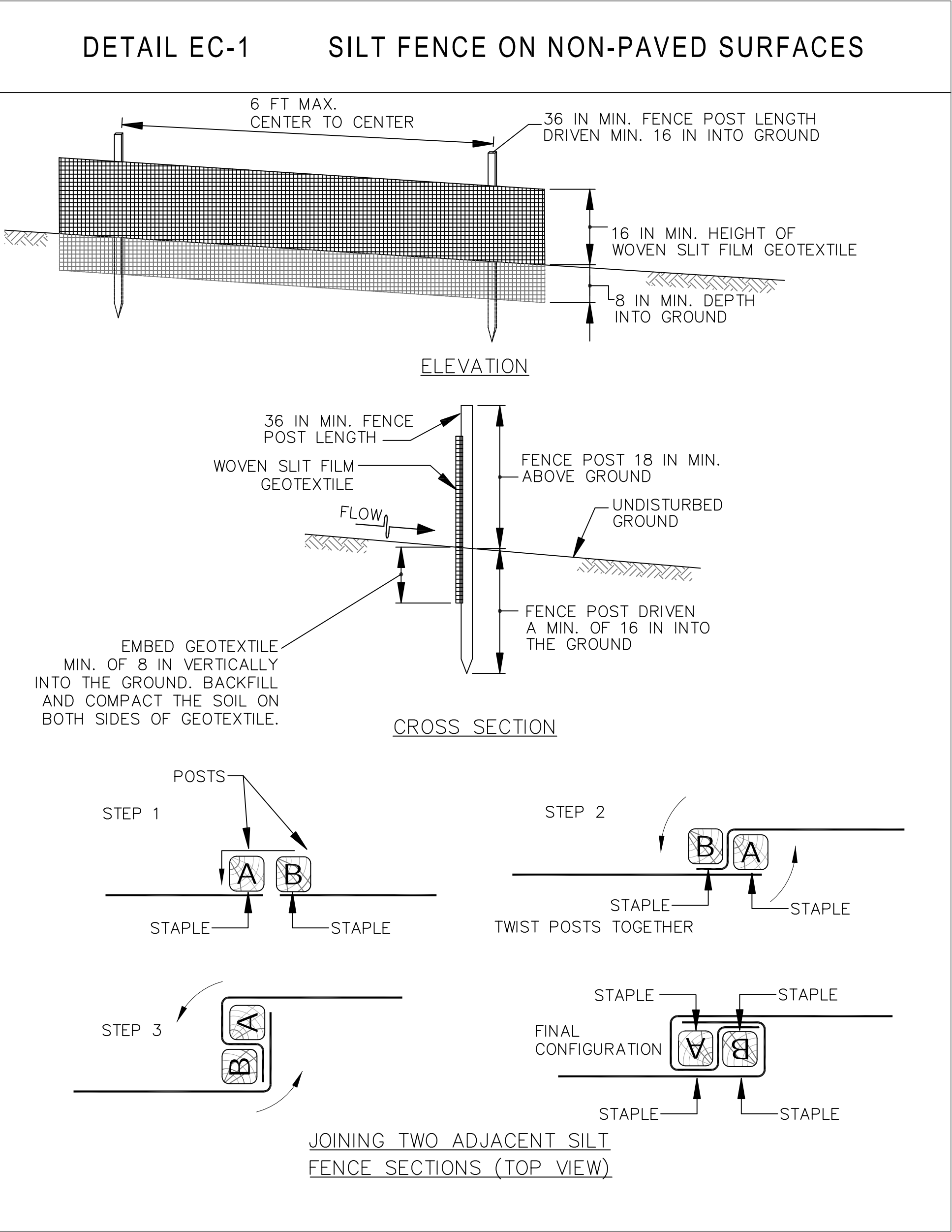


SHEET INDEX:

G-1 EXISTING SITE PLAN
G-2 PROPOSED GRADING PLAN
EC-1 EROSION CONTROL PLAN

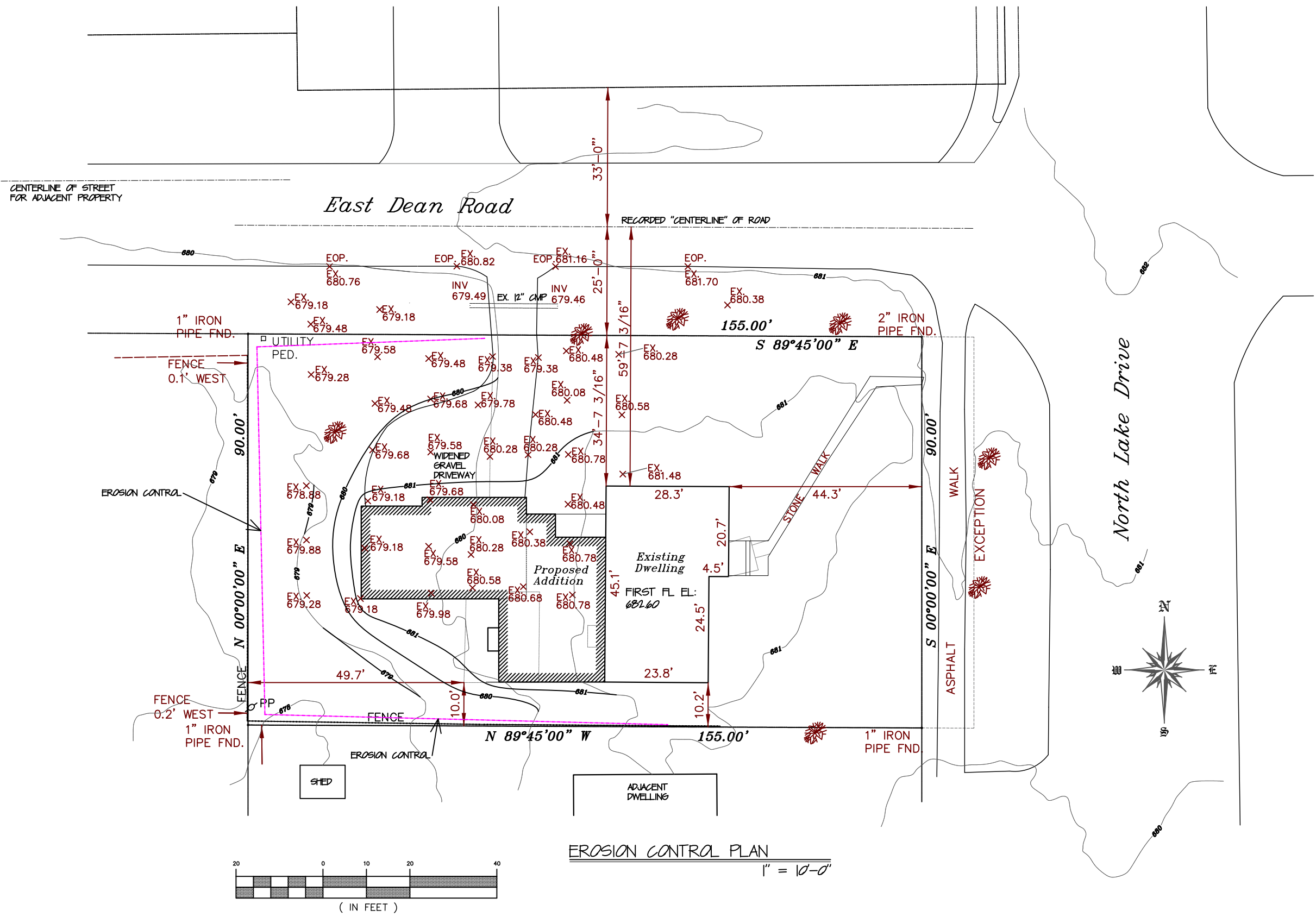
CONSTRUCTION SPECIFICATIONS

- USE WOOD POSTS $1\frac{3}{4} \times 1\frac{3}{4} \pm \frac{1}{16}$ INCH (MINIMUM) SQUARE CUT OF SOUND QUALITY HARDWOOD. AS AN ALTERNATIVE TO WOODEN POST USE STANDARD "T" OR "U" SECTION STEEL POSTS WEIGHING NOT LESS THAN 1 POUND PER LINEAR FOOT.
- USE 36 INCH MINIMUM POSTS DRIVEN 16 INCH MINIMUM INTO GROUND NO MORE THAN 6 FEET APART.
- USE WOVEN SLIT FILM GEOTEXTILE MATERIALS AND FASTEN GEOTEXTILE SECURELY TO UPSLOPE SIDE OF FENCE POSTS WITH WIRE TIES OR STAPLES AT TOP AND MID-SECTION.
- EMBED GEOTEXTILE A MINIMUM OF 8 INCHES VERTICALLY INTO THE GROUND. BACKFILL AND COMPACT THE SOIL ON BOTH SIDES OF FABRIC.
- WHERE TWO SECTIONS OF GEOTEXTILE ADJOIN: OVERLAP, TWIST, AND STAPLE TO POST IN ACCORDANCE WITH THIS DETAIL.
- EXTEND BOTH ENDS OF THE SILT FENCE A MINIMUM OF FIVE HORIZONTAL FEET UPSLOPE AT 45 DEGREES TO THE MAIN FENCE ALIGNMENT TO PREVENT RUNOFF FROM GOING AROUND THE ENDS OF THE SILT FENCE.
- REMOVE ACCUMULATED SEDIMENT AND DEBRIS WHEN BULGES DEVELOP IN SILT FENCE OR WHEN SEDIMENT REACHES 25% OF FENCE HEIGHT. REPLACE GEOTEXTILE IF TORN. IF UNDERMINING OCCURS, REINSTALL FENCE.
- HAY BALES MAY BE USED ON HARD SURFACES SUCH AS CONCRETE OR ASPHALT PAVING.



STANDARD NOTES FOR EROSION CONTROL PLAN

- THE CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL AS SHOWN AND PERFORM ALL ACTIONS NECESSARY TO PREVENT EROSION, AND CONTROL SEDIMENT FROM LEAVING THE CONSTRUCTION SITE.
- ALL EROSION CONTROL MEASURES SHALL BE IN-PLACE AND IN WORKING CONDITION PRIOR TO DISTURBING AND EXPOSING ANY SOIL SURFACES (I.E. SILT FENCE, CONSTRUCTION ENTRANCE, SEDIMENTATION BARRIERS, SEDIMENTATION TRAPS).
- ALL EROSION PREVENTION MEASURES SHALL BE MAINTAINED AND REPAIRED AS NEEDED TO INSURE CONTINUED PERFORMANCE OF THEIR INTENDED FUNCTION. NEEDED REPAIRS SHALL BE MADE AS SOON AS PRACTICABLE. THEY ARE TO REMAIN IN PLACE AND OPERATIONAL DURING ALL PHASES OF CONSTRUCTION. CONSTRUCTION ACTIVITIES SHALL NOT CONTINUE OR RESUME UNTIL REPAIRS TO EROSION CONTROL FACILITIES ARE MADE AND THE FACILITIES ARE FUNCTIONAL. ANY SEDIMENT LEAVING THE SITE OR DISCHARGING TO A SENSITIVE AREA SHALL BE STOPPED AND CONTROLLED IMMEDIATELY. CONTAMINATED AREAS SHALL BE CLEANED AND RESTORED.
- CLEARING LIMITS AND WORK AREA LIMITS SHALL BE DELINEATED AND MARKED. DON'T DISTURB MORE AREA THAN NEEDED FOR CONSTRUCTION REQUIREMENTS.
- ALL SENSITIVE OR CRITICAL AREAS (WETLANDS, STEEP SLOPES, NATURAL WATERWAYS), AND BUFFERS SHALL ALL BE CLEARLY DELINEATED AND AND CLEARLY MARKED, AND PROTECTED FROM SEDIMENT DEPOSITION.
- SEDIMENT LADEN RUNOFF SHALL BE PREVENTED FROM ENTERING ALL EXISTING STORM WATER CATCH BASINS & INLETS AFFECTED BY CONSTRUCTION.
- ALL DISTURBED SOIL SURFACES SHALL BE STABILIZED BY A SUITABLE APPLICATION OF "BEST MANAGEMENT PRACTICES".
- WHERE FEASIBLE, NO MORE THAN 500 FEET OF TRENCH SHALL BE OPEN AT ONE TIME. EXCAVATED MATERIAL SHALL BE PLACED ON THE UP-HILL SIDE OF TRENCHES PROVIDED IT DOES NOT CONFLICT WITH SAFETY REQUIREMENTS.
- DEWATERING DEVICES SHALL DISCHARGE INTO A SEDIMENT TRAP OR SEDIMENT POND. NO DISCHARGE SHALL BE MADE TO A PAVED STREET OR STORMWATER COLLECTION SYSTEM WITHOUT FIRST REMOVING SEDIMENT.
- CUT AND FILL SLOPES SHALL BE CONSTRUCTED IN A MANNER THAT WILL MINIMIZE EROSION. EROSION SHALL BE CONTROLLED AND PREVENTED BY SUCH MEASURES AS ROUGHENING THE SURFACE, INSTALLATION OF INTERCEPTOR DITCHES, TERRACING, COVERING WITH MATTING, MULCH OR PLASTIC SHEETING. RUNOFF SHALL BE PREVENTED FROM ENTERING A SLOPE AND FROM UNDER-CUTTING THE BASE OF SLOPES.
- ANY SOIL OR DEBRIS TRANSPORTED ONTO ROADWAYS AND SIDEWALKS SHALL BE REMOVED. DEPOSITS SHALL BE COMPLETELY REMOVED BY SHOVEL AND/OR SWEEPING.
- ALL PERMANENT INFILTRATION SYSTEMS SHALL BE ISOLATED AND PROTECTED FROM SEDIMENT LADEN RUNOFF ENTERING TO AVOID RISK OF REDUCING THE ABILITY OF THE SYSTEMS TO INFILTRATE. ISOLATION AND PROTECTION SHALL NOT BE REMOVED UNTIL THE DRAINAGE AREA TRIBUTARY TO THE SYSTEM IS COMPLETELY STABILIZED.
- ALL CONVEYANCE CHANNELS, BOTH TEMPORARY AND PERMANENT SHALL BE STABILIZED TO PREVENT EROSION OF THE CHANNEL. STABILIZATION SHALL EXTEND TO AREAS AT OUTLETS AND DOWNSTREAM REACHES VULNERABLE TO EROSION RESULTING FROM FLOW DISCHARGING FROM THE CHANNEL.
- STABILIZED AREAS SHALL BE PROVIDED FOR EMPLOYEE PARKING AND STORAGE OF CONSTRUCTION MATERIALS, ERODIBLE STOCKPILES OF EARTHEN MATERIALS, SUCH AS TOPSOIL, SILTY AND CLAYEY SOILS; AND LANDSCAPE MATERIALS, SHALL BE COVERED WHEN NOT BEING INCORPORATED IN THE WORK. EROSION CONTROL MEASURES SHALL BE UTILIZED AS NECESSARY TO PREVENT SEDIMENT LADEN RUNOFF FROM LEAVING OR SEDIMENT BEING TRANSPORTED FROM THESE AREAS FROM VEHICLE ACTIVITY.
- ALL POLLUTANTS OTHER THAN SEDIMENT THAT OCCUR DURING CONSTRUCTION SHALL BE HANDLED AND DISPOSED OF IN A MANNER THAT DOES NOT CAUSE CONTAMINATION OF STORM WATER.
- CONSTRUCTION SHALL NOT BE CONSIDERED COMPLETE AND ACCEPTABLE UNTIL ALL DISTURBED AOIL SURFACE HAVE BEEN PROTECTED FROM EROSION WITH PERMANENT LANDSCAPING, COVERING WITH IMPERVIOUS SURFACES, RESTORED TO ORIGINAL UNDISTURBED CONDITION OR PERMANENTLY STABILIZED.
- VEGETATED STABILIZATION AND LANDSCAPING SHALL BE FERTILIZED, WATERED AND MAINTAINED TO INSURE THAT GROWTH OF VEGETATION IS ESTABLISHED AND SUSTAINED.
- DURING DRY WEATHER CONSTRUCTION PERIODS THE CONTRACTOR SHALL PROVIDE PROJECT-SPECIFIC DUST CONTROL MEASURES THAT MAY INCLUDE: SEEDING, MULCHING, MATTING, WATER, TACKIFIER, OR CHEMICAL SOIL STABILIZERS. THE CONTRACTOR SHALL MAINTAIN THE DUST CONTROL MEASURES THROUGH DRY WEATHER PERIODS UNTIL ALL DISTURBED AREAS HAVE BEEN STABILIZED. IMMEDIATELY RE-STABILIZE AREAS DISTURBED BY CONTRACTOR'S OPERATIONS OR OTHER ACTIVITIES (WIND, WATER, VANDALISM, ETC.).
- ENTRY ONTO THE CONSTRUCTION SITE SHALL BE RESTRICTED TO THE APPROVED ENTRANCE AS SHOWN ON PLAN OR DIRECTED BY THE CONSTRUCTION MGR.



Attachment 6

June 12, 2023 email from Mr. Bencriscutto

From: [Ralph Bencriscutto](#)
To: [Scott Brandmeier](#); [Michael Rakow](#)
Subject: Re: 8339 N Lake Drive - Building permit
Date: Monday, June 12, 2023 6:34:22 AM
Attachments: [image001.png](#)
[image003.png](#)
[Outlook-0zhnu5ml.png](#)
[Outlook-jj40idju.png](#)
[8339NL~1.PDF](#)

Hi Scott

The attached is the final plan with no grading or fill left on site. Please disregard and discard any previous plans.

Since this lies below the minimums for erosion control there is nothing us to propose for for mitigation. I don't mind paying the fee to satisfy the neighbors as long as we can proceed.

Thanks for your help

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Friday, June 9, 2023 6:32 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: DPW Admin <dpwadmin@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>; stackgroup@aol.com <stackgroup@aol.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott- thanks for responding

Please cancel our application for erosion control. After reviewing the site further, we have no need and do not want the excavated dirt from the addition spread around the site. The dirt will be removed. This puts our project well below any erosion control permit requirements.

Chapter 765-1	Min required	8339 N Lake
Disturbed area minimum	4000 sq.ft	1600 (with garage)
Section 245	Min required	8339 N Lake
minimum grading	8000sq.ft	no grading
Minimum Excavation	800 cu yards	289

Please hold the fee we paid for future permits or issue a refund. We are not asking for a storm water charge adjustment. If you still would like that form filled out, just let me know. The additional impervious roof area will be around 1400 sq.ft. per the print. I will be getting water/sewer service turned on shortly and will follow that application procedure.

We are giving you 48 hr notice per requirements that we will be starting the footings and addition.

Thank you for all your help finding the minimum requirements- we are looking forward to a good working relationship with the village. If you know of any projects nearby looking for clean fill let us know. We will be removing about 250 cu yds.

Thanks Again

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Thursday, June 8, 2023 12:46 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; DPW Admin <dpwadmin@villageoffoxpoint.com>
Subject: RE: 8339 N Lake Drive - Building permit

Hi Ralph,

I hear you stopped by yesterday when I was out of the office. I haven't had a chance to review what was submitted yet – Village Code does allow us 45 days to review any completed submittal but I try to review it within a couple of weeks once it is complete. I do need you to fill out Form 1 from the following link: <https://www.villageoffoxpoint.com/DocumentCenter/View/4358/Grading-Drainage-and-Erosion-Control-Review-Application-PDF>. There is no fee associated with this but it helps us track which stormwater utility tier you will be placed in upon placement of the roof on the structure.

Scott

Scott Brandmeier, P.E.

Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, June 7, 2023 7:36 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott
Let me know if Tom has given you what you need now for us to proceed. Looks to me we covered all the bases.
Thanks for your help

Sent from my iPhone

On May 25, 2023, at 1:38 PM, Scott Brandmeier <sbrandmeier@villageoffoxpoint.com> wrote:

Tom and Ralph,

Please forgive me if this comes across as rather blunt, but our role (Mike's and mine) is to guide you to the Village Code and you need to evaluate the project to determine what needs to be submitted based on the applicable code provisions. I've provided detailed emails regarding what is normally required with projects of this nature and, as I've noted, it seems like compliance with some of the code issues may be pushed off onto the subsequent owner. That is your call but please note that we will note this in the property file.

As it stands, the drawing is inadequate to make a determination of what the existing and proposed grades are going to be for the site. All that is shown are the existing grades; you will need to submit a drawing showing the proposed grades and, if as has been indicated, the proposed grades are what is existing, then you will have to note that accordingly on the drawing. Also, even though the erosion control fee has not been paid to necessitate a review, a quick review shows that most, if not all, of the code provisions have not been addressed.

Please also note that I will be tied up in meetings and project deadlines most of the

next week (and am off next week Tuesday). Village Code does provide that once a completed application is submitted to the Village staff has 45 days to review it; while I don't think it will take that long for me to review it I am letting you know that I probably will not be able to review your application materials until, at the earliest, the week of June 5.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thursday, May 25, 2023 7:31 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Scott,

I have attached the Grading and Erosion Control Permit Application as mentioned in the email from the property owner. Please let me know if anything additional is required.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; stackgroup@aol.com <stackgroup@aol.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>
Sent: Wed, May 24, 2023 10:34 am
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

We don't see it as a detriment to the house leaving the grade as is. There is no basement water problem now and with the higher elevation we can have basement windows without window wells like the existing house. If we can use the 289 cu yards on site just around the house without any additional fill we

would do it but you let us know. Otherwise we will just use the 25 yards right around the house just for landscaping. The ordinance doesn't specify specifics that would apply in this case- its pretty vague. If we don't change the natural drainage course it seems like it would be OK. It seems to be targeting in section 272-1-C " natural drainage would be deemed to mean any creek, ravine, gully, channel, hollow, swale or depression. " which doesn't apply to our site. The grade currently flows toward Dean but it's within a 1" of flat now from the yard to the ditch. As far as the driveway it would be several months off if we can do it but it wouldn't need to be higher or have added fill.

I assume we will need an erosion control permit- If that would be it then let us know and well drop off the payment. Seems like the permit fee is \$400.00. Tom will send in the permit filled out.

Thanks again for your help!

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, May 24, 2023 9:42 AM

To: stackgroup@aol.com <stackgroup@aol.com>; Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Tom and Ralph,

I understand what is being said and I ask your patience as I delve into the code. It appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of the Village Code. This may, as the saying goes, kick the can down the road; that is, the burden for complying with the code may fall to the individual who purchases the house.

For instance, based on the drawing, it appears the foundation will be sticking out of the ground about 12-18 inches around the addition (if the addition matches the first floor elevation of the existing structure). So, basically, what I foresee happening is the new

owner (once you sell the house and improvements) will want to perform the grading and landscaping which will then push the code compliance onto them (grading and drainage, an additional erosion control application, and the fill permit). I can only imagine their dissatisfaction having to perform these tasks – unless, of course, they are made aware of these conditions.

Honestly, I believe there are exceptions in the code that will allow you to do what you hope to do – I just can't tell you if you fall into any of them based on a single drawing. I did reference the code and don't know if it has been reviewed, but I will note again that the fill ordinance has a number of exceptions that would keep you from having to address those provisions. Namely, construction of driveways (and the fill needed for them) are exempted from the ordinance (so you would calculate the fill needed for around the house but exclude the driveway (that is, unless, you have to add a foot of soil for the driveway and then the stone). Additionally, top dressing (topsoil) is exempted from the code and there is a threshold for addressing the fill ordinance – 25 cubic yards. So, you could place 25 cubic yards of fill around the house and add topsoil on top of that (an exempted quantity) to grade the lot nicely.

That said, you still cannot adversely affect a neighboring property with any grading changes and would have to set the lot up to drain in a manner that it flows out to either Dean or Lake (or both). An erosion control permit is still likely required based on what was revised and submitted.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tuesday, May 23, 2023 1:36 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Scott,

The owner feels that the budget may not allow a deck or patio and the home may sell before completion so the driveway will not be put in at this time either. I attached a revised Grading & Erosion Control Plan that shows the existing gravel driveway remaining at the street and gravel widened near the garage doors. This leaves the existing culvert unchanged. The fill calculations were revised to show actual basement area times depth divided by 27 to reach a total excavation of 254 cubic yards. The frostwall excavation will add less than 35 yards after the foundation is backfilled. There is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer. There does not seem to be any instance where new fill will need to be brought to the property.

With all fill hauled away and no fill brought to the site, the result would be no change to any

existing drainage condition. If this meets your approval please let me know if the erosion control permit is the only permit required at this time.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

To: stackgroup@aol.com <stackgroup@aol.com>

Cc: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>; Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Sent: Tue, May 23, 2023 12:21 pm

Subject: RE: 8339 N Lake Drive - Building permit

Hi Tom,

Mike Rakow sent me the survey drawing last week but I was tied up with other deadlines. Based on my conversation with Mike and looking at the drawing, the addition will be built in an area that likely will require the addition of fill to the property (even if the source of the fill is from the excavation for the addition) because the grades for the addition are anywhere up to about a foot lower than the existing structure. Based on that and the grades that were submitted, here are the following permits and fees required for the addition. Please visit <https://www.villageoffoxpoint.com/149/Permits-Applications-Licenses> to download the appropriate forms for each of the permits.

1. A fill permit. The fee is \$650 plus a \$5,000 bond is required until the fill activities are completed. Please note that an additional fee may be needed if fill is being hauled into the site to account for the trucking. Please be sure to fill out the narrative portion of the permit requirements (it refers the applicant to the Village Code – you will have to list the source of the fill, hours of operation, etc.) in your application. Please also note that we are required to inform property owners within 500 feet of the subject property of the proposed fill activity and they have 21 days to comment on the proposed fill permit application. So, you should plan on getting approvals from me about 2-3 weeks after the 21 days expires.
2. A grading and drainage analysis. This requires you to address the drainage on the site and identify the pre and post-development flows. The post-development flow in the 2, 10 and 100 year storms needs to be less than the pre-development conditions. You will likely need to have a civil engineer perform this analysis. Please note that we do not send out the notifications for the fill permit until this analysis is completed as well. The fee for this is \$400.
3. An erosion control permit and drawing. This shares the same form as the grading and drainage analysis but is a separate \$400 fee. Please be sure to address the narrative requirements (e.g., if you encounter dewatering, etc.) as part of the application process. The Village Code is referenced in the application and will identify what needs to be submitted.

4. A culvert permit application (\$75 fee) for the proposed new culvert. The application should include details on the pipe and the elevations of the invert.

I have copied Sue, the DPW Admin, on this message so that she can start preparing the 500-foot buffer and mailing labels for the fill permit but we will not send out the letters until a completed application and fees are submitted to the Village.

Feel free to call or email with any questions.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Monday, May 22, 2023 12:47 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Fwd: 8339 N Lake Drive - Building permit

Scott,

Is anything else needed for the building permit for 8339 N. Lake Drive? Please let me know if a fee is due or any additional documentation is required.

Thanks,

Tom

Stack Design Group
Direct; 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tue, May 16, 2023 3:19 pm
Subject: FW: 8339 N Lake Drive - Building permit

Scott,
Here is the info we discussed earlier. Please look over

Regards,



Michael Rakow

Building Inspector

Phone: 414-247-6622

Web: www.villageoffoxpoint.com

7200 N Santa Monica Blvd, Fox Point, WI 53217

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Monday, May 15, 2023 9:20 AM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: 8339 N Lake Drive - Building permit

Mike,

I have attached the grading plan with fill calculations and erosion control for the home at 8339 N. Lake Drive. Please let me know if anything additional is needed for the issuance of the building permit and what the fee amount is.

Thank you,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tue, Jul 12, 2022 10:27 am
Subject: RE: 8339 N Lake Drive

Thanks, see you tomorrow.

Regards,

Michael Rakow
Building Inspector



7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tuesday, July 12, 2022 6:59 AM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

Attached is the Site Plan for 8339 N Lake Drive with the open area calculations in square feet and percentage.

Please let me know if anything else is needed.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thu, Jul 7, 2022 3:39 pm
Subject: RE: 8339 N Lake Drive

Tom,

1. I will also need the open area calculation. See 745-4B
<https://ecode360.com/14576226>

1. Need to verify 70 foot setback from the centerline of Dean Rd.

Regards,

Michael Rakow
Building Inspector



VILLAGE OF
FOX POINT

7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thursday, June 30, 2022 3:38 PM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

Mike,

Attached is our Site Plan for 8339 N Lake Drive.

Please let me know if anything additional is needed.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thu, Jun 30, 2022 3:25 pm
Subject: RE: 8339 N Lake Drive

Tom,
Can you email me a copy of the site plan. I need to verify the 75 foot setback off of Dean Rd.

Regards,

Michael Rakow
Building Inspector



VILLAGE OF
FOX POINT

7200 N Santa Monica Blvd
Fox Point, WI 53217

(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Friday, June 10, 2022 1:17 PM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

I have attached a PDF file of the revised elevations for 8339 N Lake Drive. The project was tabled at the May meeting and it is my understanding that you would have it on the June agenda if we were able to submit by today, so I dropped them off yesterday. I believe that the next meeting will be Wednesday June 15th.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: stackgroup@aol.com
To: mrakow@villageoffoxpoint.com <mrakow@villageoffoxpoint.com>
Sent: Mon, May 2, 2022 9:15 am
Subject: 8339 N Lake Drive

Attached is a PDF file with the full set of architectural drawings submitted for the Building Board meeting.

Please let me know if anything additional is needed.

Thanks,

Tom Stachowiak

Stack Design Group
Direct: 414-807-8033

Attachment 7

Revised Grading/Site Plan



ARCHITECTURE

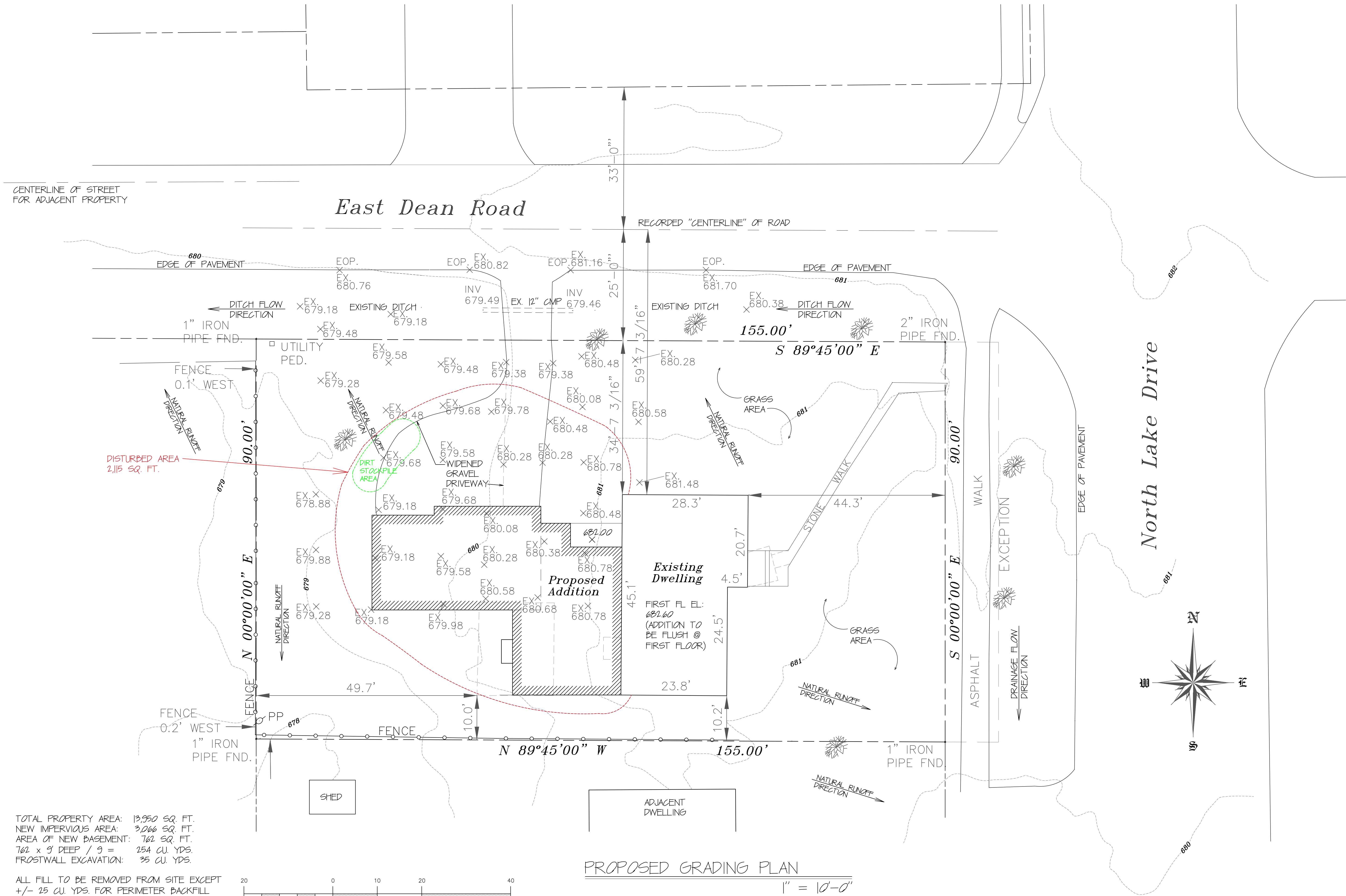
413 NORTH SECOND STREET
MILWAUKEE, WI 53203-3111
414-807-8033 FAX: 414-224-8034

Renovation & Expansion of
Single Family Home
8339 N. Lake Drive
Fox Point, WI 53217

06-09-23

GRADING PLAN

G-1



SHEET INDEX:

G-1 PROPOSED GRADING PLAN
G-2 EXISTING SITE PLAN



ARCHITECTURE

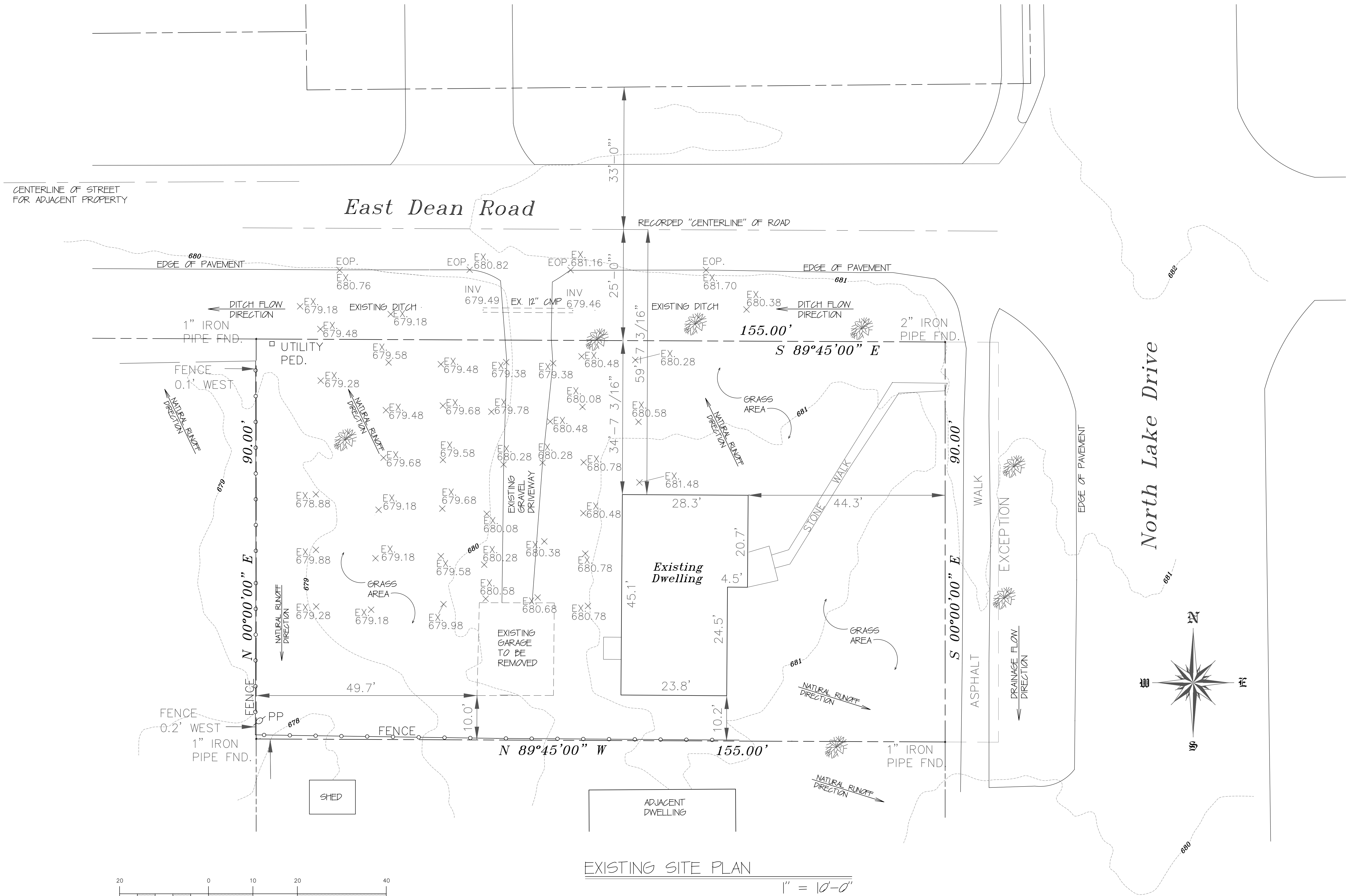
413 NORTH SECOND STREET
MILWAUKEE, WI 53203-3111
414-807-8033 FAX: 414-224-8034

Renovation & Expansion of
Single Family Home
8339 N. Lake Drive
Fox Point, WI 53217

06-09-23

EXISTING SITE
PLAN

G-2



EXISTING SITE PLAN

PER 285-43 (1) (b) THERE ARE NO IDENTIFIED LAKES, STREAMS, WETLANDS, CHANNELS, ENVIRONMENTAL CORRIDORS OR OTHER WATER COURSES ON OR WITHIN 500 FEET OF THIS SITE.
PER 285-43-(1) (c) THERE IS NOT A 100 YEAR FLOODPLAIN, FLOOD FRINGE OR FLOODWAY WITHIN 500 FEET OF THIS SITE.

Attachment 8

Conditional Approval Letter



VILLAGE OF FOX POINT

MILWAUKEE COUNTY
WISCONSIN

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT 53217-3505
414-351-8900
FAX 414-351-8909

June 13, 2023

Mr. Ralph Bencriscutto
2425 S. Memorial Drive
Racine, WI 53403

Re: Erosion Control – 8339 North Lake Drive

Dear Ralph:

I am writing with respect to the various drawings submitted to the Village for the addition at 8339 North Lake Drive. It is my understanding that you have submitted a number of iterations to fall below the threshold requiring permitting from the Village. Please note that Section 285-42 likely still requires the submittal of an erosion control plan as this may fall into the category related to construction of houses and, in your email dated June 12, 2023, indicated you are willing to pay for the erosion control fee. Please note that I am approving the proposed erosion control plan subject to the following conditions:

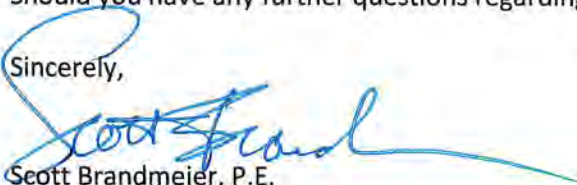
1. Sheet EC-1 dated May 31, 2023, submitted by your architect Stack Design Group identifies the erosion control plan for the project (this was submitted to my office on June 2, 2023). All erosion control features are required to be installed prior to the start of construction and that you are required to comply with Chapter 285 of the Village Code – particularly Section 285-42. Please be sure to install a tracking pad and the erosion control fence plus any drain inlet protection prior to the start of excavation.
2. Sheet G-2 dated May 31, 2023 and submitted by Stack Design Group on June 2, 2023, reflects over 4,000 square feet of disturbed area but has since been revised (dated June 9, 2023) and which you submitted to my on June 12, 2023 reflects approximately 2,100 square feet of disturbed area. Please note that should you disturb more than 4,000 square feet of disturbed area, the project must stop and you will be required to submit the grading and drainage permit application along with an analysis of the pre- and post-development flows in the 2-, 10- and 100-year storms.
3. **Please note that no fill is permitted to be added to the site and that a post-development as-built survey will be required to document that fill has not been added. An occupancy permit will not be issued until the as-built survey is submitted and approved.**
4. Please note that any future land disturbance activities will need to include the work performed under this permit. So, the appropriate permit applications will be determined based on the sum of the disturbed areas done under this permit plus any future disturbance. For example, should you or a subsequent resident or owner elect to add fill to the site or disturb an area that, combined with the approximate 2,100 square feet of disturbed area under this permit, exceed 4,000 square feet, the permits required would be based on the total impact to the site. Future permit requirements may include, but not be limited to grading and drainage, erosion control, and fill.

Mr. Ralph Bencriscutto
8339 North Lake Erosion Control Permit
June 13, 2023

5. All Village street trees along with any trees to remain on the property after construction shall be protected during construction and no work is permitted within the dripline of all Village street trees. Please ensure the contractor installs the appropriate fencing around the trees to protect them from construction traffic. *Please note that the Village has a clear cutting ordinance and you are not permitted to remove more than 50 percent of the trees from the lot prior to receiving approval from the Village Forester.*
6. Please inform the Village once the roof for the addition has been erected as this will trigger the change in your stormwater utility tier from Tier 1 to Tier 3 per Form 1 submitted by you on June 13, 2023.

Should you have any further questions regarding this matter, feel free to contact me at 414-351-8900.

Sincerely,



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point

Cc: Mike Rakow, Building Inspector
Tom Stack, Stack Design Group

Attachment 9

October 25, 2023 Email and Attachments

From: [Scott Brandmeier](#)
To: [Ralph Bencriscutto](#)
Cc: [Scott Brandmeier](#); [Fox Point Forester](#); [Michael Rakow](#)
Subject: RE: 8339 N Lake Drive - Building permit
Date: Wednesday, October 25, 2023 9:25:53 AM
Attachments: [IMG_2038.jpeg](#)
[image001.png](#)
[IMG_2037.jpeg](#)
[IMG_2036.jpeg](#)
[Erosion Control Inspection Report No. 1.pdf](#)
[Erosion Control Inspection Report No. 2.pdf](#)

Good morning Ralph,

I stopped by the jobsite this morning and took a few pictures (attached). While you may not want to hear (or read) this, I'm issuing a stop work order until you resolve the following issues:

1. Image 2037 depicts the mud and exposed soil along the west side of the property. As I noted on October 17, the soil is butting up against the fence and the silt fence is damaged to the point where it is ineffective. You indicated you were going to repair the silt fence but this has not occurred. Given the forecast for rain tonight and tomorrow, the silt fence is required to be erected prior to the end of the day today. If you do not erect the silt fence to properly contain the exposed soils, I may recommend issuance of a citation to the Police Department.
2. Image 2037 also depicts that you are using a new ingress/egress point through the ditch in the right of way. If this is your new access point, you are required to have a tracking pad installed to keep soils and mud from being tracked onto Village streets.
3. Image 2038 depicts a portion of the driveway approach and the buried culvert. You can see the top of the culvert pipe (after I moved some debris out of the way) just to the left of the short 2x4 (a small branch extends over the top of it too). The work you are doing on the driveway approach appears to be blocking the flow of storm water drainage (which flows from Lake Drive west along Dean Road). You will need to correct this work in the ditch (on both sides of the driveway approach).
4. Image 2036 depicts the proposed driveway approach butting up against a Village street tree (15-inch Norway Maple). This is not permitted. Placing concrete over the root system will likely irreversible damage the health of the tree by starving the root system of air and water. Your driveway approach will have to be shifted and you will need to obtain the approval of the Village Forester on an acceptable location for the approach (John Gall, copied on this message) prior to pouring concrete.
5. Please also remember that no fill is permitted to be placed on the property (as I noted before) and that you will need to submit an as-built survey of the property prior to issuance of the occupancy permit.
6. I have attached the recent erosion control inspections performed for your files.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works

Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Friday, October 20, 2023 6:05 AM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

Heads up we are moving the dirt from the back yard to the front so we can pick it up with a truck. We should be in good shape after that.

thanks for your help

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, October 18, 2023 1:07 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>; Fox Point Forester <forester@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Ralph,

Thanks for the note, but that's not the point. You agreed to not place any fill around the yard whatsoever so that you could, for lack of a better term, expedite the process and get your building permit. There is a bunch of soil around the yard that appears to have come from the excavation of the addition – this too has to be removed.

I also cannot tell you what permits will be needed for the driveway or patio until you present me with grades for both – including those that existed prior to development and those that you propose for the driveway and patio. If you provide those to me, I can tell you what permits will be needed.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencrisutto <ralphb@towerenergypartners.com>
Sent: Tuesday, October 17, 2023 4:02 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

We are just replacing some of that sticky clay with a gradable dirt. We had to remove over 29 trucks. The dirt by the fence will be pulled back to the garage or around the house to maintain slope. The tree also. And we will repair the silt fence.

We are preparing for a back patio and driveway - let me know if that's a separate permit.

Thanks

Sent from my iPhone

On Oct 17, 2023, at 3:15 PM, Scott Brandmeier <sbrandmeier@villageoffoxpoint.com> wrote:

Good afternoon Ralph,

I'm touching base with you on the house you are building at 8339 North Lake Drive. I performed a spot site inspection today (drive by) and noticed the following:

1. It appears you have placed fill along the west side of the house up to the fence line. Based on prior conversations with you, you had noted that you were not going to place any fill on the site in order to avoid having to obtain a fill permit and perform a grading and drainage analysis. As a reminder, you will have to provide the Village with an as-built survey before an occupancy permit will be issued and, if you have placed fill on the site, all of it will need to be removed.
2. The fill that you have placed is enveloping a tree on the property; if the fill is not removed in a timely fashion, the tree could die if the roots are unable to absorb oxygen.
3. The erosion control fence is down and needs to be repaired. This should occur

promptly (prior to the end of the week) as we've already had a rain event last week and another is expected this week.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Tuesday, June 13, 2023 1:59 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Thanks Scott

We will be following all the rules on trees etc. I think they look great as is.
Thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Tuesday, June 13, 2023 11:35 AM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: stackgroup@aol.com <stackgroup@aol.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: RE: 8339 N Lake Drive - Building permit

Ralph,

Please find the erosion control permit attached to this e-mail.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Monday, June 12, 2023 6:34 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

The attached is the final plan with no grading or fill left on site. Please disregard and discard any previous plans.

Since this lies below the minimums for erosion control there is nothing us to propose for for mitigation. I don't mind paying the fee to satisfy the neighbors as long as we can proceed.

Thanks for your help

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

<image001.png>

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Friday, June 9, 2023 6:32 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: DPW Admin <dpwadmin@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>; stackgroup@aol.com <stackgroup@aol.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott- thanks for responding
Please cancel our application for erosion control. After reviewing the site further,

we have no need and do not want the excavated dirt from the addition spread around the site. The dirt will be removed. This puts our project well below any erosion control permit requirements.

Chapter 765-1	Min required	8339 N Lake
Disturbed area minimum	4000 sq.ft	1600 (with garage)
Section 245	Min required	8339 N Lake
minimum grading	8000sq.ft	no grading
Minimum Excavation	800 cu yards	289

Please hold the fee we paid for future permits or issue a refund. We are not asking for a storm water charge adjustment. If you still would like that form filled out, just let me know. The additional impervious roof area will be around 1400 sq.ft. per the print. I will be getting water/sewer service turned on shortly and will follow that application procedure.

We are giving you 48 hr notice per requirements that we will be starting the footings and addition.

Thank you for all your help finding the minimum requirements- we are looking forward to a good working relationship with the village. If you know of any projects nearby looking for clean fill let us know. We will be removing about 250 cu yds.

Thanks Again

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Thursday, June 8, 2023 12:46 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; DPW Admin <dpwadmin@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Hi Ralph,

I hear you stopped by yesterday when I was out of the office. I haven't had a chance to review what was submitted yet – Village Code does allow us 45 days to review any completed submittal but I try to review it within a couple of weeks once it is complete. I do need you to fill out Form 1 from the following link:
<https://www.villageoffoxpoint.com/DocumentCenter/View/4358/Grading-Drainage-and-Erosion-Control-Review-Application-PDF>. There is no fee associated with this but it helps us track which stormwater utility tier you will be placed in upon placement of the roof on the structure.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencrisutto <ralphb@towerenergypartners.com>

Sent: Wednesday, June 7, 2023 7:36 AM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

Let me know if Tom has given you what you need now for us to proceed. Looks to me we covered all the bases.

Thanks for your help

Sent from my iPhone

On May 25, 2023, at 1:38 PM, Scott Brandmeier <sbrandmeier@villageoffoxpoint.com> wrote:

Tom and Ralph,

Please forgive me if this comes across as rather blunt, but our role (Mike's and mine) is to guide you to the Village Code and you need to evaluate the project to determine what needs to be submitted based on the applicable code provisions. I've provided detailed emails regarding what

is normally required with projects of this nature and, as I've noted, it seems like compliance with some of the code issues may be pushed off onto the subsequent owner. That is your call but please note that we will note this in the property file.

As it stands, the drawing is inadequate to make a determination of what the existing and proposed grades are going to be for the site. All that is shown are the existing grades; you will need to submit a drawing showing the proposed grades and, if as has been indicated, the proposed grades are what is existing, then you will have to note that accordingly on the drawing. Also, even though the erosion control fee has not been paid to necessitate a review, a quick review shows that most, if not all, of the code provisions have not been addressed.

Please also note that I will be tied up in meetings and project deadlines most of the next week (and am off next week Tuesday). Village Code does provide that once a completed application is submitted to the Village staff has 45 days to review it; while I don't think it will take that long for me to review it I am letting you know that I probably will not be able to review your application materials until, at the earliest, the week of June 5.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thursday, May 25, 2023 7:31 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Scott,

I have attached the Grading and Erosion Control Permit Application as mentioned in the email from the property owner. Please let me know if anything additional is required.

Tom

Stack Design Group

Direct: 414-807-8033

-----Original Message-----

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>;
stackgroup@aol.com <stackgroup@aol.com>

Cc: Michael Rakow <mrakow@villageoffoxpoint.com>

Sent: Wed, May 24, 2023 10:34 am

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

We don't see it as a detriment to the house leaving the grade as is. There is no basement water problem now and with the higher elevation we can have basement windows without window wells like the existing house. If we can use the 289 cu yards on site just around the house without any additional fill we would do it but you let us know. Otherwise we will just use the 25 yards right around the house just for landscaping. The ordinance doesn't specify specifics that would apply in this case- its pretty vague. If we don't change the natural drainage course it seems like it would be OK. It seems to be targeting in section 272-1-C " natural drainage would be deemed to mean any creek, ravine, gully, channel, hollow, swale or depression. " which doesn't apply to our site. The grade currently flows toward Dean but it's within a 1" of flat now from the yard to the ditch. As far as the driveway it would be several months off if we can do it but it wouldn't need to be higher or have added fill.

I assume we will need an erosion control permit- If that would be it then let us know and well drop off the payment. Seems like the permit fee is \$400.00. Tom will send in the permit filled out.

Thanks again for your help!

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, May 24, 2023 9:42 AM

To: stackgroup@aol.com <stackgroup@aol.com>; Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Cc: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Tom and Ralph,

I understand what is being said and I ask your patience as I delve into the code. It appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of the Village Code. This may, as the saying goes, kick the can down the road; that is, the burden for complying with the code may fall to the individual who purchases the house.

For instance, based on the drawing, it appears the foundation will be sticking out of the ground about 12-18 inches around the addition (if the addition matches the first floor elevation of the existing structure). So, basically, what I foresee happening is the new owner (once you sell the house and improvements) will want to perform the grading and landscaping which will then push the code compliance onto them (grading and drainage, an additional erosion control application, and the fill permit). I can only imagine their dissatisfaction having to perform these tasks – unless, of course, they are made aware of these conditions.

Honestly, I believe there are exceptions in the code that will allow you to do what you hope to do – I just can't tell you if you fall into any of them based on a single drawing. I did reference the code and don't know if it has been reviewed, but I will note again that the fill ordinance has a number of exceptions that would keep you from having to address those provisions. Namely, construction of driveways (and the fill needed for them) are exempted from the ordinance (so you would calculate the fill needed for around the house but exclude the driveway (that is, unless, you have to add a foot of soil for the driveway and then the stone). Additionally, top dressing (topsoil) is exempted from the code and there is a threshold for addressing the fill ordinance – 25 cubic yards. So, you could place 25 cubic yards of fill around the house and add topsoil on top of that (an exempted quantity) to grade the lot nicely.

That said, you still cannot adversely affect a neighboring property with any grading changes and would have to set the lot up to drain in a manner that it flows out to either Dean or Lake (or both). An erosion control permit is still likely required based on what was revised and submitted.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>

Sent: Tuesday, May 23, 2023 1:36 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Scott,

The owner feels that the budget may not allow a deck or patio and the home may sell before completion so the driveway will not be put in at this time either. I attached a revised Grading & Erosion Control Plan that shows the existing gravel driveway remaining at the street and gravel widened near the garage doors. This leaves the existing culvert unchanged. The fill calculations were revised to show actual basement area times depth divided by 27 to reach a total excavation of 254 cubic yards. The frostwall excavation will add less than 35 yards after the foundation is backfilled. There is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer. There does not seem to be any instance where new fill will need to be brought to the property.

With all fill hauled away and no fill brought to the site, the result would be no change to any existing drainage condition. If this meets your approval please let me know if the erosion control permit is the only permit required at this time.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Tue, May 23, 2023 12:21 pm
Subject: RE: 8339 N Lake Drive - Building permit

Hi Tom,

Mike Rakow sent me the survey drawing last week but I was tied up with other deadlines. Based on my conversation with Mike and looking at the drawing, the addition will be built in an area that likely will require the addition of fill to the property (even if the source of the fill is from the excavation for the addition) because the grades for the addition are anywhere up to about a foot lower than the existing structure. Based on that and the grades that were submitted, here are the following permits and fees required for the addition. Please visit <https://www.villageoffoxpoint.com/149/Permits-Applications-Licenses> to download the appropriate forms for each of the permits.

1. A fill permit. The fee is \$650 plus a \$5,000 bond is required until the fill activities are completed. Please note that an additional fee may be needed if fill is being hauled into the site to account for the trucking. Please be sure to fill out the narrative portion of the permit

requirements (it refers the applicant to the Village Code – you will have to list the source of the fill, hours of operation, etc.) in your application. Please also note that we are required to inform property owners within 500 feet of the subject property of the proposed fill activity and they have 21 days to comment on the proposed fill permit application. So, you should plan on getting approvals from me about 2-3 weeks after the 21 days expires.

2. A grading and drainage analysis. This requires you to address the drainage on the site and identify the pre and post-development flows. The post-development flow in the 2, 10 and 100 year storms needs to be less than the pre-development conditions. You will likely need to have a civil engineer perform this analysis. Please note that we do not send out the notifications for the fill permit until this analysis is completed as well. The fee for this is \$400.
3. An erosion control permit and drawing. This shares the same form as the grading and drainage analysis but is a separate \$400 fee. Please be sure to address the narrative requirements (e.g., if you encounter dewatering, etc.) as part of the application process. The Village Code is referenced in the application and will identify what needs to be submitted.
4. A culvert permit application (\$75 fee) for the proposed new culvert. The application should include details on the pipe and the elevations of the invert.

I have copied Sue, the DPW Admin, on this message so that she can start preparing the 500-foot buffer and mailing labels for the fill permit but we will not send out the letters until a completed application and fees are submitted to the Village.

Feel free to call or email with any questions.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Monday, May 22, 2023 12:47 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Fwd: 8339 N Lake Drive - Building permit

Scott,

Is anything else needed for the building permit for 8339 N. Lake Drive?
Please let me know if a fee is due or any additional documentation is required.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tue, May 16, 2023 3:19 pm
Subject: FW: 8339 N Lake Drive - Building permit

Scott,
Here is the info we discussed earlier. Please look over

Regards,

<image002.jpg>

Michael Rakow

Building Inspector

Phone: 414-247-6622

Web: www.villageoffoxpoint.com

7200 N Santa Monica Blvd, Fox Point, WI 53217

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Monday, May 15, 2023 9:20 AM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: 8339 N Lake Drive - Building permit

Mike,

I have attached the grading plan with fill calculations and erosion control for the home at 8339 N. Lake Drive. Please let me know if anything additional is needed for the issuance of the building permit and what the fee amount is.

Thank you,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tue, Jul 12, 2022 10:27 am
Subject: RE: 8339 N Lake Drive

Thanks, see you tomorrow.

Regards,

Michael Rakow

Building Inspector

<image003.png>
7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>
Sent: Tuesday, July 12, 2022 6:59 AM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

Attached is the Site Plan for 8339 N Lake Drive with the open area calculations in square feet and percentage.

Please let me know if anything else is needed.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thu, Jul 7, 2022 3:39 pm
Subject: RE: 8339 N Lake Drive

Tom,

1. I will also need the open area calculation. See 745-4B
<https://ecode360.com/14576226>

1. Need to verify 70 foot setback from the centerline of
Dean Rd.

Regards,

Michael Rakow

Building Inspector

<image003.png>

7200 N Santa Monica Blvd

Fox Point, WI 53217

(414) 247 6622

www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>

Sent: Thursday, June 30, 2022 3:38 PM

To: Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive

Mike,

Attached is our Site Plan for 8339 N Lake Drive.

Please let me know if anything additional is needed.

Tom

Stack Design Group

Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow <mrakow@villageoffoxpoint.com>

To: stackgroup@aol.com <stackgroup@aol.com>

Sent: Thu, Jun 30, 2022 3:25 pm

Subject: RE: 8339 N Lake Drive

Tom,

Can you email me a copy of the site plan. I need to verify the 75 foot setback off of Dean Rd.

Regards,

Michael Rakow

Building Inspector

<image003.png>

7200 N Santa Monica Blvd

Fox Point, WI 53217

(414) 247 6622

www.villageoffoxpoint.com

From: stackgroup@aol.com <stackgroup@aol.com>

Sent: Friday, June 10, 2022 1:17 PM

To: Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive

I have attached a PDF file of the revised elevations for 8339 N Lake Drive. The project was tabled at the May meeting and it is my understanding that you would have it on the June agenda if we were able to submit by today, so I dropped them off yesterday. I believe that the next meeting will be Wednesday June 15th.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: stackgroup@aol.com

To: mrakow@villageoffoxpoint.com <mrakow@villageoffoxpoint.com>

Sent: Mon, May 2, 2022 9:15 am

Subject: 8339 N Lake Drive

Attached is a PDF file with the full set of architectural drawings submitted for the Building Board meeting.

Please let me know if anything additional is needed.

Thanks,

Tom Stachowiak

Stack Design Group
Direct: 414-807-8033







Notice: Use of this specific form is voluntary, but the information contained on this form must be collected and kept by the permittee under s. NR 216.48(4), Wis. Adm. Code, for a construction site covered under the General WPDES Construction Site Storm Water Discharge Permit, Permit No. WI-0067831-2. This form is provided for the convenience of the permittee to meet the requirements of s. NR 216.48(4), Wis. Adm. Code. Multiple copies of this form may be made to compile the inspection report.

Inspections of implemented erosion and sediment control best management practices must be performed weekly and within 24 hours after a precipitation event 0.5 inches or greater which results in runoff.

Weekly written reports of all inspections conducted by or for the permittee must be maintained throughout the period of general permit coverage.

The information maintained in accordance with s. NR 216.48 (4) must be submitted to the Department upon request.

Name of Permittee: Ralph Bencriscutto	
Construction Site Name (Project): Home construction - Lake and Dean	Construction Site ID No.:
Location: 8339 North Lake Drive	County: Milwaukee
Contractor:	Field Office Phone: 262-664-3166

Note: Weekly inspection reports, along with erosion control and stormwater management plans, are required to be maintained on site and made available upon request.

Date of inspection (mm/dd/yy): 10/17/23	Type of inspection: ☐ Weekly ☐ Precipitation Event ☐ Other (specify) Random inspection
Time of inspection: Start: 02:00 p.m. End: 02:15 p.m.	Name(s) of individual(s) performing inspection: Scott Brandmeier - Village of Fox Point

Weather:

Description of present phase of construction:

Shell, siding and roof completed; grading along west property line; preparing for driveway.

Modifications Required	Yes	No	Not Applicable	Comments/Recommendations about the overall effectiveness of the erosion and sediment control measures. Note: For each item checked "Yes", complete the follow-up information on page 2.
Ditch Checks	☐	☐	☐	
Erosion Control Plan	☐	☐	☐	
Erosion Mat	☐	☐	☐	
Grading Practices	☐	☐	☐	
Inlet Protection	☐	☐	☐	
Mulch	☐	☐	☐	
Offsite Sediment	☐	☐	☐	
Permanent Seeding	☐	☐	☐	
Schedule / Phasing	☐	☐	☐	
Silt Fence	☐	☐	☐	Silt fence damaged; repair or replace
Silt Screen	☐	☐	☐	
Sod	☐	☐	☐	
Stabilized Outlet	☐	☐	☐	
Temp. Diversion Channel	☐	☐	☐	
Temp. Settling Basin	☐	☐	☐	
Temporary Seeding	☐	☐	☐	
Tracking Pads	☐	☐	☐	
Turbidity Barrier	☐	☐	☐	
Other (specify) <u>see below</u>	☐	☐	☐	

Other Modifications Required:

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 2 of 2

Name of Permittee:

Ralph Bencriscutto

Construction Site Name (Project):

Home construction - Lake and Dean

Construction Site ID No.:

Use the space below for detailed follow-up action items.

Exact place of erosion/sediment control inspected

Type of erosion/sediment control and its observed condition

Description of any necessary maintenance or repair to erosion/sediment control, including anticipated date of completion

Along Dean Road and west side of property.

Erosion control fence is damaged.

Erect silt fence; remove fill from property that wasn't permitted to be placed.

Additional Comments:

RESET

Notice: Use of this specific form is voluntary, but the information contained on this form must be collected and kept by the permittee under s. NR 216.48(4), Wis. Adm. Code, for a construction site covered under the General WPDES Construction Site Storm Water Discharge Permit, Permit No. WI-0067831-2. This form is provided for the convenience of the permittee to meet the requirements of s. NR 216.48(4), Wis. Adm. Code. Multiple copies of this form may be made to compile the inspection report.

Inspections of implemented erosion and sediment control best management practices must be performed weekly and within 24 hours after a precipitation event 0.5 inches or greater which results in runoff.

Weekly written reports of all inspections conducted by or for the permittee must be maintained throughout the period of general permit coverage.

The information maintained in accordance with s. NR 216.48 (4) must be submitted to the Department upon request.

Name of Permittee: Ralph Bencriscutto	
Construction Site Name (Project): Home construction - Lake and Dean	Construction Site ID No.:
Location: 8339 North Lake Drive	County: Milwaukee
Contractor:	Field Office Phone: 262-664-3166

Note: Weekly inspection reports, along with erosion control and stormwater management plans, are required to be maintained on site and made available upon request.

Date of inspection (mm/dd/yy): 10/17/23	Type of inspection: ☐ Weekly ☐ Precipitation Event ☐ Other (specify) Random inspection
Time of inspection: Start: 02:00 p.m. End: 02:15 p.m.	Name(s) of individual(s) performing inspection: Scott Brandmeier - Village of Fox Point

Weather:

Description of present phase of construction:

Shell, siding and roof completed; grading along west property line; preparing for driveway.

Modifications Required	Yes	No	Not Applicable	Comments/Recommendations about the overall effectiveness of the erosion and sediment control measures. Note: For each item checked "Yes", complete the follow-up information on page 2.
Ditch Checks	☐	☐	☐	
Erosion Control Plan	☐	☐	☐	
Erosion Mat	☐	☐	☐	
Grading Practices	☐	☐	☐	
Inlet Protection	☐	☐	☐	
Mulch	☐	☐	☐	
Offsite Sediment	☐	☐	☐	
Permanent Seeding	☐	☐	☐	
Schedule / Phasing	☐	☐	☐	
Silt Fence	☐	☐	☐	Silt fence damaged; repair or replace
Silt Screen	☐	☐	☐	
Sod	☐	☐	☐	
Stabilized Outlet	☐	☐	☐	
Temp. Diversion Channel	☐	☐	☐	
Temp. Settling Basin	☐	☐	☐	
Temporary Seeding	☐	☐	☐	
Tracking Pads	☐	☐	☐	
Turbidity Barrier	☐	☐	☐	
Other (specify) <u>see below</u>	☐	☐	☐	

Other Modifications Required:

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 2 of 2

Name of Permittee:

Ralph Bencriscutto

Construction Site Name (Project):

Home construction - Lake and Dean

Construction Site ID No.:

Use the space below for detailed follow-up action items.

Exact place of erosion/sediment control inspected

Type of erosion/sediment control and its observed condition

Description of any necessary maintenance or repair to erosion/sediment control, including anticipated date of completion

Along Dean Road and west side of property.

Erosion control fence is damaged.

Erect silt fence; remove fill from property that wasn't permitted to be placed.

Additional Comments:

RESET

Attachment 10

October 25, 2023 Follow up Email

From: [Scott Brandmeier](#)
To: [Ralph Bencriscutto](#)
Cc: [Scott Brandmeier](#); [Fox Point Forester](#); [Michael Rakow](#)
Bcc: [Mike Krueger](#); [Chris Freedy](#)
Subject: RE: 8339 N Lake Drive - Building permit
Date: Wednesday, October 25, 2023 12:25:00 PM

Ralph,

Please refer to my responses in red below.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, October 25, 2023 11:33 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

I be see what your talking about with the culvert - we will be correcting that

Sent from my iPhone

On Oct 25, 2023, at 10:14 AM, Ralph Bencriscutto
<ralphb@towerenergypartners.com> wrote:

Hi Scott

Thanks for stopping by - I appreciate you preventing problems

We are in the process of removing the mud to the old grass-that's why we are piling it up for pick up. I'll have him put tge fence back up. We are not making another entrance. **With all due respect, you said you would put the fence back up last week and it still hasn't been done. So, until that work is done, the jobsite is shut down. With respect to the ingress/egress point, the tire tracks indicate otherwise; the old entrance was through the driveway and your contractor has tracked mud and sediment onto the road. The tracking pad needs to be installed.**

I see what you are talking about with the tree and will move the driveway according to the foresters recommendations. We do not want to kill the tree but just so I know is

that tree owned by the city? Yes, this is a Village street tree. John is in the office one day a week (typically Thursdays) but I don't know if he will have a chance to look at it tomorrow to provide his recommendation.

The culvert will be cleaned out and reused I assume and we need to get the driveway usable so we don't have to drive through the ditches. You should have checked this before the contractor set the forms over the top of the culvert pipe. I can tell you that the small section I looked at appears damaged (bent) and it may not function properly.

I'm assuming we can leave 25 yards on site or bring in that much without issue per the limits? I don't see us leaving that much however. I'll be honest with you Ralph – I kind of anticipated when you started this project that you would be asking this question. You assured us that you would not add any fill to the site and presented us with a grading plan showing no fill being added. Generally speaking, 25 cubic yards is the cutoff but the addition of the fill (regardless of amount) cannot adversely impact the neighbors. If you want to add fill to the site, you will have to submit another grading plan and document that the placement will not impact the neighbors. I will require payment of a \$400 fee (to review a revised grading plan) before considering the request.

Also remember that we were under the minimum for the permit and got the permit only for the neighbors' sake so please have a little patience with us. The original contractor went under after I paid him 50K and I had to hire someone else with a 6 week delay. It would have been a lot easier if the original contractor just removed it like he was paid to do. The amount of disturbance created and the erosion associated with this project is a reason for requiring the erosion control permit and the conditions associated with it. One cannot expect to undertake a project of this nature and not have to manage the soils disturbed during the construction process. While I would like to be patient with you, you've had 8 days since I first informed you of the condition of the silt fence and nothing has been done other than to move soils to the front and stockpile them. I'm going to flip the script and ask you how much time you need to erect the erosion control fence and correct the deficiencies that exist? Forgive me for being blunt, but erosion control should not be an afterthought and, while unfortunate that your original contractor went under, that still doesn't change the dynamic that things need to be fixed. I'm standing by my comment that the erosion control problems need to be fixed today due to the onset of rain tonight, tomorrow and this weekend.

I'll keep you informed of our progress
Thanks

Sent from my iPhone

On Oct 25, 2023, at 9:26 AM, Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Good morning Ralph,

I stopped by the jobsite this morning and took a few pictures (attached). While you may not want to hear (or read) this, I'm issuing a stop work order until you resolve the following issues:

1. Image 2037 depicts the mud and exposed soil along the west side of the property. As I noted on October 17, the soil is butting up against the fence and the silt fence is damaged to the point where it is ineffective. You indicated you were going to repair the silt fence but this has not occurred. Given the forecast for rain tonight and tomorrow, the silt fence is required to be erected prior to the end of the day today. If you do not erect the silt fence to properly contain the exposed soils, I may recommend issuance of a citation to the Police Department.
2. Image 2037 also depicts that you are using a new ingress/egress point through the ditch in the right of way. If this is your new access point, you are required to have a tracking pad installed to keep soils and mud from being tracked onto Village streets.
3. Image 2038 depicts a portion of the driveway approach and the buried culvert. You can see the top of the culvert pipe (after I moved some debris out of the way) just to the left of the short 2x4 (a small branch extends over the top of it too). The work you are doing on the driveway approach appears to be blocking the flow of storm water drainage (which flows from Lake Drive west along Dean Road). You will need to correct this work in the ditch (on both sides of the driveway approach).
4. Image 2036 depicts the proposed driveway approach butting up against a Village street tree (15-inch Norway Maple). This is not permitted. Placing concrete over the root system will likely irreversible damage the health of the tree by starving the root system of air and water. Your driveway approach will have to be shifted and you will need to obtain the approval of the Village Forester on an acceptable location for the approach (John Gall, copied on this message) prior to pouring concrete.
5. Please also remember that no fill is permitted to be placed on the property (as I noted before) and that you will need to submit an as-built survey of the property prior to issuance of the occupancy permit.
6. I have attached the recent erosion control inspections performed for your files.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Friday, October 20, 2023 6:05 AM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

Heads up we are moving the dirt from the back yard to the front so we can pick it up with a truck. We should be in good shape after that.

thanks for your help

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, October 18, 2023 1:07 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael

Rakow <mrakow@villageoffoxpoint.com>; Fox Point Forester

<forester@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Ralph,

Thanks for the note, but that's not the point. You agreed to not place any fill around the yard whatsoever so that you could, for lack of a better term, expedite the process and get your building permit. There is a bunch of soil around the yard that appears to have come from the excavation of

the addition – this too has to be removed.

I also cannot tell you what permits will be needed for the driveway or patio until you present me with grades for both – including those that existed prior to development and those that you propose for the driveway and patio. If you provide those to me, I can tell you what permits will be needed.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Tuesday, October 17, 2023 4:02 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

We are just replacing some of that sticky clay with a gradable dirt. We had to remove over 29 trucks.

The dirt by the fence will be pulled back to the garage or around the house to maintain slope. The tree also. And we will repair the silt fence.

We are preparing for a back patio and driveway - let me know if that's a separate permit.

Thanks

Sent from my iPhone

On Oct 17, 2023, at 3:15 PM, Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Good afternoon Ralph,

I'm touching base with you on the house you are building at 8339 North Lake Drive. I performed a spot site inspection

today (drive by) and noticed the following:

1. It appears you have placed fill along the west side of the house up to the fence line. Based on prior conversations with you, you had noted that you were not going to place any fill on the site in order to avoid having to obtain a fill permit and perform a grading and drainage analysis. As a reminder, you will have to provide the Village with an as-built survey before an occupancy permit will be issued and, if you have placed fill on the site, all of it will need to be removed.
2. The fill that you have placed is enveloping a tree on the property; if the fill is not removed in a timely fashion, the tree could die if the roots are unable to absorb oxygen.
3. The erosion control fence is down and needs to be repaired. This should occur promptly (prior to the end of the week) as we've already had a rain event last week and another is expected this week.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Tuesday, June 13, 2023 1:59 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Thanks Scott

We will be following all the rules on trees etc. I think they look great as is.

Thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Sent: Tuesday, June 13, 2023 11:35 AM

To: Ralph Bencriscutto

<ralphb@towerenergypartners.com>; Michael Rakow

<mrakow@villageoffoxpoint.com>

Cc: stackgroup@aol.com <stackgroup@aol.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Ralph,

Please find the erosion control permit attached to this e-mail.

Scott

Scott Brandmeier, P.E.

Director of Public Works

Village of Fox Point

7200 North Santa Monica Boulevard

Fox Point, WI 53217

414-351-8900 ext. 6624

sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Sent: Monday, June 12, 2023 6:34 AM

To: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>; Michael Rakow

<mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

The attached is the final plan with no grading or fill left on site. Please disregard and discard any previous plans.

Since this lies below the minimums for erosion control there is nothing us to propose for for mitigation. I don't mind paying the fee to satisfy the neighbors as long as we can proceed.

Thanks for your help

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Sent: Friday, June 9, 2023 6:32 AM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Cc: DPW Admin <dpwadmin@villageoffoxpoint.com>;

Michael Rakow <mrakow@villageoffoxpoint.com>;

stackgroup@aol.com <stackgroup@aol.com>

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott- thanks for responding

Please cancel our application for erosion control. After reviewing the site further, we have no need and do not want the excavated dirt from the addition spread around the site. The dirt will be removed. This puts our project well below any erosion control permit requirements.

Chapter 765-1	Min required	8339 N Lake
----------------------	---------------------	--------------------

Disturbed area minimum	4000 sq.ft	
1600 (with garage)		

Section 245	Min required	8339 N Lake
--------------------	---------------------	--------------------

minimum grading	8000sq.ft	
no grading		
Minimum Excavation	800 cu	
yards	289	

Please hold the fee we paid for future permits or issue a refund. We are not asking for a storm water charge

adjustment. If you still would like that form filled out, just let me know. The additional impervious roof area will be around 1400 sq.ft. per the print. I will be getting water/sewer service turned on shortly and will follow that application procedure.

We are giving you 48 hr notice per requirements that we will be starting the footings and addition.

Thank you for all your help finding the minimum requirements- we are looking forward to a good working relationship with the village. If you know of any projects nearby looking for clean fill let us know. We will be removing about 250 cu yds.

Thanks Again

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier

[<sbrandmeier@villageoffoxpoint.com>](mailto:sbrandmeier@villageoffoxpoint.com)

Sent: Thursday, June 8, 2023 12:46 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier

[<sbrandmeier@villageoffoxpoint.com>](mailto:sbrandmeier@villageoffoxpoint.com); DPW Admin

[<dpwadmin@villageoffoxpoint.com>](mailto:dpwadmin@villageoffoxpoint.com)

Subject: RE: 8339 N Lake Drive - Building permit

Hi Ralph,

I hear you stopped by yesterday when I was out of the office. I haven't had a chance to review what was submitted yet – Village Code does allow us 45 days to review any completed submittal but I try to review it within a couple of weeks once it is complete. I do need you to fill out Form 1 from the following link:

<https://www.villageoffoxpoint.com/DocumentCenter/View/4358/Grading-Drainage-and-Erosion-Control-Review-Application-PDF>. There is no fee associated with this but it helps us track which stormwater utility tier you will be placed in upon placement of the roof on the structure.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Wednesday, June 7, 2023 7:36 AM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>; Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

Let me know if Tom has given you what you need now for us to proceed. Looks to me we covered all the bases.

Thanks for your help

Sent from my iPhone

On May 25, 2023, at 1:38 PM, Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Tom and Ralph,

Please forgive me if this comes across as rather blunt, but our role (Mike's and mine) is to guide you to the Village Code and you need to evaluate the project to determine what needs to be submitted based on the applicable code provisions. I've provided detailed emails

regarding what is normally required with projects of this nature and, as I've noted, it seems like compliance with some of the code issues may be pushed off onto the subsequent owner. That is your call but please note that we will note this in the property file.

As it stands, the drawing is inadequate to make a determination of what the existing and proposed grades are going to be for the site. All that is shown are the existing grades; you will need to submit a drawing showing the proposed grades and, if as has been indicated, the proposed grades are what is existing, then you will have to note that accordingly on the drawing. Also, even though the erosion control fee has not been paid to necessitate a review, a quick review shows that most, if not all, of the code provisions have not been addressed.

Please also note that I will be tied up in meetings and project deadlines most of the next week (and am off next week Tuesday). Village Code does provide that once a completed application is submitted to the Village staff has 45 days to review it; while I don't think it will take that long for me to review it I am letting you know that I probably will not be able to review your application materials until, at the earliest, the week of June 5.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com
<stackgroup@aol.com>

Sent: Thursday, May 25, 2023 7:31 AM

To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Scott,

I have attached the Grading and Erosion Control Permit Application as mentioned in the email from the property owner. Please let me know if anything additional is required.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Ralph Benciscutto
<ralphb@towerenergypartners.com>
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>;
stackgroup@aol.com <stackgroup@aol.com>
Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>
Sent: Wed, May 24, 2023 10:34 am
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

We don't see it as a detriment to the house leaving the grade as is. There is no basement water problem now and with the higher elevation we can have basement windows without window wells like the existing house. If we can use the 289 cu yards on site just around the house without any additional fill we would do it but you let us know. Otherwise we will just use the 25 yards right around the house just for landscaping. The ordinance doesn't specify specifics that would apply in this case- its pretty vague. If we don't change the natural drainage course it seems like it would be OK. It seems to be targeting in section 272-1-C " natural drainage would be deemed to mean

any creek, ravine, gully, channel, hollow, swale or depression. " which doesn't apply to our site. The grade currently flows toward Dean but it's within a 1" of flat now from the yard to the ditch. As far as the driveway it would be several months off if we can do it but it wouldn't need to be higher or have added fill.

I assume we will need an erosion control permit- If that would be it then let us know and well drop off the payment. Seems like the permit fee is \$400.00. Tom will send in the permit filled out.

Thanks again for your help!

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, May 24, 2023 9:42 AM

To: stackgroup@aol.com

<stackgroup@aol.com>; Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Cc: Michael Rakow

<mrakow@villageoffoxpoint.com>; Scott

Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive - Building permit

Tom and Ralph,

I understand what is being said and I ask your patience as I delve into the code. It appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of the Village

Code. This may, as the saying goes, kick the can down the road; that is, the burden for complying with the code may fall to the individual who purchases the house.

For instance, based on the drawing, it appears the foundation will be sticking out of the ground about 12-18 inches around the addition (if the addition matches the first floor elevation of the existing structure). So, basically, what I foresee happening is the new owner (once you sell the house and improvements) will want to perform the grading and landscaping which will then push the code compliance onto them (grading and drainage, an additional erosion control application, and the fill permit). I can only imagine their dissatisfaction having to perform these tasks – unless, of course, they are made aware of these conditions.

Honestly, I believe there are exceptions in the code that will allow you to do what you hope to do – I just can't tell you if you fall into any of them based on a single drawing. I did reference the code and don't know if it has been reviewed, but I will note again that the fill ordinance has a number of exceptions that would keep you from having to address those provisions. Namely, construction of driveways (and the fill needed for them) are exempted from the ordinance (so you would calculate the fill needed for around the house but exclude the driveway (that is, unless, you have to add a foot of soil for the driveway and then the stone). Additionally, top dressing (topsoil) is exempted from the code and there is a threshold for addressing the fill ordinance – 25 cubic yards. So, you could place 25 cubic yards of fill around the house and add topsoil on top of that (an exempted quantity) to grade the lot nicely.

That said, you still cannot adversely affect a neighboring property with any grading changes and would have to set the lot up to drain in a manner that it flows out to either Dean or Lake (or both). An erosion control permit is still likely required based on what was revised and submitted.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624

sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tuesday, May 23, 2023 1:36 PM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>; Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Scott,

The owner feels that the budget may not allow a deck or patio and the home may sell before completion so the driveway will not be put in at this time either. I attached a revised Grading & Erosion Control Plan that shows the existing gravel driveway remaining at the street and gravel widened near the garage doors. This leaves the existing culvert unchanged. The fill calculations were revised to show actual basement area times depth divided by 27 to reach a total excavation of 254 cubic yards. The frostwall excavation will add less than 35 yards after the foundation is backfilled. There is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer. There does not seem to be any instance where new fill will need to be brought to the property.

With all fill hauled away and no fill brought to the site, the result would be no change to any existing drainage condition. If this meets your approval please let me know if the erosion control permit is the only permit required at this time.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>; Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>; Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Sent: Tue, May 23, 2023 12:21 pm
Subject: RE: 8339 N Lake Drive - Building permit

Hi Tom,

Mike Rakow sent me the survey drawing last week but I was tied up with other deadlines. Based on my conversation with Mike and looking at the drawing, the addition will be built in an area that likely will require the addition of fill to the property (even if the source of the fill is from the excavation for the addition) because the grades for the addition are anywhere up to about a foot lower than the existing structure. Based on that and the grades that were submitted, here are the following permits and fees required for the addition. Please visit <https://www.villageoffoxpoint.com/149/Permits-Applications-Licenses> to download the appropriate forms for each of the permits.

1. A fill permit. The fee is \$650 plus a \$5,000 bond is required until the fill activities are completed. Please note that an additional fee may be needed if fill is being hauled into the site to account for the trucking. Please be sure to fill out the narrative portion of the permit requirements (it refers the applicant to the Village Code – you will have to list the source of the fill, hours of operation, etc.) in your application. Please also note that we are required to inform property owners within 500 feet of the subject property of the proposed fill activity and they have 21 days to comment on the proposed fill permit application. So, you should plan on getting approvals from me about 2-3 weeks after the 21 days expires.
2. A grading and drainage analysis. This requires you to address the drainage on the site and identify the pre and post-development flows. The post-development flow in the 2, 10 and 100 year storms needs to be less than the pre-development conditions. You will likely need to have a civil engineer perform this analysis. Please note that we do not send out the notifications for the fill permit until this analysis is completed as well. The fee for

this is \$400.

3. An erosion control permit and drawing.
This shares the same form as the grading and drainage analysis but is a separate \$400 fee. Please be sure to address the narrative requirements (e.g., if you encounter dewatering, etc.) as part of the application process. The Village Code is referenced in the application and will identify what needs to be submitted.
4. A culvert permit application (\$75 fee) for the proposed new culvert. The application should include details on the pipe and the elevations of the invert.

I have copied Sue, the DPW Admin, on this message so that she can start preparing the 500-foot buffer and mailing labels for the fill permit but we will not send out the letters until a completed application and fees are submitted to the Village.

Feel free to call or email with any questions.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: stackgroup@aol.com
<stackgroup@aol.com>
Sent: Monday, May 22, 2023 12:47 PM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Fwd: 8339 N Lake Drive - Building permit

Scott,

Is anything else needed for the building permit for 8339 N. Lake Drive? Please let me know if a fee is due or any additional documentation is required.

Thanks,

Tom

Stack Design Group

Direct; 414-807-8033

-----Original Message-----

From: Michael Rakow

<mrakow@villageoffoxpoint.com>

To: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Cc: stackgroup@aol.com <stackgroup@aol.com>

Sent: Tue, May 16, 2023 3:19 pm

Subject: FW: 8339 N Lake Drive - Building permit

Scott,

Here is the info we discussed earlier.

Please look over

Regards,

<image002.jpg>

Michael Rakow

Building Inspector

Phone: 414-247-6622

Web: www.villageoffoxpoint.com

7200 N Santa Monica Blvd, Fox Point, WI 53217

From: stackgroup@aol.com

<stackgroup@aol.com>

Sent: Monday, May 15, 2023 9:20 AM

To: Michael Rakow

<mrakow@villageoffoxpoint.com>

Subject: 8339 N Lake Drive - Building permit

Mike,

I have attached the grading plan with fill calculations and erosion control for the home at 8339 N. Lake Drive. Please let me know if anything additional is needed for the issuance of the building permit and what the fee amount is.

Thank you,

Tom

Stack Design Group

Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow

<mrakow@villageoffoxpoint.com>

To: stackgroup@aol.com <stackgroup@aol.com>

Sent: Tue, Jul 12, 2022 10:27 am

Subject: RE: 8339 N Lake Drive

Thanks, see you tomorrow.

Regards,

Michael Rakow

Building Inspector

<image003.png>

7200 N Santa Monica Blvd

Fox Point, WI 53217

(414) 247 6622

www.villageoffoxpoint.com

From: stackgroup@aol.com

<stackgroup@aol.com>

Sent: Tuesday, July 12, 2022 6:59 AM

To: Michael Rakow

<mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive

Attached is the Site Plan for 8339 N Lake Drive with the open area calculations in square feet and percentage.

Please let me know if anything else is needed.

Thanks,

Tom

Stack Design Group

Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow

<mrakow@villageoffoxpoint.com>

To: stackgroup@aol.com <stackgroup@aol.com>

Sent: Thu, Jul 7, 2022 3:39 pm

Subject: RE: 8339 N Lake Drive

Tom,

1. I will also need the open area calculation. See 745-4B

<https://ecode360.com/14576226>

1. Need to verify 70 foot setback from the centerline of Dean Rd.

Regards,

Michael Rakow
Building Inspector

<image003.png>
7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com
<stackgroup@aol.com>
Sent: Thursday, June 30, 2022 3:38 PM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

Mike,

Attached is our Site Plan for 8339 N Lake Drive.

Please let me know if anything additional is needed.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----

From: Michael Rakow
<mrakow@villageoffoxpoint.com>
To: stackgroup@aol.com <stackgroup@aol.com>
Sent: Thu, Jun 30, 2022 3:25 pm
Subject: RE: 8339 N Lake Drive

Tom,
Can you email me a copy of the site plan. I need to verify the 75 foot setback off of Dean Rd.

Regards,

Michael Rakow

Building Inspector

<image003.png>
7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: stackgroup@aol.com
<stackgroup@aol.com>
Sent: Friday, June 10, 2022 1:17 PM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

I have attached a PDF file of the revised elevations for 8339 N Lake Drive. The project was tabled at the May meeting and it is my understanding that you would have it on the June agenda if we were able to submit by today, so I dropped them off yesterday. I believe that the next meeting will be Wednesday June 15th.

Thanks,

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----
From: stackgroup@aol.com
To: mrakow@villageoffoxpoint.com
<mrakow@villageoffoxpoint.com>
Sent: Mon, May 2, 2022 9:15 am
Subject: 8339 N Lake Drive

Attached is a PDF file with the full set of architectural drawings submitted for the Building Board meeting.

Please let me know if anything additional is needed.

Thanks,

Tom Stachowiak

Stack Design Group
Direct: 414-807-8033

<IMG_2038.jpeg>

<IMG_2037.jpeg>

<IMG_2036.jpeg>

<Erosion Control Inspection Report No. 1.pdf>

<Erosion Control Inspection Report No. 2.pdf>

Attachment 11

November 6, 2023 Email regarding Site Practices and Placement of Fill

From: [Scott Brandmeier](#)
To: [Ralph Benciscutto](#)
Cc: [Scott Brandmeier](#); [Michael Rakow](#)
Subject: Re: 8339 N Lake Drive - Building permit
Date: Monday, November 6, 2023 5:41:33 PM
Attachments: [IMG_2065.jpeg](#)
[IMG_2064.jpeg](#)
[IMG_2062.jpeg](#)

Ralph,

I stopped out and spoke with the contractor (Guran - not sure of the spelling). The road was a mess from his work today - it wasn't something from last week - and he was moving the soil from the west side of the yard to the east side (pictures attached).

I will go back to what I said months ago and anticipated would occur - namely, that you need to place fill in order for the yard to be properly graded. Guran mentioned that he was doing that with some of the soils on the site and that he didn't want to leave the driveway higher than the surrounding ground.

As you know, you are not permitted to do so because you didn't want to go through the permitting process. Honestly, what I am seeing will actually create more work for you and possibly more expense than if you had just gone through the permitting process months ago.

I've been really patient with this but before you continue with more work, you need to have a plan in place for how this will proceed. Logic dictates fill needs to be placed and the appropriate permits need to be obtained to do so.

Some other concerns include the fill in the ditch blocking the flow of water, a buried culvert pipe, and the lack of the appropriate tracking pad.

By the way, as I was arriving the police were leaving. So, others have called to complain about this.

Scott

Get [Outlook for iOS](#)

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Monday, November 6, 2023 4:08:49 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

He says he'll wash the mud off the road that was left there from last week - he had to get the mud out of the culvert to put down the tracking pad of gravel but we will not be using that after we get the remaining mud out of there.

Sent from my iPhone

On Nov 6, 2023, at 3:59 PM, Ralph Benciscutto <ralphb@towerenergypartners.com> wrote:

All we are doing is the lot work to get the mud out of there - he is putting the gravel at the exit today for the tracking pad. The ground is trying to dry up so we can finish. It's been impossible to work on it with the mud and all our equipment keeps getting stuck but he's trying to finish it. He got rid of 6 more trucks the last few days.

Sent from my iPhone

On Nov 6, 2023, at 3:29 PM, Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Ralph,

I just received a report from a trustee that there is mud all over the road on Dean. If you recall, I shut the job down until you put a tracking pad in. Is there a reason why (a) the tracking pad was not installed and (b) why you have proceeded with work?

I will be visiting the site and may recommend citations.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencrisutto <ralphb@towerenergypartners.com>

Sent: Wednesday, October 25, 2023 12:47 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

I picked up new silt fence and he's putting it in today - he was trying to remove the mud and the old fence would remain but with all the rain it's been painful. The first fence is still there. He will move the driveway today and expose the culvert and use the driveway.

We will not need to add any dirt.

We will follow your guidance and get it under control today.

Sent from my iPhone

On Oct 25, 2023, at 12:25 PM, Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Ralph,

Please refer to my responses in red below.

Scott

Scott Brandmeier, P.E.

Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, October 25, 2023 11:33 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

I be see what your talking about with the culvert - we will be correcting that

Sent from my iPhone

On Oct 25, 2023, at 10:14 AM, Ralph Bencriscutto
<ralphb@towerenergypartners.com> wrote:

Hi Scott

Thanks for stopping by - I appreciate you preventing problems

We are in the process of removing the mud to the old grass-that's why we are piling it up for pick up. I'll have him put tge fence back up. We are not making another entrance. **With all due respect, you said you would put the fence back up last week and it still hasn't been done. So, until that work is done, the jobsite is shut down. With respect to the ingress/egress point, the tire tracks indicate otherwise; the old entrance was through the driveway and your contractor has tracked mud and sediment onto the road. The tracking pad needs to be installed.**

I see what you are talking about with the tree and will move the driveway according to the foresters recommendations. We do not want to kill the tree but just so I know is that tree owned by the city? **Yes, this is a Village street tree. John is in the office one day a week (typically Thursdays) but I don't know if he will have a chance to look at it tomorrow to provide his recommendation.**

The culvert will be cleaned out and reused I assume and we need to get the driveway usable so we dont have to drive through tge ditches. **You should have checked this before the contractor set the forms over the top of the culvert pipe. I can tell you that the small section I looked at appears damaged (bent) and it may not function properly.**

I'm assuming we can leave 25 yards on site or bring in that much without issue per the limits? I don't see us leaving that much however. I'll be honest with you Ralph – I kind of anticipated when you started this project that you would be asking this question. You assured us that you would not add any fill to the site and presented us with a grading plan showing no fill being added. Generally speaking, 25 cubic yards is the cutoff but the addition of the fill (regardless of amount) cannot adversely impact the neighbors. If you want to add fill to the site, you will have to submit another grading plan and document that the placement will not impact the neighbors. I will require payment of a \$400 fee (to review a revised grading plan) before considering the request.

Also remember that we were under the minimum for the permit and got the permit only for the neighbors' sake so please have a little patience with us. The original contractor went under after I paid him 50K and I had to hire someone else with a 6-week delay. It would have been a lot easier if the original contractor just removed it like he was paid to do. The amount of disturbance created and the erosion associated with this project is a reason for requiring the erosion control permit and the conditions associated with it. One cannot expect to undertake a project of this nature and not have to manage the soils disturbed during the construction process. While I would like to be patient with you, you've had 8 days since I first informed you of the condition of the silt fence and nothing has been done other than to move soils to the front and stockpile them. I'm going to flip the script and ask you how much time you need to erect the erosion control fence and correct the deficiencies that exist? Forgive me for being blunt, but erosion control should not be an afterthought and, while unfortunate that your original contractor went under, that still doesn't change the dynamic that things need to be fixed. I'm standing by my comment that the erosion control problems need to be fixed today due to the onset of rain tonight, tomorrow and this weekend.

I'll keep you informed of our progress
Thanks

Sent from my iPhone

On Oct 25, 2023, at 9:26 AM, Scott

Brandmeier

<sbrandmeier@villageoffoxpoint.com> wrote:

Good morning Ralph,

I stopped by the jobsite this morning and took a few pictures (attached). While you may not want to hear (or read) this, I'm issuing a stop work order until you resolve the following issues:

1. Image 2037 depicts the mud and exposed soil along the west side of the property. As I noted on October 17, the soil is butting up against the fence and the silt fence is damaged to the point where it is ineffective. You indicated you were going to repair the silt fence but this has not occurred. Given the forecast for rain tonight and tomorrow, the silt fence is required to be erected prior to the end of the day today. If you do not erect the silt fence to properly contain the exposed soils, I may recommend issuance of a citation to the Police Department.
2. Image 2037 also depicts that you are using a new ingress/egress point through the ditch in the right of way. If this is your new access point, you are required to have a tracking pad installed to keep soils and mud from being tracked onto Village streets.
3. Image 2038 depicts a portion of the driveway approach and the buried culvert. You can see the top of the culvert pipe (after I moved some debris out of the way) just to the left of the short 2x4 (a small branch extends over the top of it too). The work you are doing on the driveway approach appears to be blocking the flow of storm water drainage (which flows from Lake Drive west along Dean Road). You will need to correct this work in the ditch (on both sides of the driveway approach).
4. Image 2036 depicts the proposed driveway approach butting up against a Village street tree (15-inch Norway

Maple). This is not permitted. Placing concrete over the root system will likely irreversible damage the health of the tree by starving the root system of air and water. Your driveway approach will have to be shifted and you will need to obtain the approval of the Village Forester on an acceptable location for the approach (John Gall, copied on this message) prior to pouring concrete.

5. Please also remember that no fill is permitted to be placed on the property (as I noted before) and that you will need to submit an as-built survey of the property prior to issuance of the occupancy permit.
6. I have attached the recent erosion control inspections performed for your files.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Friday, October 20, 2023 6:05 AM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott
Heads up we are moving the dirt from the back yard to the front so we can pick it up with a truck. We should be in good shape after that.

thanks for your help

Ralph Bencriscutto
President
ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Sent: Wednesday, October 18, 2023 1:07 PM
To: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Cc: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>;
Michael Rakow
<mrakow@villageoffoxpoint.com>; Fox Point
Forester <forester@villageoffoxpoint.com>
Subject: RE: 8339 N Lake Drive - Building
permit

Ralph,

Thanks for the note, but that's not the point. You agreed to not place any fill around the yard whatsoever so that you could, for lack of a better term, expedite the process and get your building permit. There is a bunch of soil around the yard that appears to have come from the excavation of the addition – this too has to be removed.

I also cannot tell you what permits will be needed for the driveway or patio until you present me with grades for both – including those that existed prior to development and those that you propose for the driveway and patio. If you provide those to me, I can tell you what permits will be needed.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Tuesday, October 17, 2023 4:02 PM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

We are just replacing some of that sticky clay with a gradable dirt. We had to remove over 29 trucks.

The dirt by the fence will be pulled back to the garage or around the house to maintain slope. The tree also. And we will repair the silt fence.

We are preparing for a back patio and driveway - let me know if that's a separate permit.

Thanks

Sent from my iPhone

On Oct 17, 2023, at 3:15 PM,
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
wrote:

Good afternoon Ralph,

I'm touching base with you on the house you are building at 8339 North Lake Drive. I performed a spot site inspection today (drive by) and noticed the following:

1. It appears you have placed fill along the west side of the house up to the fence line. Based on prior conversations with you, you had noted that you were not going to place any fill on the site in order to avoid having to obtain a fill permit and perform a grading and drainage analysis. As a reminder, you will have to provide the Village with an as-built survey before an occupancy permit will be

- issued and, if you have placed fill on the site, all of it will need to be removed.
2. The fill that you have placed is enveloping a tree on the property; if the fill is not removed in a timely fashion, the tree could die if the roots are unable to absorb oxygen.
 3. The erosion control fence is down and needs to be repaired. This should occur promptly (prior to the end of the week) as we've already had a rain event last week and another is expected this week.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica
Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Tuesday, June 13, 2023
1:59 PM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive -
Building permit

Thanks Scott

We will be following all the rules on trees etc. I think they look great as is.

Thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Sent: Tuesday, June 13, 2023

11:35 AM

To: Ralph Bencriscutto

<ralphb@towerenergypartners.com>;

Michael Rakow

<mrakow@villageoffoxpoint.com>

Cc: stackgroup@aol.com

<stackgroup@aol.com>; Scott

Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive -

Building permit

Ralph,

Please find the erosion control
permit attached to this e-mail.

Scott

Scott Brandmeier, P.E.

Director of Public Works

Village of Fox Point

7200 North Santa Monica

Boulevard

Fox Point, WI 53217

414-351-8900 ext. 6624

sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Sent: Monday, June 12, 2023

6:34 AM

To: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>;

Michael Rakow

<mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive -

Building permit

Hi Scott

The attached is the final plan
with no grading or fill left on site.
Please disregard and discard any
previous plans.

Since this lies below the
minimums for erosion control
there is nothing us to propose
for for mitigation. I don't mind
paying the fee to satisfy the
neighbors as long as we can
proceed.

Thanks for your help

Ralph Bencriscutto
President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Sent: Friday, June 9, 2023 6:32
AM

To: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Cc: DPW Admin

<dpwadmin@villageoffoxpoint.com>;

Michael Rakow

<mrakow@villageoffoxpoint.com>;

stackgroup@aol.com

<stackgroup@aol.com>

Subject: Re: 8339 N Lake Drive -
Building permit

Hi Scott- thanks for responding
Please cancel our application
for erosion control. After
reviewing the site further, we
have no need and do not want
the excavated dirt from the
addition spread around the
site. The dirt will be removed.
This puts our project well
below any erosion control

permit requirements.

Chapter 765-1

Min required 8339 N Lake

Disturbed area
minimum 4000 sq.ft
1600 (with garage)

**Section 245 Min
required 8339 N Lake**

minimum
grading
8000sq.ft no grading
Minimum
Excavation 800 cu
yards 289

Please hold the fee we paid for future permits or issue a refund. We are not asking for a storm water charge adjustment. If you still would like that form filled out, just let me know. The additional impervious roof area will be around 1400 sq.ft. per the print. I will be getting water/sewer service turned on shortly and will follow that application procedure.

We are giving you 48 hr notice per requirements that we will be starting the footings and addition.

Thank you for all your help finding the minimum requirements- we are looking forward to a good working relationship with the village. If you know of any projects nearby looking for clean fill let us know. We will be removing about 250 cu yds.

Thanks Again

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Sent: Thursday, June 8, 2023

12:46 PM

To: Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Cc: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>;

DPW Admin

<dpwadmin@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive -
Building permit

Hi Ralph,

I hear you stopped by yesterday when I was out of the office. I haven't had a chance to review what was submitted yet – Village Code does allow us 45 days to review any completed submittal but I try to review it within a couple of weeks once it is complete. I do need you to fill out Form 1 from the following link:

<https://www.villageoffoxpoint.com/DocumentCenter/View/4358/Grading-Drainage-and-Erosion-Control-Review-Application-PDF>. There is

no fee associated with this but it helps us track which stormwater utility tier you will be placed in upon placement of the roof on the structure.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica

Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencrisutto
<ralphb@towerenergypartners.com>
Sent: Wednesday, June 7, 2023
7:36 AM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>;
Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive -
Building permit

Hi Scott
Let me know if Tom has given
you what you need now for us to
proceed. Looks to me we
covered all the bases.
Thanks for your help

Sent from my iPhone

On May 25, 2023,
at 1:38 PM, Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
wrote:

Tom and Ralph,

Please forgive me if
this comes across
as rather blunt, but
our role (Mike's and
mine) is to guide
you to the Village
Code and you need
to evaluate the
project to
determine what
needs to be
submitted based on
the applicable code
provisions. I've
provided detailed

emails regarding what is normally required with projects of this nature and, as I've noted, it seems like compliance with some of the code issues may be pushed off onto the subsequent owner. That is your call but please note that we will note this in the property file.

As it stands, the drawing is inadequate to make a determination of what the existing and proposed grades are going to be for the site. All that is shown are the existing grades; you will need to submit a drawing showing the proposed grades and, if as has been indicated, the proposed grades are what is existing, then you will have to note that accordingly on the drawing. Also, even though the erosion control fee has not been paid to necessitate a review, a quick review shows that most, if not all, of the code provisions have not been addressed.

Please also note that I will be tied up

in meetings and
project deadlines
most of the next
week (and am off
next week
Tuesday). Village
Code does provide
that once a
completed
application is
submitted to the
Village staff has 45
days to review it;
while I don't think it
will take that long
for me to review it I
am letting you
know that I
probably will not be
able to review your
application
materials until, at
the earliest, the
week of June 5.

Scott

Scott Brandmeier,
P.E.
Director of Public
Works
Village of Fox Point
7200 North Santa
Monica Boulevard
Fox Point, WI
53217
414-351-8900 ext.
6624
sbrandmeier@villageoffoxpoint.com

From:

stackgroup@aol.com
<stackgroup@aol.com>

Sent: Thursday,
May 25, 2023 7:31
AM

To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Cc: Michael Rakow

<mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N

Lake Drive -

Building permit

Scott,

I have attached the
Grading and Erosion
Control Permit
Application as
mentioned in the
email from the
property owner.
Please let me know
if anything additional
is required.

Tom

Stack Design Group
Direct: 414-807-
8033

-----Original

Message-----

From: Ralph

Benciscutto

<ralphb@towerenergypartners.com>

To: Scott

Brandmeier

<sbrandmeier@villageoffoxpoint.com>;

stackgroup@aol.com

<stackgroup@aol.com>

Cc: Michael Rakow

<mrakow@villageoffoxpoint.com>

Sent: Wed, May 24,
2023 10:34 am

Subject: Re: 8339 N
Lake Drive - Building
permit

Hi Scott

We don't see it as
a detriment to the
house leaving the
grade as is. There
is no basement
water problem
now and with the
higher elevation
we can have
basement
windows without

window wells like the existing house. If we can use the 289 cu yards on site just around the house without any additional fill we would do it but you let us know. Otherwise we will just use the 25 yards right around the house just for landscaping. The ordinance doesn't specify specifics that would apply in this case- its pretty vague. If we don't change the natural drainage course it seems like it would be OK. It seems to be targeting in section 272-1-C " natural drainage would be deemed to mean any creek, ravine, gully, channel, hollow, swale or depression. " which doesn't apply to our site. The grade currently flows toward Dean but it's within a 1" of flat now from the yard to the ditch. As far as the driveway it would be several months off if we can do it

but it wouldn't
need to be higher
or have added fill.

I assume we will
need an erosion
control permit- If
that would be it
then let us know
and well drop off
the payment.
Seems like the
permit fee is
\$400.00. Tom will
send in the permit
filled out.

Thanks again for
your help!

Ralph
Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-
3166

<image001.png>

From: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday,
May 24, 2023 9:42
AM

To:
stackgroup@aol.com
<stackgroup@aol.com>;
Ralph Bencriscutto
<ralphb@towerenergypartners.com>

Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>;
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339 N
Lake Drive -
Building permit

Tom and Ralph,

I understand what is being said and I ask your patience as I delve into the code. It appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of the Village Code. This may, as the saying goes, kick the can down the road; that is, the burden for complying with the code may fall to the individual who purchases the house.

For instance, based on the drawing, it appears the foundation will be sticking out of the ground about 12-18 inches around the addition (if the addition matches the first floor elevation of the existing structure). So, basically, what I foresee happening is the new owner (once you sell the house and improvements) will want to perform the grading and landscaping which will then push the code compliance onto them (grading and drainage, an additional erosion control application, and the fill permit). I can only imagine their dissatisfaction having to perform these tasks – unless, of course, they are made aware of these conditions.

Honestly, I believe

there are exceptions in the code that will allow you to do what you hope to do – I just can't tell you if you fall into any of them based on a single drawing. I did reference the code and don't know if it has been reviewed, but I will note again that the fill ordinance has a number of exceptions that would keep you from having to address those provisions. Namely, construction of driveways (and the fill needed for them) are exempted from the ordinance (so you would calculate the fill needed for around the house but exclude the driveway (that is, unless, you have to add a foot of soil for the driveway and then the stone). Additionally, top dressing (topsoil) is exempted from the code and there is a threshold for addressing the fill ordinance – 25 cubic yards. So, you could place 25 cubic yards of fill around the house and add topsoil on top of that (an exempted quantity) to grade the lot nicely.

That said, you still cannot adversely affect a neighboring property with any grading changes and would have to set the lot up to drain in a manner that it flows out to either Dean or Lake (or both). An erosion control permit is still likely required based on what was revised and submitted.

Scott

Scott Brandmeier,
P.E.
Director of Public
Works
Village of Fox Point
7200 North Santa
Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext.
6624
sbrandmeier@villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tuesday, May
23, 2023 1:36 PM
To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>;
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N
Lake Drive - Building
permit

Scott,

The owner feels that the budget may not allow a deck or patio and the home may sell before completion so the driveway will not be put in at this time either. I attached a revised Grading & Erosion Control Plan that shows the existing gravel driveway remaining at the street and gravel widened near the garage doors. This leaves the existing culvert unchanged. The fill calculations were revised to show actual basement area times depth divided by 27 to reach a total excavation of 254 cubic yards. The frostwall excavation

will add less than 35 yards after the foundation is backfilled. There is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer. There does not seem to be any instance where new fill will need to be brought to the property.

With all fill hauled away and no fill brought to the site, the result would be no change to any existing drainage condition. If this meets your approval please let me know if the erosion control permit is the only permit required at this time.

Tom

Stack Design Group
Direct: 414-807-8033

-----Original Message-----
From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
To:
<stackgroup@aol.com>
<stackgroup@aol.com>
Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>;
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>;
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Sent: Tue, May 23, 2023 12:21 pm
Subject: RE: 8339 N Lake Drive - Building permit

Hi Tom,

Mike Rakow sent me

the survey drawing last week but I was tied up with other deadlines. Based on my conversation with Mike and looking at the drawing, the addition will be built in an area that likely will require the addition of fill to the property (even if the source of the fill is from the excavation for the addition) because the grades for the addition are anywhere up to about a foot lower than the existing structure. Based on that and the grades that were submitted, here are the following permits and fees required for the addition. Please visit <https://www.villageoffoxpoint.com/149/Permits-Applications-Licenses> to download the appropriate forms for each of the permits.

1. A fill permit.
The fee is \$650 plus a \$5,000 bond is required until the fill activities are completed. Please note that an additional fee may be needed if fill is being hauled into the site to account for the trucking. Please be sure to fill out the narrative portion of the

permit requirements (it refers the applicant to the Village Code – you will have to list the source of the fill, hours of operation, etc.) in your application. Please also note that we are required to inform property owners within 500 feet of the subject property of the proposed fill activity and they have 21 days to comment on the proposed fill permit application. So, you should plan on getting approvals from me about 2-3 weeks after the 21 days expires.

2. A grading and drainage analysis. This requires you to address the drainage on the site and identify the pre and post-development flows. The

post-development
flow in the 2,
10 and 100
year storms
needs to be
less than the
pre-development
conditions.

You will likely
need to have
a civil
engineer
perform this
analysis.

Please note
that we do not
send out the
notifications
for the fill
permit until
this analysis
is completed
as well. The
fee for this is
\$400.

3. An erosion
control permit
and drawing.
This shares
the same
form as the
grading and
drainage
analysis but is
a separate
\$400 fee.
Please be
sure to
address the
narrative
requirements
(e.g., if you
encounter
dewatering,
etc.) as part
of the
application
process. The
Village Code

is referenced
in the
application
and will
identify what
needs to be
submitted.

4. A culvert
permit
application
(\$75 fee) for
the proposed
new culvert.
The
application
should
include
details on the
pipe and the
elevations of
the invert.

I have copied Sue,
the DPW Admin, on
this message so that
she can start
preparing the 500-
foot buffer and
mailing labels for the
fill permit but we will
not send out the
letters until a
completed
application and fees
are submitted to the
Village.

Feel free to call or
email with any
questions.

Scott

Scott Brandmeier,
P.E.
Director of Public
Works
Village of Fox Point
7200 North Santa
Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext.
6624
sbrandmeier@villageoffoxpoint.com

From:
stackgroup@aol.com

<stackgroup@aol.com>

Sent: Monday, May
22, 2023 12:47 PM

To: Scott
Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Subject: Fwd: 8339
N Lake Drive -
Building permit

Scott,

Is anything else
needed for the
building permit for
8339 N. Lake
Drive? Please let
me know if a fee is
due or any additional
documentation is
required.

Thanks,

Tom

Stack Design Group
Direct; 414-807-
8033

-----Original
Message-----

From: Michael
Rakow

<mrakow@villageoffoxpoint.com>

To: Scott
Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Cc:
stackgroup@aol.com
<stackgroup@aol.com>

Sent: Tue, May 16,
2023 3:19 pm
Subject: FW: 8339 N
Lake Drive - Building
permit

Scott,
Here is the info
we discussed
earlier. Please
look over

Regards,

<image002.jpg>

Michael Rakow

Building Inspector

Phone: 414-247-6622

Web: www.villageoffoxpoint.com

7200 N Santa Monica Blvd, Fox Point, WI 53217

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Monday, May
15, 2023 9:20 AM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: 8339 N
Lake Drive - Building
permit

Mike,

I have attached the
grading plan with fill
calculations and
erosion control for
the home at 8339 N.
Lake Drive. Please
let me know if
anything additional is
needed for the
issuance of the
building permit and
what the fee amount
is.

Thank you,

Tom

Stack Design Group
Direct: 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<mrakow@villageoffoxpoint.com>
To:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tue, Jul 12,
2022 10:27 am
Subject: RE: 8339 N
Lake Drive

Thanks, see you
tomorrow.

Regards,

Michael Rakow
Building Inspector

<image003.png>
7200 N Santa
Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tuesday, July
12, 2022 6:59 AM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N
Lake Drive

Attached is the Site
Plan for 8339 N
Lake Drive with the
open area
calculations in
square feet and
percentage.

Please let me know
if anything else is
needed.

Thanks,

Tom

Stack Design Group
Direct: 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<mrakow@villageoffoxpoint.com>
To:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Thu, Jul 7,
2022 3:39 pm
Subject: RE: 8339 N
Lake Drive

Tom,

1. I will also
need the
open area
calculation.
See 745-
4B

<https://ecode360.com/14576226>

1. Need to
verify 70
foot
setback
from the
centerline
of Dean
Rd.

Regards,

Michael Rakow
Building Inspector

<image003.png>
7200 N Santa
Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Thursday,
June 30, 2022 3:38
PM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N
Lake Drive

Mike,

Attached is our Site
Plan for 8339 N
Lake Drive.

Please let me know
if anything additional
is needed.

Tom

Stack Design Group
Direct: 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<mrakow@villageoffoxpoint.com>
To:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Thu, Jun 30,
2022 3:25 pm
Subject: RE: 8339 N
Lake Drive

Tom,
Can you email
me a copy of the
site plan. I need
to verify the 75
foot setback off
of Dean Rd.

Regards,

Michael Rakow
Building Inspector

<image003.png>
7200 N Santa
Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Friday, June
10, 2022 1:17 PM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N
Lake Drive

I have attached a
PDF file of the
revised elevations
for 8339 N Lake
Drive. The project
was tabled at the
May meeting and it
is my understanding
that you would have

it on the June
agenda if we were
able to submit by
today, so I dropped
them off yesterday. I
believe that the next
meeting will be
Wednesday June
15th.

Thanks,

Tom

Stack Design Group
Direct: 414-807-
8033

-----Original
Message-----

From:

stackgroup@aol.com

To:

mrakow@villageoffoxpoint.com

<mrakow@villageoffoxpoint.com>

Sent: Mon, May 2,
2022 9:15 am

Subject: 8339 N
Lake Drive

Attached is a PDF
file with the full set of
architectural
drawings submitted
for the Building
Board meeting.

Please let me know
if anything additional
is needed.

Thanks,

Tom Stachowiak

Stack Design Group
Direct: 414-807-
8033

<IMG_2038.jpeg>

<IMG_2037.jpeg>

<IMG_2036.jpeg>

<Erosion Control Inspection Report No. 1.pdf>

<Erosion Control Inspection Report No. 2.pdf>







Attachment 12

November 8, 2023 Follow up email and pictures

From: [Scott Brandmeier](#)
To: [Ralph Benciscutto](#)
Cc: [Scott Brandmeier](#); [Michael Rakow](#)
Bcc: [Sue Reed](#); [Mike Krueger](#); [Chad Livingston](#)
Subject: RE: 8339 N Lake Drive - Building permit
Date: Wednesday, November 8, 2023 12:25:00 PM
Attachments: [image001.png](#)
[IMG_2070.jpeg](#)
[IMG_2069.jpeg](#)
[Erosion Control Inspection Report No. 3.pdf](#)
[Erosion Control Inspection Report No. 4.pdf](#)

Ralph,

I drove by this morning to see if anything different has been done as you and the contractor assured me that a tracking pad would be installed yesterday morning. Based on the pictures I took, I am honestly getting the impression that erosion control and management of the soils isn't a top priority. The erosion control fence you installed two weeks ago is absolutely ineffective (see attached picture) as it is resting up against the fence and is probably 18 inches higher than the ground. Plus, no tracking pad has been installed and there are muddy puddles of water on the road in addition to standing water on the property because your contractor has blocked the flow of water through the ditch.

I have attached the pictures and erosion control inspections for your files. I will be forwarding this to the Police Chief and determining whether citations should be issued for the continued failures to manage the site properly.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Monday, November 6, 2023 5:58 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott

Thanks for taking a look. I see your point on the permit since I agree we were supposed to remove all the dirt but we do need some against the house and will need some clean dirt not this clay. He will be cleaning out the culvert also tomorrow. We are expecting a good stretch of weather to dry things- up that will help.

Ill get the new permit in motion tomorrow.

Thanks again

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Monday, November 6, 2023 5:41 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow
<mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

Ralph,

I stopped out and spoke with the contractor (Guran - not sure of the spelling). The road was a mess from his work today - it wasn't something from last week - and he was moving the soil from the west side of the yard to the east side (pictures attached).

I will go back to what I said months ago and anticipated would occur - namely, that you need to place fill in order for the yard to be properly graded. Guran mentioned that he was doing that with some of the soils on the site and that he didn't want to leave the driveway higher than the surrounding ground.

As you know, you are not permitted to do so because you didn't want to go through the permitting process. Honestly, what I am seeing will actually create more work for you and possibly more expense than if you had just gone through the permitting process months ago.

I've been really patient with this but before you continue with more work, you need to have a plan in place for how this will proceed. Logic dictates fill needs to be placed and the appropriate permits need to be obtained to do so.

Some other concerns include the fill in the ditch blocking the flow of water, a buried culvert pipe, and the lack of the appropriate tracking pad.

By the way, as I was arriving the police were leaving. So, others have called to complain about this.

Scott

Get [Outlook for iOS](#)

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Monday, November 6, 2023 4:08:49 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

He says he'll wash the mud off the road that was left there from last week - he had to get the mud out of the

culvert to put down the tracking pad of gravel but we will not be using that after we get the remaining mud out of there.

Sent from my iPhone

On Nov 6, 2023, at 3:59 PM, Ralph Benciscutto <ralphb@towerenergypartners.com> wrote:

All we are doing is the lot work to get the mud out of there - he is putting the gravel at tge exit today for the tracking pad. The ground is trying to dry up so we can finish. It's been impossible to work on it with the mud and all our equipment keeps getting stuck but he's trying to finish it. He got rid of 6 more trucks the last few days.

Sent from my iPhone

On Nov 6, 2023, at 3:29 PM, Scott Brandmeier <sbrandmeier@villageoffoxpoint.com> wrote:

Ralph,

I just received a report from a trustee that there is mud all over the road on Dean. If you recall, I shut the job down until you put a tracking pad in. Is there a reason why (a) the tracking pad was not installed and (b) why you have proceeded with work?

I will be visiting the site and may recommend citations.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>

Sent: Wednesday, October 25, 2023 12:47 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive - Building permit

I picked up new silt fence and he's putting it in today - he was trying to remove the mud and the old fence would remain but with all the rain it's been painful. The first fence is still there. He will move the driveway today and expose the culvert and use the driveway.

We will not need to add any dirt.

We will follow your guidance and get it under control today.

Sent from my iPhone

On Oct 25, 2023, at 12:25 PM, Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Ralph,

Please refer to my responses in red below.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, October 25, 2023 11:33 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

I be see what your talking about with the culvert - we will be correcting that

Sent from my iPhone

On Oct 25, 2023, at 10:14 AM, Ralph Bencriscutto
<ralphb@towerenergypartners.com> wrote:

Hi Scott

Thanks for stopping by - I appreciate you preventing problems

We are in the process of removing the mud to the old grass-that's why we are piling it up for pick up. I'll have him put tge fence back up. We are not making another entrance. **With all due respect, you said you would put the fence back up last week and it still hasn't been done. So, until that work is done, the jobsite is shut down. With respect to the ingress/egress point, the tire tracks indicate otherwise; the old entrance was through the driveway and your contractor has tracked mud and**

sediment onto the road. The tracking pad needs to be installed.

I see what you are talking about with the tree and will move the driveway according to the foresters recommendations. We do not want to kill the tree but just so I know is that tree owned by the city? Yes, this is a Village street tree. John is in the office one day a week (typically Thursdays) but I don't know if he will have a chance to look at it tomorrow to provide his recommendation.

The culvert will be cleaned out and reused I assume and we need to get the driveway usable so we don't have to drive through the ditches. You should have checked this before the contractor set the forms over the top of the culvert pipe. I can tell you that the small section I looked at appears damaged (bent) and it may not function properly.

I'm assuming we can leave 25 yards on site or bring in that much without issue per the limits? I don't see us leaving that much however. I'll be honest with you Ralph – I kind of anticipated when you started this project that you would be asking this question. You assured us that you would not add any fill to the site and presented us with a grading plan showing no fill being added. Generally speaking, 25 cubic yards is the cutoff but the addition of the fill (regardless of amount) cannot adversely impact the neighbors. If you want to add fill to the site, you will have to submit another grading plan and document that the placement will not impact the neighbors. I will require payment of a \$400 fee (to review a revised grading plan) before considering the request.

Also remember that we were under the minimum for the permit and got the permit only for the neighbors' sake so please have a little patience with us. The original contractor went under after I paid him 50K and I had to hire someone else with a 6 week delay. It would have been a lot easier if the original contractor just removed it like he was paid to do. The amount of disturbance created and the erosion associated with this project is a reason for requiring the erosion control permit and the conditions associated with it. One cannot expect to undertake a project of this nature and not have to manage the soils disturbed during the construction process. While I would like to be patient with you, you've had 8 days since I first informed you of the condition of

the silt fence and nothing has been done other than to move soils to the front and stockpile them. I'm going to flip the script and ask you how much time you need to erect the erosion control fence and correct the deficiencies that exist? Forgive me for being blunt, but erosion control should not be an afterthought and, while unfortunate that your original contractor went under, that still doesn't change the dynamic that things need to be fixed. I'm standing by my comment that the erosion control problems need to be fixed today due to the onset of rain tonight, tomorrow and this weekend.

I'll keep you informed of our progress
Thanks

Sent from my iPhone

On Oct 25, 2023, at 9:26 AM, Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
wrote:

Good morning Ralph,

I stopped by the jobsite this morning and took a few pictures (attached). While you may not want to hear (or read) this, I'm issuing a stop work order until you resolve the following issues:

1. Image 2037 depicts the mud and exposed soil along the west side of the property. As I noted on October 17, the soil is butting up against the fence and the silt fence is damaged to the point where it is ineffective. You indicated you were going to repair the silt fence but this has not occurred. Given the forecast for rain tonight and tomorrow, the silt fence is required to be erected prior to the end of the day today. If you do not erect the silt fence to properly contain the exposed soils, I may recommend issuance of a citation to

the Police Department.

2. Image 2037 also depicts that you are using a new ingress/egress point through the ditch in the right of way. If this is your new access point, you are required to have a tracking pad installed to keep soils and mud from being tracked onto Village streets.
3. Image 2038 depicts a portion of the driveway approach and the buried culvert. You can see the top of the culvert pipe (after I moved some debris out of the way) just to the left of the short 2x4 (a small branch extends over the top of it too). The work you are doing on the driveway approach appears to be blocking the flow of storm water drainage (which flows from Lake Drive west along Dean Road). You will need to correct this work in the ditch (on both sides of the driveway approach).
4. Image 2036 depicts the proposed driveway approach butting up against a Village street tree (15-inch Norway Maple). This is not permitted. Placing concrete over the root system will likely irreversible damage the health of the tree by starving the root system of air and water. Your driveway approach will have to be shifted and you will need to obtain the approval of the Village Forester on an acceptable location for the approach (John Gall, copied on this message) prior to pouring concrete.
5. Please also remember that no fill is permitted to be placed on the property (as I noted before) and that you will need to submit an as-built survey of the property prior to issuance of the occupancy permit.
6. I have attached the recent erosion control inspections performed for your files.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Friday, October 20, 2023 6:05 AM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott
Heads up we are moving the dirt from the back yard to the front so we can pick it up with a truck. We should be in good shape after that.

thanks for your help

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

<image001.png>

From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Sent: Wednesday, October 18, 2023 1:07 PM
To: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Cc: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>;
Michael Rakow
<mrakow@villageoffoxpoint.com>; Fox
Point Forester
<forester@villageoffoxpoint.com>
Subject: RE: 8339 N Lake Drive - Building permit

Ralph,

Thanks for the note, but that's not the point. You agreed to not place any fill

around the yard whatsoever so that you could, for lack of a better term, expedite the process and get your building permit. There is a bunch of soil around the yard that appears to have come from the excavation of the addition – this too has to be removed.

I also cannot tell you what permits will be needed for the driveway or patio until you present me with grades for both – including those that existed prior to development and those that you propose for the driveway and patio. If you provide those to me, I can tell you what permits will be needed.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Tuesday, October 17, 2023 4:02 PM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive - Building permit

Hi Scott
We are just replacing some of that sticky clay with a gradable dirt. We had to remove over 29 trucks.
The dirt by the fence will be pulled back to the garage or around the house to maintain slope. The tree also. And we will repair the silt fence.

We are preparing for a back patio and driveway - let me know if that's a separate permit.

Thanks

Sent from my iPhone

On Oct 17, 2023, at 3:15 PM,
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Good afternoon Ralph,

I'm touching base with you on the house you are building at 8339 North Lake Drive. I performed a spot site inspection today (drive by) and noticed the following:

1. It appears you have placed fill along the west side of the house up to the fence line. Based on prior conversations with you, you had noted that you were not going to place any fill on the site in order to avoid having to obtain a fill permit and perform a grading and drainage analysis. As a reminder, you will have to provide the Village with an as-built survey before an occupancy permit will be issued and, if you have placed fill on the site, all of it will need to be removed.
2. The fill that you have placed is enveloping a tree on the property; if the fill is not removed in a timely fashion, the tree could die if the roots are unable to absorb oxygen.
3. The erosion control fence is down and needs to be repaired.

This should occur promptly (prior to the end of the week) as we've already had a rain event last week and another is expected this week.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica
Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>
Sent: Tuesday, June 13, 2023
1:59 PM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive
- Building permit

Thanks Scott

We will be following all the rules on trees etc. I think they look great as is.
Thanks

Ralph
Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

<image001.png>

From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Sent: Tuesday, June 13, 2023
11:35 AM
To: Ralph Bencrisutto
<ralphb@towerenergypartners.com>; Michael Rakow
<mrakow@villageoffoxpoint.com>
Cc: stackgroup@aol.com
<stackgroup@aol.com>; Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: RE: 8339 N Lake Drive
- Building permit

Ralph,

Please find the erosion control permit attached to this e-mail.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica
Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencrisutto
<ralphb@towerenergypartners.com>
Sent: Monday, June 12, 2023
6:34 AM
To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>; Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive
- Building permit

Hi Scott

The attached is the final plan with no grading or fill left on site. Please disregard and discard any previous plans.

Since this lies below the minimums for erosion control there is nothing us to propose for for mitigation. I don't mind paying the fee to satisfy the neighbors as long as we can proceed.

Thanks for your help

Ralph
Bencriscutto
President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Ralph Bencriscutto

<ralphb@towerenergypartners.com>

Sent: Friday, June 9, 2023 6:32 AM

To: Scott Brandmeier

<sbrandmeier@villageoffoxpoint.com>

Cc: DPW Admin

<dpwadmin@villageoffoxpoint.com>; Michael Rakow

<mrakow@villageoffoxpoint.com>; stackgroup@aol.com

<stackgroup@aol.com>

Subject: Re: 8339 N Lake Drive
- Building permit

Hi Scott- thanks for responding

Please cancel our application for erosion control. After

reviewing the site further,
we have no need and do not
want the excavated dirt from
the addition spread around
the site. The dirt will be
removed. This puts our
project well below any
erosion control permit
requirements.

Chapter 765-1

Min required 8339 N
Lake

Disturbed area
minimum 4000 sq.ft
1600 (with garage)

Section 245 **Min**
required 8339 N Lake

minimum
grading
8000sq.ft no grading
Minimum
Excavation 800
cu yards 289

Please hold the fee we paid
for future permits or issue a
refund. We are not asking
for a storm water charge
adjustment. If you still would
like that form filled out, just
let me know. The additional
impervious roof area will be
around 1400 sq.ft. per the
print. I will be getting
water/sewer service turned
on shortly and will follow
that application procedure.

We are giving you 48 hr
notice per requirements that
we will be starting the
footings and addition.

Thank you for all your help

finding the minimum requirements- we are looking forward to a good working relationship with the village. If you know of any projects nearby looking for clean fill let us know. We will be removing about 250 cu yds.

Thanks Again

**Ralph
Bencriscutto**
President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Sent: Thursday, June 8, 2023
12:46 PM

To: Ralph Bencriscutto
<ralphb@towerenergypartners.com>

Cc: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>; DPW Admin
<dpwadmin@villageoffoxpoint.com>

Subject: RE: 8339 N Lake Drive
- Building permit

Hi Ralph,

I hear you stopped by yesterday when I was out of the office. I haven't had a chance to review what was submitted yet – Village Code does allow us 45 days to review any completed

submittal but I try to review it within a couple of weeks once it is complete. I do need you to fill out Form 1 from the following link:

<https://www.villageoffoxpoint.com/DocumentCenter/View/4358/Grading-Drainage-and-Erosion-Control-Review-Application-PDF>. There is no

fee associated with this but it helps us track which stormwater utility tier you will be placed in upon placement of the roof on the structure.

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica
Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto
<ralphb@towerenergypartners.com>

Sent: Wednesday, June 7,
2023 7:36 AM

To: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>; Michael Rakow
<mrakow@villageoffoxpoint.com>

Subject: Re: 8339 N Lake Drive
- Building permit

Hi Scott

Let me know if Tom has given you what you need now for us to proceed. Looks to me we covered all the bases.
Thanks for your help

Sent from my iPhone

On May 25, 2023,
at 1:38 PM, Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com> wrote:

Tom and Ralph,

Please forgive me
if this comes
across as rather
blunt, but our
role (Mike's and
mine) is to guide
you to the Village
Code and you
need to evaluate
the project to
determine what
needs to be
submitted based
on the applicable
code provisions.
I've provided
detailed emails
regarding what is
normally
required with
projects of this
nature and, as
I've noted, it
seems like
compliance with
some of the code
issues may be
pushed off onto
the subsequent
owner. That is
your call but
please note that
we will note this
in the property
file.

As it stands, the
drawing is

inadequate to make a determination of what the existing and proposed grades are going to be for the site. All that is shown are the existing grades; you will need to submit a drawing showing the proposed grades and, if as has been indicated, the proposed grades are what is existing, then you will have to note that accordingly on the drawing. Also, even though the erosion control fee has not been paid to necessitate a review, a quick review shows that most, if not all, of the code provisions have not been addressed.

Please also note that I will be tied up in meetings and project deadlines most of the next week (and am off next week Tuesday). Village Code does provide that once a completed application is submitted to the Village staff has

45 days to review it; while I don't think it will take that long for me to review it I am letting you know that I probably will not be able to review your application materials until, at the earliest, the week of June 5.

Scott

Scott
Brandmeier, P.E.
Director of Public
Works
Village of Fox
Point
7200 North Santa
Monica
Boulevard
Fox Point, WI
53217
414-351-8900
ext. 6624
sbrandmeier@villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Thursday,
May 25, 2023
7:31 AM
To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Cc: Michael
Rakow
<mrakow@village>

offoxpoint.com>

Subject: Re: 8339

N Lake Drive -
Building permit

Scott,

I have attached
the Grading and
Erosion Control
Permit Application
as mentioned in
the email from the
property owner.
Please let me
know if anything
additional is
required.

Tom

Stack Design
Group
Direct: 414-807-
8033

-----Original
Message-----

From: Ralph
Bencriscutto
<ralphb@towerenergypartners.com>
>

To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>;
stackgroup@aol.com
<stackgroup@aol.com>

Cc: Michael
Rakow
<mrakow@villageoffoxpoint.com>

Sent: Wed, May
24, 2023 10:34
am

Subject: Re: 8339
N Lake Drive -
Building permit

Hi Scott

We don't see it
as a detriment
to the house

leaving the
grade as is.
There is no
basement water
problem now
and with the
higher elevation
we can have
basement
windows
without window
wells like the
existing house.
If we can use
the 289 cu yards
on site just
around the
house without
any additional
fill we would do
it but you let us
know.
Otherwise we
will just use the
25 yards right
around the
house just for
landscaping. The
ordinance
doesn't specify
specifics that
would apply in
this case- its
pretty vague. If
we don't change
the natural
drainage course
it seems like it
would be OK. It
seems to be
targeting in
section 272-1-C
" natural
drainage would
be deemed to

mean any creek,
ravine, gully,
channel, hollow,
swale or
depression. "
which doesn't
apply to our
site. The grade
currently flows
toward Dean
but it's within a
1" of flat now
from the yard to
the ditch. As far
as the driveway
it would be
several months
off if we can do
it but it wouldn't
need to be
higher or have
added fill.

I assume we will
need an erosion
control permit-
If that would be
it then let us
know and well
drop off the
payment. Seems
like the permit
fee is \$400.00.
Tom will send in
the permit filled
out.

Thanks again for
your help!

Ralph
Bencriscu
tto
President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Sent:
Wednesday, May 24, 2023 9:42 AM

To:
stackgroup@aol.com
<stackgroup@aol.com>; Ralph Bencriscutto
<ralphb@towerenergypartners.com>

Cc: Michael Rakow
<mrakow@villageoffoxpoint.com>; Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339
N Lake Drive -
Building permit

Tom and Ralph,

I understand what is being said and I ask your patience as I delve into the code. It appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of

the Village Code. This may, as the saying goes, kick the can down the road; that is, the burden for complying with the code may fall to the individual who purchases the house.

For instance, based on the drawing, it appears the foundation will be sticking out of the ground about 12-18 inches around the addition (if the addition matches the first floor elevation of the existing structure).

So, basically, what I foresee happening is the new owner (once you sell the house and improvements) will want to perform the grading and landscaping which will then push the code compliance onto them (grading and drainage, an additional erosion control application, and the fill permit). I can only imagine their dissatisfaction having to perform these tasks – unless, of course, they are made aware of these conditions.

Honestly, I believe there are exceptions in the code that will allow you to do what you hope to do – I just can't tell you if you fall into

any of them based on a single drawing. I did reference the code and don't know if it has been reviewed, but I will note again that the fill ordinance has a number of exceptions that would keep you from having to address those provisions. Namely, construction of driveways (and the fill needed for them) are exempted from the ordinance (so you would calculate the fill needed for around the house but exclude the driveway (that is, unless, you have to add a foot of soil for the driveway and then the stone). Additionally, top dressing (topsoil) is exempted from the code and there is a threshold for addressing the fill ordinance – 25 cubic yards. So, you could place 25 cubic yards of fill around the house and add topsoil on top of that (an exempted quantity) to grade the lot nicely.

That said, you still cannot adversely affect a neighboring property with any grading changes and would have to set the lot up to drain in a manner that it flows out to either Dean or

Lake (or both). An erosion control permit is still likely required based on what was revised and submitted.

Scott

Scott Brandmeier,
P.E.
Director of Public
Works
Village of Fox
Point
7200 North Santa
Monica Boulevard
Fox Point, WI
53217
414-351-8900 ext.
6624
sbrandmeier@villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tuesday,
May 23, 2023 1:36
PM
To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Cc: Michael
Rakow
<mrakow@villageoffoxpoint.com>;
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339
N Lake Drive -
Building permit

Scott,

The owner feels that the budget may not allow a deck or patio and the home may sell before completion so the driveway will not be put in at this time either. I attached a revised Grading & Erosion

Control Plan that shows the existing gravel driveway remaining at the street and gravel widened near the garage doors. This leaves the existing culvert unchanged. The fill calculations were revised to show actual basement area times depth divided by 27 to reach a total excavation of 254 cubic yards. The frostwall excavation will add less than 35 yards after the foundation is backfilled. There is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer. There does not seem to be any instance where new fill will need to be brought to the property.

With all fill hauled away and no fill brought to the site, the result would be no change to any existing drainage condition. If this meets your approval please let me know if the erosion control permit is the only permit required at this time.

Tom

Stack Design

Group
Direct: 414-807-
8033

-----Original
Message-----
From: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
To:
stackgroup@aol.com
<stackgroup@aol.com>
Cc: Michael
Rakow
<mrakow@villageoffoxpoint.com>;
Scott Brandmeier
<sbrandmeier@villageoffoxpoint.com>; Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Sent: Tue, May
23, 2023 12:21
pm
Subject: RE: 8339
N Lake Drive -
Building permit

Hi Tom,

Mike Rakow sent me the survey drawing last week but I was tied up with other deadlines. Based on my conversation with Mike and looking at the drawing, the addition will be built in an area that likely will require the addition of fill to the property (even if the source of the fill is from the excavation for the addition) because the grades for the addition are anywhere up to about a foot lower than the existing

structure. Based on that and the grades that were submitted, here are the following permits and fees required for the addition. Please visit <https://www.villageoffoxpoint.com/149/Permits-Applications-Licenses> to download the appropriate forms for each of the permits.

1. A fill permit.
The fee is \$650 plus a \$5,000 bond is required until the fill activities are completed. Please note that an additional fee may be needed if fill is being hauled into the site to account for the trucking. Please be sure to fill out the narrative portion of the permit requirements (it refers the applicant to the Village

Code – you will have to list the source of the fill, hours of operation, etc.) in your application.

Please also note that we are required to inform property owners within 500 feet of the subject property of the proposed fill activity and they have 21 days to comment on the proposed fill permit application.

So, you should plan on getting approvals from me about 2-3 weeks after the 21 days expires.

2. A grading and drainage analysis. This requires you to address the drainage on the site

and identify
the pre and
post-
developme
nt flows.

The post-
developme
nt flow in
the 2, 10
and 100
year storms
needs to be
less than
the pre-
developme
nt
conditions.

You will
likely need
to have a
civil
engineer
perform
this
analysis.

Please
note that
we do not
send out
the
notification
s for the fill
permit until
this
analysis is
completed
as well.

The fee for
this is
\$400.

3. An erosion
control
permit and
drawing.
This shares
the same
form as the
grading
and
drainage

analysis
but is a
separate
\$400 fee.
Please be
sure to
address the
narrative
requiremen
ts (e.g., if
you
encounter
dewatering,
etc.) as
part of the
application
process.
The Village
Code is
referenced
in the
application
and will
identify
what needs
to be
submitted.

4. A culvert
permit
application
(\$75 fee)
for the
proposed
new
culvert.
The
application
should
include
details on
the pipe
and the
elevations
of the
invert.

I have copied Sue,
the DPW Admin,
on this message
so that she can
start preparing the

500-foot buffer
and mailing labels
for the fill permit
but we will not
send out the
letters until a
completed
application and
fess are submitted
to the Village.

Feel free to call or
email with any
questions.

Scott

Scott Brandmeier,
P.E.
Director of Public
Works
Village of Fox
Point
7200 North Santa
Monica Boulevard
Fox Point, WI
53217
414-351-8900 ext.
6624
sbrandmeier@villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Monday,
May 22, 2023
12:47 PM
To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Subject: Fwd:
8339 N Lake Drive
- Building permit

Scott,

Is anything else
needed for the
building permit for
8339 N. Lake
Drive? Please let
me know if a fee is
due or any
additional
documentation is
required.

Thanks,

Tom

Stack Design
Group
Direct; 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<mrakow@villageoffoxpoint.com>
To: Scott
Brandmeier
<sbrandmeier@villageoffoxpoint.com>
Cc:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tue, May
16, 2023 3:19 pm
Subject: FW: 8339
N Lake Drive -
Building permit

Scott,
Here is the info
we discussed
earlier. Please
look over

Regards,

<image002.jpg>

Michael Rakow

Building Inspector

Phone: 414-247-6622

Web: www.villageoffoxpoint.com

7200 N Santa Monica Blvd, Fox Point, WI 53217

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Monday,
May 15, 2023 9:20
AM

To: Michael
Rakow
<[mrakow@village
offoxpoint.com](mailto:mrakow@villageoffoxpoint.com)>
Subject: 8339 N
Lake Drive -
Building permit

Mike,

I have attached
the grading plan
with fill
calculations and
erosion control for
the home at 8339
N. Lake Drive.
Please let me
know if anything
additional is
needed for the
issuance of the
building permit
and what the fee
amount is.

Thank you,

Tom

Stack Design
Group
Direct: 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<[mrakow@village
offoxpoint.com](mailto:mrakow@villageoffoxpoint.com)>
To:
[stackgroup@aol.c
om](mailto:stackgroup@aol.com)
<[stackgroup@aol.
com](mailto:stackgroup@aol.com)>
Sent: Tue, Jul 12,
2022 10:27 am
Subject: RE: 8339
N Lake Drive

Thanks, see
you tomorrow.

Regards,

**Michael
Rakow**
Building Inspector

<image003.png>
7200 N Santa
Monica Blvd
Fox Point, WI
53217
(414) 247 6622
www.villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Tuesday,
July 12, 2022 6:59
AM
To: Michael
Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339
N Lake Drive

Attached is the
Site Plan for 8339
N Lake Drive with
the open area
calculations in
square feet and
percentage.

Please let me
know if anything
else is needed.

Thanks,

Tom

Stack Design
Group
Direct: 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<mrakow@villageoffoxpoint.com>
To:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Thu, Jul 7,

2022 3:39 pm
Subject: RE: 8339
N Lake Drive

Tom,

1. I will also
need the
open
area
calculatio
n. See
745-4B

<https://ecode360.com/14576226>

1. Need to
verify 70
foot
setback
from the
centerlin
e of
Dean Rd.

Regards,

**Michael
Rakow**
Building Inspector

<image003.png>
7200 N Santa
Monica Blvd
Fox Point, WI
53217
(414) 247 6622
www.villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>

Sent: Thursday,
June 30, 2022
3:38 PM

To: Michael
Rakow
<mrakow@villageoffoxpoint.com>

Subject: Re: 8339
N Lake Drive

Mike,

Attached is our
Site Plan for 8339
N Lake Drive.

Please let me
know if anything
additional is
needed.

Tom

Stack Design
Group
Direct: 414-807-
8033

-----Original
Message-----
From: Michael
Rakow
<[mrakow@village
offoxpoint.com](mailto:mrakow@villageoffoxpoint.com)>
To:
[stackgroup@aol.c
om](mailto:stackgroup@aol.com)
<[stackgroup@aol.
com](mailto:stackgroup@aol.com)>
Sent: Thu, Jun 30,
2022 3:25 pm
Subject: RE: 8339
N Lake Drive

Tom,
Can you email
me a copy of
the site plan. I
need to verify
the 75 foot
setback off of
Dean Rd.

Regards,

**Michael
Rakow**
Building Inspector

<image003.png>
7200 N Santa
Monica Blvd
Fox Point, WI
53217

(414) 247 6622
www.villageoffoxpoint.com

From:
stackgroup@aol.com
<stackgroup@aol.com>
Sent: Friday, June 10, 2022 1:17 PM
To: Michael Rakow
<mrakow@villageoffoxpoint.com>
Subject: Re: 8339 N Lake Drive

I have attached a PDF file of the revised elevations for 8339 N Lake Drive. The project was tabled at the May meeting and it is my understanding that you would have it on the June agenda if we were able to submit by today, so I dropped them off yesterday. I believe that the next meeting will be Wednesday June 15th.

Thanks,

Tom

Stack Design
Group
Direct: 414-807-8033

-----Original Message-----
From:
stackgroup@aol.com
To:
mrakow@villageoffoxpoint.com
<mrakow@villageoffoxpoint.com>
Sent: Mon, May 2, 2022 9:15 am
Subject: 8339 N Lake Drive

Attached is a PDF
file with the full set
of architectural
drawings
submitted for the
Building Board
meeting.

Please let me
know if anything
additional is
needed.

Thanks,

Tom Stachowiak

Stack Design
Group
Direct: 414-807-
8033

<IMG_2038.jpeg>

<IMG_2037.jpeg>

<IMG_2036.jpeg>

<Erosion Control Inspection Report No.
1.pdf>

<Erosion Control Inspection Report No.
2.pdf>





Attachment 13

Erosion Control Inspection Report #3

#3

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 1 of 2

Notice: Use of this specific form is voluntary, but the information contained on this form must be collected and kept by the permittee under s. NR 216.48(4), Wis. Adm. Code, for a construction site covered under the General WPDES Construction Site Storm Water Discharge Permit, Permit No. WI-0067831-2. This form is provided for the convenience of the permittee to meet the requirements of s. NR 216.48(4), Wis. Adm. Code. Multiple copies of this form may be made to compile the inspection report.

Inspections of implemented erosion and sediment control best management practices must be performed weekly and within 24 hours after a precipitation event 0.5 inches or greater which results in runoff.

Weekly written reports of all inspections conducted by or for the permittee must be maintained throughout the period of general permit coverage.

The information maintained in accordance with s. NR 216.48 (4) must be submitted to the Department upon request.

Name of Permittee: Ralph Bencriscutto				
Construction Site Name (Project): Home construction - Lake and Dean			Construction Site ID No.:	
Location: 8339 North Lake Drive			County: Milwaukee	
Contractor:			Field Office Phone: 262-664-3166	
Note: Weekly inspection reports, along with erosion control and stormwater management plans, are required to be maintained on site and made available upon request.				
Date of inspection (mm/dd/yy): 11/06/23		Type of inspection: ☐ Weekly ☐ Precipitation Event ☒ Other (specify) Complaint received		
Time of inspection: Start: 04:15 p.m. End: 04:50 p.m.		Name(s) of individual(s) performing inspection: Scott Brandmeier - Village of Fox Point		
Weather:				
Description of present phase of construction: Shell, siding and roof completed; grading along west property line; preparing for driveway.				
Modifications Required	Yes	No	Not Applicable	Comments/Recommendations about the overall effectiveness of the erosion and sediment control measures. Note: For each item checked "Yes", complete the follow-up information on page 2.
Ditch Checks	☒	☐	☐	
Erosion Control Plan	☒	☐	☐	
Erosion Mat	☐	☐	☐	
Grading Practices	☒	☐	☐	Placement of soil being done contrary to permit conditions.
Inlet Protection	☐	☐	☐	
Mulch	☐	☐	☐	
Offsite Sediment	☒	☐	☐	Sediment tracked off-site due to lack of erosion control practices.
Permanent Seeding	☐	☐	☐	
Schedule / Phasing	☐	☐	☐	
Silt Fence	☒	☐	☐	Silt fence damaged; repair or replace
Silt Screen	☐	☐	☐	
Sod	☐	☐	☐	
Stabilized Outlet	☐	☐	☐	
Temp. Diversion Channel	☐	☐	☐	
Temp. Settling Basin	☐	☐	☐	
Temporary Seeding	☐	☐	☐	
Tracking Pads	☒	☐	☐	Tracking pad not installed in new ingress/egress location.
Turbidity Barrier	☐	☐	☐	
Other (specify) see below	☒	☐	☐	Culvert not draining properly; buried and ditch needs to be graded.

Other Modifications Required: Refer to attached email. Contractor was moving soil from west side of property to east side. Ralph noted when pulling the building permit months earlier that he would not place fill on the property. A recommendation will be made to issue citations if not resolved.

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 2 of 2

Name of Permittee: Ralph Bencriscutto		
Construction Site Name (Project): Home construction - Lake and Dean		Construction Site ID No.:
<i>Use the space below for detailed follow-up action items.</i>		
Exact place of erosion/sediment control inspected	Type of erosion/sediment control and its observed condition	Description of any necessary maintenance or repair to erosion/sediment control, including anticipated date of completion
Along Dean Road and west side of property.	Erosion control fence is damaged. No tracking pad in place.	Erect silt fence; remove fill from property that wasn't permitted to be placed. Install tracking pad.
Additional Comments:		

RESET





Attachment 14

Erosion Control Inspection Report #4

#4

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 1 of 2

Notice: Use of this specific form is voluntary, but the information contained on this form must be collected and kept by the permittee under s. NR 216.48(4), Wis. Adm. Code, for a construction site covered under the General WPDES Construction Site Storm Water Discharge Permit, Permit No. WI-0067831-2. This form is provided for the convenience of the permittee to meet the requirements of s. NR 216.48(4), Wis. Adm. Code. Multiple copies of this form may be made to compile the inspection report.

Inspections of implemented erosion and sediment control best management practices must be performed weekly and within 24 hours after a precipitation event 0.5 inches or greater which results in runoff.

Weekly written reports of all inspections conducted by or for the permittee must be maintained throughout the period of general permit coverage.

The information maintained in accordance with s. NR 216.48 (4) must be submitted to the Department upon request.

Name of Permittee: Ralph Bencriscutto	
Construction Site Name (Project): Home construction - Lake and Dean	Construction Site ID No.:
Location: 8339 North Lake Drive	County: Milwaukee
Contractor:	Field Office Phone: 262-664-3166

Note: Weekly inspection reports, along with erosion control and stormwater management plans, are required to be maintained on site and made available upon request.

Date of inspection (mm/dd/yy): 11/08/23	Type of inspection: ☐ Weekly ☒ Precipitation Event ☐ Other (specify) <u>Follow up to 11/06/23 inspection</u>
Time of inspection: Start: 09:15 a.m. End: 09:20 a.m.	Name(s) of individual(s) performing inspection: Scott Brandmeier - Village of Fox Point

Weather:

Description of present phase of construction:

Shell, siding and roof completed; grading along west property line; preparing for driveway.

Modifications Required	Yes	No	Not Applicable	Comments/Recommendations about the overall effectiveness of the erosion and sediment control measures. Note: For each item checked "Yes", complete the follow-up information on page 2.
Ditch Checks	☒	☐	☐	
Erosion Control Plan	☒	☐	☐	
Erosion Mat	☐	☐	☐	
Grading Practices	☒	☐	☐	Placement of soil being done contrary to permit conditions.
Inlet Protection	☒	☐	☐	Flow of water blocked in the ditch by placement of soil.
Mulch	☐	☐	☐	
Offsite Sediment	☒	☐	☐	Sediment tracked off-site due to lack of erosion control practices.
Permanent Seeding	☐	☐	☐	
Schedule / Phasing	☐	☐	☐	
Silt Fence	☒	☐	☐	Silt fence damaged; repair or replace
Silt Screen	☐	☐	☐	
Sod	☐	☐	☐	
Stabilized Outlet	☐	☐	☐	
Temp. Diversion Channel	☐	☐	☐	
Temp. Settling Basin	☐	☐	☐	
Temporary Seeding	☐	☐	☐	
Tracking Pads	☒	☐	☐	Tracking pad not installed in new ingress/egress location.
Turbidity Barrier	☐	☐	☐	
Other (specify) <u>see below</u>	☒	☐	☐	Culvert not draining properly; buried and ditch needs to be graded.

Other Modifications Required: Refer to attached email.

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 2 of 2

Name of Permittee: Ralph Bencriscutto		
Construction Site Name (Project): Home construction - Lake and Dean		Construction Site ID No.:
<i>Use the space below for detailed follow-up action items.</i>		
Exact place of erosion/sediment control inspected	Type of erosion/sediment control and its observed condition	Description of any necessary maintenance or repair to erosion/sediment control, including anticipated date of completion
Along Dean Road and west side of property.	Erosion control fence is damaged. No tracking pad in place.	Erect silt fence; remove fill from property that wasn't permitted to be placed. Install tracking pad. Establish flow of water in ditch and install ditch checks.
Additional Comments:		

RESET





Attachment 15

December 6, 2023 Email to Mr. Bencriscutto

From: [Scott Brandmeier](#)
To: [Ralph Benciscutto](#); [Michael Rakow](#)
Cc: [Scott Brandmeier](#)
Subject: RE: Fill Permit
Date: Wednesday, December 6, 2023 12:44:53 PM
Attachments: [image001.png](#)
[image002.png](#)
[8339 N Lake Drive Grading-Drainage Site Plans 05-31-23.pdf](#)

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM
To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

Get [Outlook for iOS](#)

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help

☐ **§ 272-10 Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § **756-10B** of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § **272-4**.

[Added 4-13-2010 by Ord. No. 2010-08]

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

This

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



Attachment 16

December 6, 2023 Email from Mr. Bencriscutto to staff

From: [Ralph Bencriscutto](#)
To: [Scott Brandmeier](#); [Michael Rakow](#)
Subject: Re: Fill Permit
Date: Wednesday, December 6, 2023 4:27:36 PM
Attachments: [image001.png](#)
[image002.png](#)
[Outlook-e00ffa3fd.png](#)
[8339 N Lake Drive_Grading-Drainage_Site Plans_05-31-23-1.pdf](#)

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Pint.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Wednesday, December 6, 2023 12:44 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue

any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM
To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

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From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § 272-4.

[Added 4-13-2010 by Ord. No. 2010-08]

This

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

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Racine, WI 53403
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F (262) 632-3446



Attachment 17

December 7, 2023 Email from Mr. Bencriscutto

From: [Ralph Bencriscutto](#)
To: [Scott Brandmeier](#); [Michael Rakow](#)
Subject: 8339 permit issue
Date: Thursday, December 7, 2023 10:32:47 AM
Attachments: [Outlook-wat4x10s.png](#)

12/7/23

Scott

This is a letter of retraction accusing you (Scott) of malice, misrepresentation, ulterior motives and recommending a contractor. After discussing the provisions of the code with Scott we disagreed on several issues, but I now believe he is acting on what he thinks is appropriate. We are also agreeing to discuss the matter in person with a third party to arbitrate and come to an agreement.

Since we both believe strongly that we are correct in the interpretation of the code I would assume that with some calm discussion we can come to an agreement that satisfies the village code requirements for both parties.

Thanks for agreeing to a third party opinion.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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Racine, WI 53403
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F (262) 632-3446



Attachment 18

December 7, 2023 Email to Mr. Bencriscutto

From: [Scott Brandmeier](#)
To: [Ralph Benciscutto](#)
Cc: [Scott Brandmeier](#); [Scott Botcher](#); [Michael Rakow](#)
Subject: RE: Fill Permit
Date: Thursday, December 7, 2023 4:43:00 PM
Attachments: [image002.png](#)
[image004.png](#)

Ralph,

Thank you for your email from earlier today retracting the statements you made below. I can assure you that my task is to apply the code uniformly and I appreciate the comments you have made regarding your interpretations of the code and how they should apply.

I also appreciate that you took time out of your day to meet with the Village Manager (Scott Botcher – copied) and me to discuss your perspective. Based on our discussion this afternoon, I am withdrawing the requirement to submit plans to me subject to Scott's determination. As noted, if after consulting with the Village Attorney Scott agrees with your interpretation, it would appear no permits will be required for grading and drainage. If, however, he is of the opinion that the code does apply and that you have disturbed an area in excess of the threshold then you will have to submit the necessary permits (unless you decide to appeal to the Board of Appeals to have them render a decision). Please note that if you have to hire an engineer to perform the drainage analysis, you should select one of your choosing.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, December 6, 2023 4:27 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Point.

Ralph Benciscutto
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(262) 664-3166

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F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, December 6, 2023 12:44 PM

To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Monday, December 4, 2023 9:04 AM

To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: Re: Fill Permit

Ralph,

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The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

Get [Outlook for iOS](#)

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

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- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § 272-4.

[Added 4-13-2010 by Ord. No. 2010-08]

Ralph Bencriscutto
President
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This
that

Attachment 19

Mr. Bencriscutto December 8, 2023 Email and Interpretation Documentation



TOWER ENERGY INTERNATIONAL, LLC

Energy Reduction Specialists

There is no mention of how much gravel can be used under the driveway or patio. That is a fabricated and illogical requirement since the driveway always flows to the road and whatever gravel is used will be needed to maintain the $\frac{1}{4}$ " per ft recommended slope. The other exemptions below are clear. We put a 2' berm for the mechanicals and planter for the transition.

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
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TOWER ENERGY INTERNATIONAL, LLC

Energy Reduction Specialists

In response to this permit:

We are not grading the lot.

We are not disturbing over 4000 sq.ft. Driving on the grass is not "disturbing" since it does not affect the topography which is the purpose of the permit- changes in drainage.

The 272-10 exemptions apply since code 272 is not applicable due to the absence of any grading being proposed and more.

Top dressing for the lawn is not disturbing it and permitted under the exclusions. The driveway, patio, berms and planters are exempt and the addition is not applicable since there is no yard elevation relative to any plan. It is eliminated from the scope of any yard drainage after it's built.

We have no plan and are completed for any before or after grade changes- we are not changing the grade.

There are no other provisions in the permit that are applicable- we are not adding any fill except for the planter and berm on the west driveway. The boulders and decorative are to hold the berm in place.

E. Drainage.

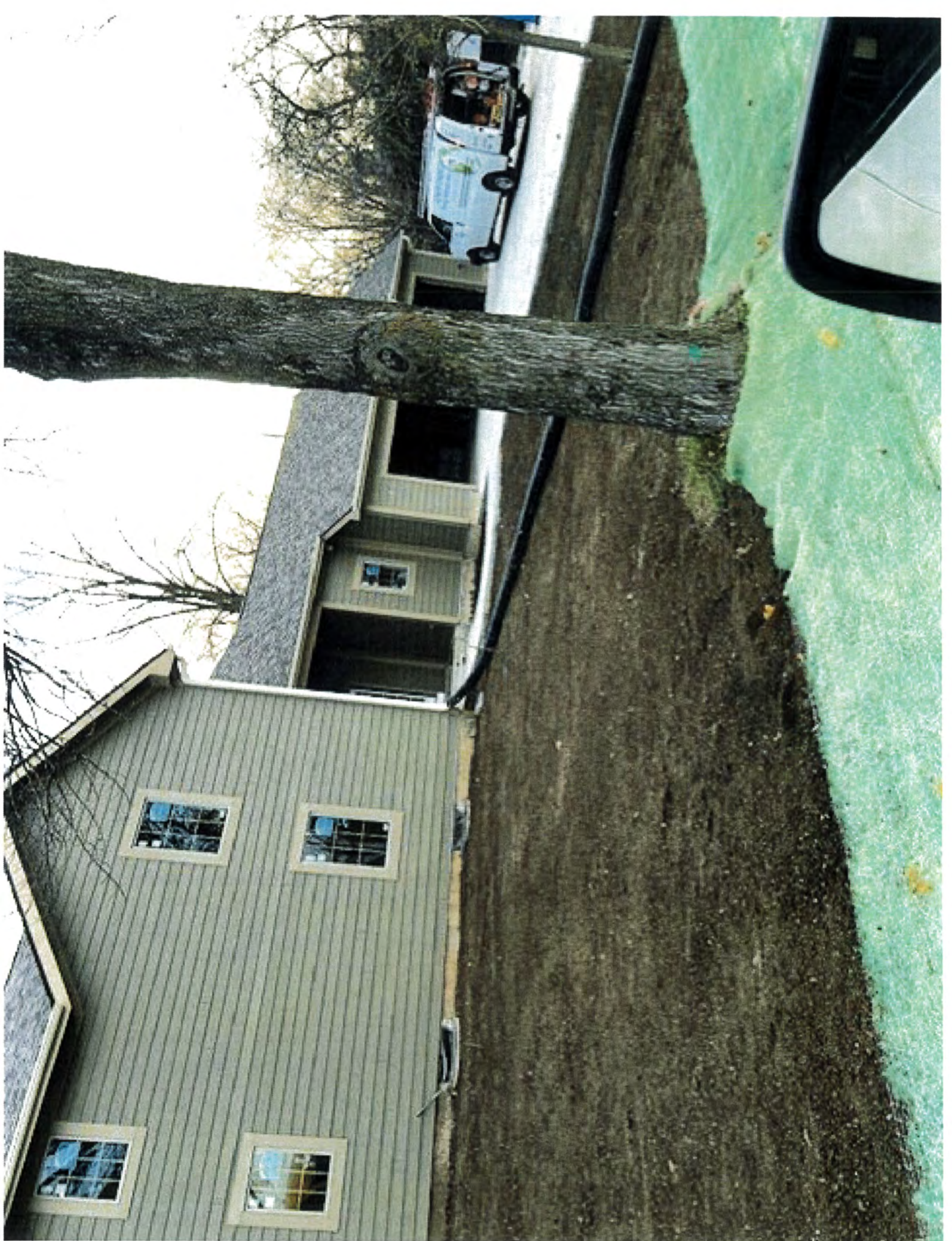
(1) Grading of lots.

(a) A drainage plan is required:

- [1]** For applications for the construction of a new principal building;
- [2]** For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more;
- [3]** For applications for land disturbing activity (other than tree removal) on the face of a ravine bluff or lake bluff;
- [4]** For all circumstances where a fill permit is required pursuant to Chapter 272 of this Code; and
- [5]** When required by the Village in particular cases due to particular concerns arising in the application.

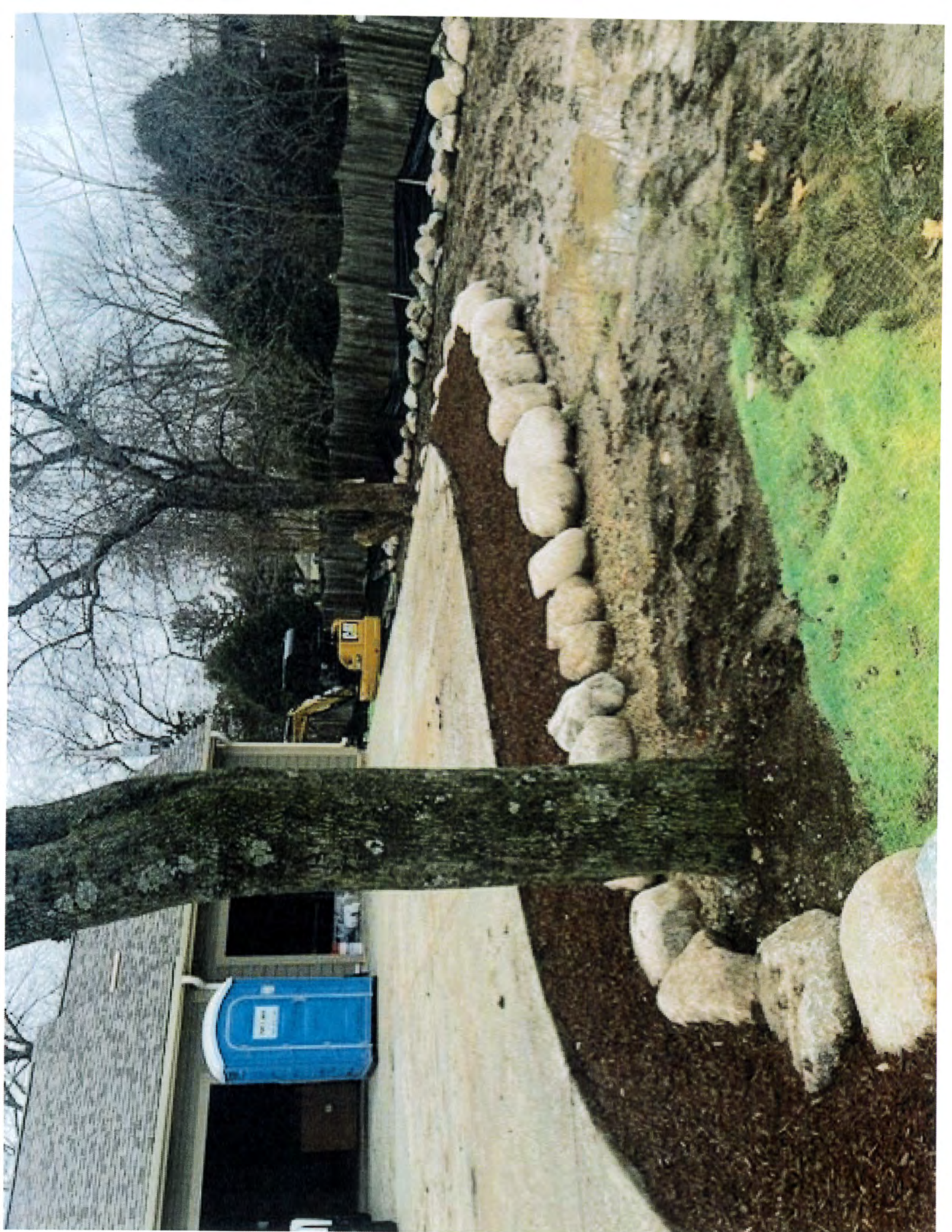
(b) The plans shall show the present and proposed grades of the lot on which it is proposed to erect the building for which a building permit is sought and of the immediately adjoining property in sufficient detail to indicate the surface water drainage before and after the completion of grading. No permit shall be issued if the erection of the building and the proposed grade shall unreasonably obstruct the natural flow of water from the surface of adjoining property or obstruct the flow of any existing ravine, ditch, drain or stormwater sewer draining neighboring property, unless suitable provision is made for such flow by means of an adequate ditch or pipe, which shall be shown on the plans and shall be constructed so as to provide continuous drainage at all times. The plan shall include a pre- and postdevelopment flow analysis which must address all of the following issues:

- [1]** Flows off the property in the two-, ten-, and one-hundred-year storm events in both conditions.
- [2]** If there will be fill brought to the site, where the excavated soils will be stockpiled until grading activities occur; also, if soils will be delivered to the site and stockpiled prior to grading, identify these locations.
- [3]** Identify the cuts and fills on the property.
- [4]** Identify the depth and width of flows at the property line, in both conditions.
- [5]** Identify how the stormwater that drains toward the road will be tied into the Village system.



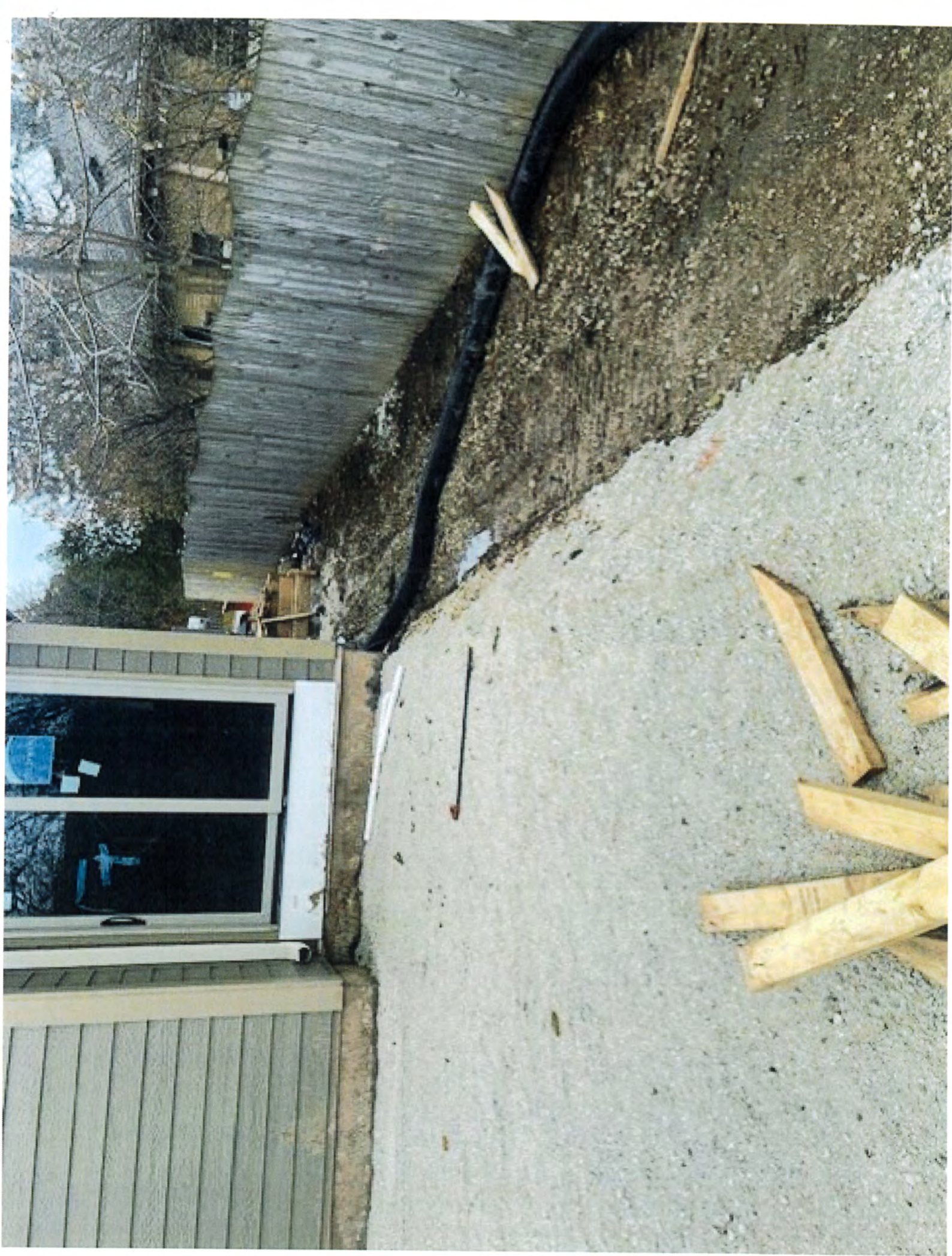












From: [Ralph Bencriscutto](#)
To: [Scott Brandmeier](#)
Cc: [Scott Botcher](#); [Michael Rakow](#)
Subject: Re: Fill Permit
Date: Friday, December 8, 2023 5:20:50 AM
Attachments: [image002.png](#)
[image004.png](#)
[Outlook-rrkikmu0.png](#)

Hi Scott

I'm a spec writer and have some suggestions for clarification.

As far as 756-7 E I would recommend the following:

Definition of disturbed area is the net area of proposed grading.

Exclusions: Restoration of activities that disturbed the land during the project to original grade are exempt.

Code 272- Erosion control

Definition of disturbed area is the net change in topography that will affect the natural drainage less exemptions listed in 272-10. Restoration and/ or re-grading of the area to original grade after construction activities is exempt.

Erosion control for Areas under 4000 sq.ft.

Excavation and construction activities that will result in temporary storing the excavated materials along with the disturbed land required for the moving of the same will require a mitigation permit to prevent excessive silt from migrating to the adjacent properties in the event of heavy rain. The permit will require the silt fence, covering of piled dirt and / or erosion control fabrics as appropriate to mitigate issues. After the project is completed the contractor or building owner will have 90 days to affect removal and restoration to original grade. If unusual weather or other mitigating conditions are preventing removal within this time frame and extension can be applied for providing silk mitigation procedures are maintained.

Excmptions:

The provision would be exempted if the lot was not within 50' of engineered or natural drainage that would be affected.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Thursday, December 7, 2023 4:43 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: RE: Fill Permit

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I also appreciate that you took time out of your day to meet with the Village Manager (Scott Botcher – copied) and me to discuss your perspective. Based on our discussion this afternoon, I am withdrawing the requirement to submit plans to me subject to Scott's determination. As noted, if after consulting with the Village Attorney Scott agrees with your interpretation, it would appear no permits will be required for grading and drainage. If, however, he is of the opinion that the code does apply and that you have disturbed an area in excess of the threshold then you will have to submit the necessary permits (unless you decide to appeal to the Board of Appeals to have them render a decision). Please note that if you have to hire an engineer to perform the drainage analysis, you should select one of your choosing.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
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Sent: Wednesday, December 6, 2023 4:27 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Pint.

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
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T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Wednesday, December 6, 2023 12:44 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue

any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM
To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

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From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § 272-4.

[Added 4-13-2010 by Ord. No. 2010-08]

This

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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F (262) 632-3446



Attachment 20

December 21, 2023 Email from Mr. Botcher

From: [Scott Botcher](#)
To: [Ralph Benciscutto](#); [Scott Brandmeier](#)
Cc: [Michael Rakow](#)
Subject: RE: Fill Permit
Date: Thursday, December 21, 2023 4:00:44 PM
Attachments: [image006.png](#)
[image008.png](#)
[image003.png](#)

Ralph,

Thank you for taking the time to meet with Scott and me. I sincerely appreciate the questions you posed and comments you made regarding our Ordinances. After doing some research and discussing this matter with our Village Attorney, I carefully considered your comments and questions and have come to the following conclusions:

The phrase "land disturbing activity" is used in several places in State statutes, and defined in those sections, and for the most part the various definitions are very similar.

Wisconsin Statutes Section 236.13(2)(ad)2. says this:

"Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

Wisconsin Statutes Section 281.33(3)(b)1. says this:

The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that: Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

Your question arises in relation to the Village Building Code, Section 756-7 E (1)(a) (2), so the most relevant definition may be from the **State Uniform Dwelling Code (UDC)**, because that is incorporated into the Village Building Code. The definition of the phrase "land disturbing construction activity" in the UDC is:

"Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit or trench dewatering, filling and grading activities. (Wisconsin Administrative Code Section SPS 320.07(46m).)

In my opinion, you have engaged in "Land disturbing activity" as defined by all three citations, above; primarily, but not exclusively, "filling" and/or "change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state" or "any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment"

As such, I agree with Mr. Brandmeier's determination and you should secure the required permits from him. As we indicated, you have the right to appeal this decision to the Board of Appeals.

Sincerely,

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620



From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 8, 2023 5:21 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Hi Scott

I'm a spec writer and have some suggestions for clarification.

As far as 756-7 E I would recommend the following:

Definition of disturbed area is the net area of proposed grading.

Exclusions: Restoration of activities that disturbed the land during the project to original grade are exempt.

Code 272- Erosion control

Definition of disturbed area is the net change in topography that will affect the natural drainage less exemptions listed in 272-10. Restoration and/ or re-grading of the area to original grade after construction activities is exempt.

Erosion control for Areas under 4000 sq.ft.

Excavation and construction activities that will result in temporary storing the excavated materials along with the disturbed land required for the moving of the same will require a mitigation permit to prevent excessive silt from migrating to the adjacent properties in the event of heavy rain. The permit will require the silt fence, covering of piled dirt and / or erosion control fabrics as appropriate to mitigate issues. After the project is completed the contractor or building owner will have 90 days to affect removal and restoration to original grade. If unusual weather or other mitigating conditions are preventing removal within this time frame and extension can be applied for providing silk mitigation procedures are maintained.

Excmptions:

The provision would be exempted if the lot was not within 50' of engineered or natural drainage that would be affected.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Thursday, December 7, 2023 4:43 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

Thank you for your email from earlier today retracting the statements you made below. I can assure you that my task is to apply the code uniformly and I appreciate the comments you have made regarding your interpretations of the code and how they should apply.

I also appreciate that you took time out of your day to meet with the Village Manager (Scott Botcher – copied) and me to discuss your perspective. Based on our discussion this afternoon, I am withdrawing the requirement to submit plans to me subject to Scott's determination. As noted, if after consulting with the Village Attorney Scott agrees with your interpretation, it would appear no permits will be required for grading and drainage. If, however, he is of the opinion that the code does apply and that you have disturbed an area in excess of the threshold then you will have to submit the necessary permits (unless you decide to appeal to the Board of Appeals to have them render a decision). Please note that if you have to hire an engineer to perform the drainage analysis, you should select one of your choosing.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Wednesday, December 6, 2023 4:27 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: Fill Permit

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Point.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Wednesday, December 6, 2023 12:44 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM
To: Ralph Bencrisutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

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From: Ralph Bencrisutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § 272-4.

[Added 4-13-2010 by Ord. No. 2010-08]

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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F (262) 632-3446



This
text

Attachment 21

December 22, 2023 Email from Mr. Bencriscutto

From: [Ralph Benciscutto](#)
To: [Scott Botcher](#); [Scott Brandmeier](#)
Cc: [Michael Rakow](#)
Subject: Re: Fill Permit
Date: Friday, December 22, 2023 2:56:50 PM
Attachments: [image006.png](#)
[image008.png](#)
[image003.png](#)
[Outlook-3xs3tv10.png](#)

Hi Scott

Thanks for delving into this.

Defining "land disturbing activity" would be relevant to the permit being applied for and its intended purpose. Please look this over again before I appeal.

As far as permit application are you saying that the exemptions in 272-10 do not apply?

[§ 272-10 Exceptions.](#)

The following activities are excluded from the requirements of this chapter:

[A.](#)

Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.

[B.](#)

Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.

[C.](#)

Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.

[D.](#)

Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.

[E.](#)

Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.

[F.](#)

Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § [756-10B](#) of this Code.

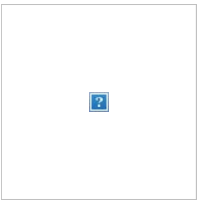
[G.](#)

Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.

[H.](#)

Drainage.

[\(1\)](#)



Village of Fox Point, WI: Permits.

§ 756-7E Drainage. Grading of lots. A drainage plan is required: For applications for the construction of a new principal building; For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more; For

[ecode360.com](#)

Grading of lots. 756-7E provision ([we are not grading](#))

[\(a\).](#)

A drainage plan is required:

[\[1\]](#)

For applications for the construction of a new principal building; [This is an addition](#)

[\[2\]](#)

For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more;

[There is no man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. The grass has been replanted.](#)

[\[3\]](#)

For applications for land disturbing activity (other than tree removal) on the face of a ravine bluff or lake bluff;

[\[4\]](#)

[For all circumstances where a fill permit is required pursuant to Chapter 272 of this Code; and Here they reference 272 which would include 272-10- exemptions. There is no other logical conclusion and you can't have a dichotomy of rules that contradict themselves.](#)

[\[5\]](#)

In Lieu of the above please reference the specific permit required and the justification for the parameters that have been exceeded.

Thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Botcher <sbotcher@villageoffoxpoint.com>
Sent: Thursday, December 21, 2023 4:00 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

Thank you for taking the time to meet with Scott and me. I sincerely appreciate the questions you posed and comments you made regarding our Ordinances. After doing some research and discussing this matter with our Village Attorney, I carefully considered your comments and questions and have come to the following conclusions:

The phrase "land disturbing activity" is used in several places in State statutes, and defined in those sections, and for the most part the various definitions are very similar.

Wisconsin Statutes Section 236.13(2)(ad)2. says this:

"Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

Wisconsin Statutes Section 281.33(3)(b)1. says this:

The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that: Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

Your question arises in relation to the Village Building Code, Section 756-7 E (1)(a) (2), so the most relevant definition may be from the **State Uniform Dwelling Code (UDC)**, because that is incorporated into the Village Building Code. The definition of the phrase "land disturbing construction activity" in the UDC is:

"Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit or trench dewatering, filling and grading activities. (Wisconsin Administrative Code Section SPS 320.07(46m).)

In my opinion, you have engaged in "Land disturbing activity" as defined by all three citations, above; primarily, but not exclusively, "filling" and/or "change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state" or "any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment"

As such, I agree with Mr. Brandmeier's determination and you should secure the required permits from him. As we indicated, you have the right to appeal this decision to the Board of Appeals.

Sincerely,

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620



From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 8, 2023 5:21 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Hi Scott

I'm a spec writer and have some suggestions for clarification.

As far as 756-7 E I would recommend the following:

Definition of disturbed area is the net area of proposed grading.

Exclusions: Restoration of activities that disturbed the land during the project to original grade are exempt.

Code 272- Erosion control

Definition of disturbed area is the net change in topography that will affect the natural drainage less exemptions listed in 272-10. Restoration and/ or re-grading of the area to original grade after construction activities is exempt.

Erosion control for Areas under 4000 sq.ft.

Excavation and construction activities that will result in temporary storing the excavated materials along with the disturbed land required for the moving of the same will require a mitigation permit to prevent excessive silt from migrating to the adjacent properties in the event of heavy rain. The permit will require the silt fence, covering of piled dirt and / or erosion control fabrics as appropriate to mitigate issues. After the project is completed the contractor or building owner will have 90 days to affect removal and restoration to original grade. If unusual weather or other mitigating conditions are preventing removal within this time frame and extension can be applied for providing silk mitigation procedures are maintained.

Excmptions:

The provision would be exempted if the lot was not within 50' of engineered or natural drainage that would be affected.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Thursday, December 7, 2023 4:43 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

Thank you for your email from earlier today retracting the statements you made below. I can assure you that my task is to apply the code uniformly and I appreciate the comments you have made regarding your interpretations of the code and how they should apply.

I also appreciate that you took time out of your day to meet with the Village Manager (Scott Botcher – copied) and me to discuss your perspective. Based on our discussion this afternoon, I am withdrawing the requirement to submit plans to me subject to Scott's determination. As noted, if after consulting with the Village Attorney Scott agrees with your interpretation, it would appear no permits will be required for grading and drainage. If, however, he is of the opinion that the code does apply and that you have disturbed an area in excess of the threshold then you will have to submit the necessary permits (unless you decide to appeal to the Board of Appeals to have them render a decision). Please note that if you have to hire an engineer to perform the drainage analysis, you should select one of your choosing.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works

Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, December 6, 2023 4:27 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Point.

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Wednesday, December 6, 2023 12:44 PM
To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively

estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I told you that we wouldn't issue any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM
To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

Get [Outlook for iOS](#)

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott
Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help

☐ § 272-10 **Exceptions.**

The following activities are excluded from the requirements of this chapter:

- A. Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.
- B. Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.
- C. Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.
- D. Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.
- E. Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.
- F. Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § **756-10B** of this Code.
- G. Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.
- H. Swimming pool removal. This chapter shall not apply to fill that is placed to fill the void left following the removal of a swimming pool, provided that the excavation is filled to the level of the surrounding grade and provided further that the fill material complies with § **272-4**.

[Added 4-13-2010 by Ord. No. 2010-08]

This

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



Attachment 22

March 13, 2024 Email from Mr. Bencriscutto

From: [Ralph Benciscutto](#)
To: [Scott Botcher](#)
Cc: [Scott Brandmeier](#)
Subject: Re: Fill Permit
Date: Wednesday, March 13, 2024 7:12:34 AM
Attachments: [image001.png](#)
[image.png](#)
[Outlook-2b5a14hf.png](#)
[Fox Point erosion permit response letter to scott vs 3.docx](#)

Mr Botcher

This is not a matter of your opinion. As an official with capacity to enforce both civil and criminal penalties, your enforcement must be backed up by facts both enforceable and defensible in a court of law.

Either you are not reading my comments or not taking the time to read the entire code with the exemptions. That would be negligence and a violation of the State of WI Code of conduct for municipal inspectors. You and the village will be liable for damages and the cost of defense. You are effectively halting the completion of the house and sale now listed at 1.1M which is accumulating taxes and interest daily. You have an obligation to enforce the codes fairly and accurately which you are not doing.

I expect you or Scott to answer my responses and quantify how you come up with the grading or fill requirement after the exemptions. This is what we were meeting about when you had to leave early. Since Scott Brandmeier says it's up to you now than you need to quantify it.

While you are deliberating please tell the forester to allow me to remove the tree- that also will affect the size of the driveway and increase the exemption.

This picture and measurements even include the north easement which is also exempt when having to repair.



Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Botcher <sbotcher@villageoffoxpoint.com>

Sent: Tuesday, March 12, 2024 10:40 AM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

Mr. Brandmeier did not cancel any requirement; he agreed to put enforcement of the permitting requirement in abeyance until I completed my review and rendered a decision. That was made abundantly clear when we met. Further, you both agreed to abide by my decision, whatever it was—that too was discussed fully when you both came into my office.

Consistent with the request and concurrence of you both, I have rendered my decision.

This matter is very simple: you may wish to consider a review by the Board of Appeals or abide by the permit requirements which the Village Engineer has communicated to you.

There is no need for any meeting or further discussions on my part.

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620



From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Monday, March 11, 2024 7:15 PM

To: Scott Botcher <sbotcher@villageoffoxpoint.com>

Subject: Re: Fill Permit

Scott

There is no pending permit application - he cancelled the requirement
Do the three of us need to get together again ?

Sent from my iPhone

On Mar 11, 2024, at 1:42 PM, Scott Botcher <sbotcher@villageoffoxpoint.com> wrote:

Ralph,

I believe I made appropriate and applicable statutory references which incorporated and contemplated both your position and Scott's.

Please feel free to avail yourself of your appeal rights to the Board of Appeals should you see fit, or, fulfill the permitting requirements Mr. Brandmeier has previously communicated.

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620
<image001.png>

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Monday, March 11, 2024 8:47 AM
To: Scott Botcher <sbotcher@villageoffoxpoint.com>
Subject: Re: Fill Permit

Scott

You didn't respond to my response and Scott had dropped the request for the fill and grading permit

Your answer didn't take into account any of the exemptions and requirements for that kind of permit that apply to the project - see below

As far as I know everything was settled

I need to remove that tree and make the driveway bigger - please relay this to the forester so I can get a new culvert permit
Thanks

Sent from my iPhone

On Mar 11, 2024, at 8:33 AM, Scott Botcher
<sbotcher@villageoffoxpoint.com> wrote:

Ralph-

I responded on 12/21/23. Here is the email-

Ralph,

Thank you for taking the time to meet with Scott and me. I sincerely appreciate the questions you posed and comments you made regarding our Ordinances. After doing some research and discussing this matter with our Village Attorney, I carefully considered your comments and questions and have come to the following conclusions:

The phrase "land disturbing activity" is used in several places in State statutes, and defined in those sections, and for the most part the various definitions are very similar.

Wisconsin Statutes Section 236.13(2)(ad)2. says this:

"Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

Wisconsin Statutes Section 281.33(3)(b)1. says this:

The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that: Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

*Your question arises in relation to the Village Building Code, Section 756-7 E (1)(a) (2), so the most relevant definition may be from the **State Uniform Dwelling Code (UDC)**, because that is incorporated into the Village Building Code. The definition of the phrase "land disturbing construction activity" in the UDC is:*

"Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition,

excavating, pit or trench dewatering, filling and grading activities. (Wisconsin Administrative Code Section SPS 320.07(46m).)

In my opinion, you have engaged in "Land disturbing activity" as defined by all three citations, above; primarily, but not exclusively, "filling" and/or "change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state" or "any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment"

As such, I agree with Mr. Brandmeier's determination and you should secure the required permits from him. As we indicated, you have the right to appeal this decision to the Board of Appeals.

Sincerely,

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620
<image002.png>

From: Ralph Bencrisutto <ralphb@towerenergypartners.com>
Sent: Friday, March 8, 2024 2:42 PM
To: Scott Botcher <sbotcher@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Scott- You never responded to this and Scott Brandmeier is referring back to you. Unless you give me a basis for a permit to apply for there will be no permit application that is relevant and an appeal would be a waste of everyone's time and money. Please read my response again and let me know where you think I'm mistaken.

If you want to meet again let's do so and make sure we have enough time to delve into the requirements. It would be better if Mike was also there since he is an expert on the codes and could help clarify.

Let me know
thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Friday, December 22, 2023 2:56 PM

To: Scott Botcher <sbotcher@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Cc: Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: Re: Fill Permit

Hi Scott

Thanks for delving into this.

Defining " land disturbing activity " would be relevant to the permit being applied for and its intended purpose. Please look this over again before I appeal.

1.

As far as permit application are you saying that the exemptions in 272-10 do not apply?

[§ 272-10 Exceptions.](#)

The following activities are excluded from the requirements of this chapter:

[A.](#)

Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.

[B.](#)

Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.

[C.](#)

Berms. This chapter shall not apply to the construction of a

berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.

D.

Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.

E.

Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.

F.

Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § [756-10B](#) of this Code.

G.

Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.

E.

Drainage.

(1)

	Village of Fox Point, WI: Permits. § 756-7E Drainage. Grading of lots. A drainage plan is required: For applications for the construction of a new principal building; For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more; For
---	---

Grading of lots. 756-7E provision (we are not grading)

(a)

A drainage plan is required:

[1]

For applications for the construction of a new principal building;

This is an addition

[2]

For applications for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more;
There is no man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. The grass has been replanted.

[3]

For applications for land disturbing activity (other than tree removal) on the face of a ravine bluff or lake bluff;

[4]

For all circumstances where a fill permit is required pursuant to Chapter 272 of this Code; and Here they reference 272 which would include 272-10- exemptions. There is no other logical conclusion and you can't have a dichotomy of rules that contradict themselves.

[5]

In Liew of the above please reference the specific permit required and the justification for the parameters that have been exceeded.

Thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Botcher <sbotcher@villageoffoxpoint.com>

Sent: Thursday, December 21, 2023 4:00 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Cc: Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

Thank you for taking the time to meet with Scott and me. I sincerely appreciate the questions you posed and comments you made regarding our Ordinances. After doing some research and discussing this matter with our Village Attorney, I carefully considered your comments and questions and have come to the following conclusions:

The phrase "land disturbing activity" is used in several places in State statutes, and defined in those sections, and for the most part the various definitions are very similar.

Wisconsin Statutes Section 236.13(2)(ad)2. says this:

"Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

Wisconsin Statutes Section 281.33(3)(b)1. says this:

The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that: Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

Your question arises in relation to the Village Building Code, Section 756-7 E (1)(a) (2), so the most relevant definition may be from the **State Uniform Dwelling Code (UDC)**, because that is incorporated into the Village Building Code. The definition of the phrase "land disturbing *construction* activity" in the UDC is:

"Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit or trench dewatering, filling and grading activities. (Wisconsin Administrative Code Section SPS

320.07(46m).)

In my opinion, you have engaged in "Land disturbing activity" as defined by all three citations, above; primarily, but not exclusively, "filling" and/or "change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state" or "any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment"

As such, I agree with Mr. Brandmeier's determination and you should secure the required permits from him. As we indicated, you have the right to appeal this decision to the Board of Appeals.

Sincerely,

Scott A. Botcher
Village Manager
Village of Fox Point
414-247-6620
<image002.png>

From: Ralph Bencrisutto <ralphb@towerenergypartners.com>
Sent: Friday, December 8, 2023 5:21 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Hi Scott

I'm a spec writer and have some suggestions for clarification.

As far as 756-7 E I would recommend the following:

Definition of disturbed area is the net area of proposed grading.

Exclusions: Restoration of activities that disturbed the land during the project to original grade are exempt.

Code 272- Erosion control

Definition of disturbed area is the net change in topography that will affect the natural drainage less exemptions listed in 272-10. Restoration and/ or re-grading of the area to original grade after construction activities is exempt.

Erosion control for Areas under 4000 sq.ft.

Excavation and construction activities that will result in temporary storing the excavated materials along with the disturbed land required for the moving of the same will require a mitigation permit to prevent excessive silt from migrating to the adjacent properties in the event of heavy rain. The permit will require the silt fence, covering of piled dirt and / or erosion control fabrics as appropriate to mitigate issues. After the project is completed the contractor or building owner will have 90 days to affect removal and restoration to original grade. If unusual weather or other mitigating conditions are preventing removal within this time frame and extension can be applied for providing silk mitigation procedures are maintained.

Excmptions:

The provision would be exempted if the lot was not within 50' of engineered or natural drainage that would be affected.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Thursday, December 7, 2023 4:43 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

Thank you for your email from earlier today retracting the statements you made below. I can assure you that my task is to apply the code uniformly and I appreciate the comments you have made regarding your interpretations of the code and how they should apply.

I also appreciate that you took time out of your day to meet with the Village Manager (Scott Botcher – copied) and me to discuss your perspective. Based on our discussion this afternoon, I am withdrawing the requirement to submit plans to me subject to Scott's determination. As noted, if after consulting with the Village Attorney Scott agrees with your interpretation, it would appear no permits will be required for grading and drainage. If, however, he is of the opinion that the code does apply and that you have disturbed an area in excess of the threshold then you will have to submit the necessary permits (unless you decide to appeal to the Board of Appeals to have them render a decision). Please note that if you have to hire an engineer to perform the drainage analysis, you should select one of your choosing.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, December 6, 2023 4:27 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>;
Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: Fill Permit

Scott

You continue to bend the codes for the purpose of requiring this permit. The disturbed area is less than the proposal since we removed all the fill and didn't grade the yard. The only area disturbed is the addition itself. Top dressing is excluded and is allowed without a permit. You somehow draw it into your disturbed area footprint- this is not relative. The driveway and patio are exempt and there is no minimum or maximum on the gravel fill for either in the exemption of the code. Landscape boulders are not fill by definition and you're trying to include that is again a misrepresentation.

Municipal codes and laws are written to eliminate interpretation by the inspector or building owner. You cannot require permits for what is exempt. The landowner can do what they want. If you have told contractors or owners in the past that the code is

intended to mean what you want it to mean then you have fraudulently misrepresented the requirements at the cost of an expensive and time delaying process of an unneeded engineering and permit procedure. I would like a list of any contractor you told this same requirement to along with the homeowners.

After calling North Shore per your recommendation, he stated there is no basis for an erosion or fill permit for a code that doesn't exist and that you have been involved in this requirement with other homeowners. Recommending him by the way is a violation of the Wisconsin ethics code concerning municipal employees and that alone would be a reason for an investigation of malice or ulterior motives. If you did that in Milwaukee you would be fired.

I am giving notice that I will not be providing you with an engineered plan based on landscaping that does not require a permit. If you stop the project or do not give occupancy based on this fraudulent misrepresentation, we will file an action for damages with attorney's fees which will include you personally. Accusations of fraud and/ or malice would not be defended by the city attorneys on your behalf.

I have tried to work with you but you are being either negligent in your interpretation, willfully negligent for malice or guilty of fraud by inducement. For what purpose I guess we will find out.

I expect a retraction of your threat of action in writing by Friday. If not received I will start an action for damages and file a grievance with Fox Pint.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image001.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Wednesday, December 6, 2023 12:44 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>;

Michael Rakow <mrakow@villageoffoxpoint.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: Fill Permit

Ralph,

As you know, Mike and I have been very patient with this project and how it has been managed (for lack of a better term). In driving past earlier today, I noticed that more boulders were placed which, if you recall, I noted that these fall into the fill category. After all of the discussions we've had, honestly it appears you are thumbing your nose at the process. Please understand we are not treating you any differently than anyone else; when fill is needed to build a development, those applying for a permit understand the need and the requirement for the permit.

So, as I look at the grading plan you submitted to our office in May combined with what we've observed on the site, you are required to perform the following:

1. Prepare a grading and drainage plan and perform an analysis to ensure there is no adverse impact to the adjacent property owners. Your plan from May 2023 noted a disturbed area of 4,458 sq. ft.; however, the area disturbed is significantly larger than that based on observations of the site (refer to the screen shot below). Basically, it appears you have disturbed over 12,000 sq. ft (and that is being conservative given that I did not include the half the area on the Lake Drive side. Anything over 8,000 sq. ft. of disturbance requires a permit.
2. You will also need a fill permit. Again, the drawing you submitted showed grades being increased by at least one to two feet around the house and in the driveway area. While exceptions are in the code for driveways, what is meant by that is you can deduct up to one foot of that area from the fill calculation (in your case, this assumes 8-inches of stone for the subgrade and 4-inches of concrete). Anything extra is extra fill you need to meet the grade of the house. Based on the drawings you submitted to the building board, the size of the driveway was planned to be 36-feet wide by 34-feet, 8-inches from the property line. Please note that I estimate the driveway shrunk by the Village maple tree and, in my calculations, I have deducted an area of approximately 18-feet wide by 8-foot in length from the property line. So, the area of the driveway is approximately 1,100 square feet (1,248 sq. ft. minus 144 sq. ft.). Conservatively estimating you needed 9-inches of extra fill to get the driveway to subgrade, that equates to about 830 cubic feet or about 30 cubic yards – already exceeding the 25 yards in the fill permit condition. When you add in the fill you already added along the driveway, with the boulders, in the back by the patio, etc., you more than exceed the 25 cubic yards.

As I mentioned, Ralph, we've been patient and will continue to be patient – to a degree. Here is the expectation – a few weeks ago I

told you that we wouldn't issue any citations if you (a) cleaned up the site and (b) submitted a grading and drainage plan to me in four weeks. That plan is due next week Friday (12/15/23). Given that, based on my calculations, more area was disturbed than what was reported to us and that the fill permit does apply based on my calculations, I am providing you with a new date – I will need the permit applications and all supporting information submitted to me by December 29, 2023. If these are not received, I will issue a stop work order and will recommend issuance of citations. Please also understand, as I've said repeatedly, we will not issue occupancy until these permits have been obtained.

In addition to the screen shot, I have included the plan you submitted to our office along with a link to your permit file (<https://foxpoint.ags.ruekert-mielke.com/Documents/20230613204120932.pdf>).

Respectfully,

Scott

<image003.jpg>

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, December 4, 2023 9:04 AM
To: Ralph Bencrisutto <ralphb@towerenergypartners.com>;
Michael Rakow <mrakow@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: Fill Permit

Ralph,

That is an incorrect interpretation of the code. While driveways are included as an exemption, that doesn't mean you get to bring in 2 feet of fill and then place stone and then the driveway. I explained that to you last week when I stopped by. I've always told developers that they can exclude about 9-12 inches of the driveway area from the fill calculation because that is what is intended in the exemption.

The boulders and stone adjacent to the drive also qualify as fill under the ordinance.

If you recall our conversations when you were looking to get the permits before construction even began, I explained to you that absolutely no fill would be permitted and the grades around the house will have to match what existed before construction. Based on what I observe, the current grades do not match the pre-development grades.

As I also said last week, an occupancy permit will not be issued if the grades don't match the pre-development grades unless you obtain the necessary permits.

Scott

Get [Outlook for iOS](#)

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Friday, December 1, 2023 4:18:01 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Fill Permit

Hi Scott

Thanks for meeting me today. I have a call out to North Shore but I needed to give them a scope of work.

In reviewing Code 272- the exception to the permit requirement is in 272-10. As noted below we are in compliance since the front yard is top dressing, the patio and driveway are exempt, and the minor grading is to pitch away from a residential structure, does not change the flow and will be a mulch finished detail in front of the rock. I likely will lower the patio regardless since I think it's too high but it will not change the direction of the flow.

If I am incorrect in this assumption please let me know
Thanks for your help
<image004.png>

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

<image001.png>

Attachment 23

March 19, 2024 Email to Mr. Bencriscutto

From: [Scott Brandmeier](#)
To: [Ralph Benciscutto](#)
Cc: [Scott Botcher](#); [Christine Symychych](#); [Scott Brandmeier](#)
Subject: RE: 8339
Date: Tuesday, March 19, 2024 4:36:00 PM
Attachments: [image001.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[8339 N Lake Drive Grading-Drainage Site Plans_05-31-23.pdf](#)
[8339NL - 1.PDF](#)
[8339 Lake.pdf](#)
[IMG_2062.jpg](#)
[IMG_2065.jpg](#)
[image007.png](#)
[image007.png](#)
[image008.png](#)

Ralph,

I appreciate your passion as it relates to this matter; but, frankly, I do believe it is misguided by a desire to not fulfill any of the permit requirements. This isn't something that just sprang out of a meeting with you, Scott Botcher and me in December 2023; rather, this dates back to when you first sought a building permit for the project (which dates back to 2022 but my involvement began in May 2023). On May 23, 2023, I informed your designer (Tom from Stack Design Group) what portions of the Village Code applied based on the site plan that had been submitted to our office. In the email to him, I referenced the permits needed and Stack Design Group, on your behalf, submitted a proposed grading plan dated May 31, 2023 depicting a disturbed area of approximately 4,500 square feet (refer to the attached titled 8339 N Lake Drive_Grading-Drainage_Site Plans_05-31-23). Also on May 23, 2023, Tom from Stack Design Group responded by noting "there is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer."

I responded to Tom's email on May 24, 2023 (on which you were copied) noting that "it appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of the Village Code. This may, as they saying goes, kick the can down the road." I noted a couple of other things in that email which are important to the discussion:

1. I pointed out that the foundation for the addition would be sticking out of the ground about 12-18 inches around the addition if you matched the first floor elevation of the existing structure (which is shown on the drawing as being at an elevation of 682.60). This was pretty easy to determine from the drawing your designer submitted to the Village; namely, it showed a grade elevation of 681 around the addition and the existing elevation of the ground in the area being about 679 to 680 (spot elevations depict 679.18, 679.68, etc.). The grades slope away from the addition down to 680 then 679 and then tie into what was purportedly the existing grades.
2. I also noted that construction of driveways are exempt from needing a fill permit **"unless you have to add a foot of soil for the driveway and then the stone."** Please refer to my additional comments below for more details on the applicability of the fill ordinance.

On June 12, 2023, you submitted a revised drawing to Mike Rakow and me (refer to attached drawing titled 8339NL-1 dated June 9, 2023) which reflected a disturbed area of 2,115 square feet and a small dirt stockpile area. The earlier drawing that was submitted was modified to show no grading or fill around the existing house or addition. In fact, in your email, you noted that the drawing you sent "is the final plan with no grading or fill left on site. Please disregard and discard any previous plans." On June 13, 2023, I sent you the erosion control permit approval letter (attached as 8339 Lake) and in it noted the following (among other things):

- A. Paragraph 2 notes that should you disturb more than 4,000 square feet "the project must stop and you will be required to submit the grading and drainage permit application along with an analysis of the pre- and post-development flows in the 2-, 10- and 100-year storms."
- B. Paragraph 3 specifically noted that "no fill is permitted to be added to the site and that a post-development as-built survey will be required to document that fill has not been added. An occupancy permit will not be issued until the as-built survey is submitted and approved."
- C. Paragraph 4 further noted "that any future land disturbance activities will need to include the work performed under this permit. So, the appropriate permit applications will be determined based on the sum of the disturbed areas done under this permit plus any future disturbance. For example, should you or a subsequent resident or owner elect to add fill to the site or disturb an area that, combined with the approximate 2,100 square feet of disturbed area under this permit, exceed 4,000 square feet, the permits required would be based on the total impact to the site. Future permit requirements may include, but not be limited to grading and drainage, erosion control and fill."

To suggest that you were not aware of the requirements of the Village Code nor the conditions upon which the erosion control permit was issued simply ignores the documented correspondence between the parties. The fact of the matter is that your actions and those of your contractors have led us to where we are today; namely, you disturbed a far greater area than what was shown on the June 9, 2023 drawing (the drawing used for the basis of the erosion control approval) and placed fill in site of being informed in the June 13, 2023 letter that "no fill is permitted to be added to the site." Yours and your contractor's actions have ultimately triggered the applicability of the ordinance once you exceeded the threshold identified in Village Code. One cannot now argue that I should have required the grading and drainage permit in June when your submittal noted you would disturb less than 4,000 square feet; it is a non sequitur. Rather, I appropriately informed you of the requirements should you exceed the thresholds in the code.

As work on your project progressed, it became increasingly evident that you had no intent to abide by the June 9, 2023 drawing and June 13, 2023 approval letter. In fact, as shown on the attached pictures (2062 and 2065) from November 2023, not only did you disturb a large area (and expand the disturbance beyond what was approved) you placed the spoils over a large portion of the site. This, as Scott Botcher concluded, met the definition of disturbed area. Based on what was observed on site and clearly seen in the photographic documentation, your disturbed area was far greater than the approximate 2,100 square feet you noted would be disturbed on your June 9, 2023 drawing. Looking at the site, I had identified for you approximately 12,000 square feet of disturbed area in my December 6, 2023 email to you and Mike Rakow (see screenshot below). This was based on areas over which you spread fill, drove on the site, disturbed the ground, etc. and was a conservative estimate which excluded a large portion of the yard along Lake Drive.

At your behest, I have performed three additional screenshots (dated March 19, 2024) which shows a three perspectives of the disturbed areas – the first one only includes the area within the property lines (at your request) and the second shows that area plus the area within the Village right of way. **Please note that this does not mean we agree with your interpretation of what constitutes a disturbed area – it is simply done for the purposes of responding to your questions. Rather, the actual disturbed area, based on the definition provided to you by Scott Botcher, includes an additional 5,200 square feet along Lake Drive as well as the approximate 8,200 square feet in the yard and approximate 1,800 square feet in the Village right of way (refer to the third screen shot under the March 19, 2024 caption).** Even assuming for sake of argument that the area along Lake Drive and the area within the Village right of way along Dean is not included, your disturbed area exceeds 8,000 square feet.

Clearly, you have disturbed an area greater than 4,000 square feet and therefore the requirements of Section 756-7(E)(1)(a) apply (a drainage plan is required for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more). By virtue of the documented evidence and the definition of disturbed area, this section of the code applies to the work you are performing at the site and the grading and drainage plan is required for the work.

With respect to your other questions – namely, whether you are subject to the fill ordinance is dependent, as I noted to you in our meeting with Scott Botcher, on the elevations that will be presented to us in the grading and drainage analysis. However, based on my observations and the drawings you have submitted, it does appear as though you or your contractor's have placed more than 25 cubic yards of fill on the property. You have asked why the exemptions do not apply to what you have done and, while I've explained this multiple times before, will reiterate my prior comments:

- I. The fill ordinance, Chapter 272, was adopted by the Village Board around 2004 (which predates me). When I started, I noticed that there were no exceptions within the code (what is now currently Section 272-10) and spoke with the Manager at that time as well as our Village Attorney and noted that some exceptions needed to be adopted. You refer, for instance, to the driveway exception. The intent of this exception is to allow a person to remove and replace a driveway or patio in kind – prior to the exceptions being adopted in 2010, anyone replacing a driveway or patio would have been required to obtain a fill permit. This exception is not, however, intended to apply to a project where the grade of the house is increased (in your case almost three feet from what existed before the start of construction to match the first floor elevation of the existing structure before work began). One cannot argue that all of the fill beneath the driveway is exempt from the requirements of Chapter 272 as that was never the intent of the code. Nonetheless, I use that exemption and note to applicants that they can deduct approximately 10 inches (4 inches for concrete or asphalt and 6 inches for stone) over the area of the driveway from the calculation of the fill being placed on the site.
- II. Top dressing is generally considered a few inches of topsoil; you are arguing that the entire area where you filled is considered top dressing. That does not follow and is not the case. Top-dressing involves adding a thin layer of soil, organic matter or compost to the grass to create a smooth surface thereby eliminating any bumpy or uneven surfaces. So, in the case of a fill permit, applicants usually exclude the upper 4 inches of soil placed on the site to account for top dressing – not, as in your case you are attempting to do – the entire amount of fill placed on the site.
- III. One of the ironies in your request is that the very code you say shouldn't apply (Chapter 285) is the section of the code you use to make your argument that what you have done is considered landscaping. As we've noted before, one cannot use the exemptions in one part of the code (in your case, you appear to focus on the exemptions in Chapter 272) to apply to other parts of the code (be it Chapter 285 or Section 756-7).

No doubt, you will continue to argue ad nauseum that what you are doing should be exempt from the permit requirements. However, combined with all of our prior correspondence and the information contained herein, the Village Code clearly applies to the work you have done on the site. I do find it interesting that you continue to argue that our Village Code is subject to negotiation and compromise; it is not. I cannot deviate from the code and its applicability; to do so for the benefit of one applicant (you) would set a precedent for future applicants and is both unethical and improper and to ask me to do so is unethical. You were keenly aware of the permit requirements in June 2023 – it isn't as though this caught anyone off guard.

I look forward to you submitting the grading and drainage analysis to my attention. Upon review of the final grading plan, we can certainly confirm whether the fill ordinance applies to the work you have done. Based on my observations, however, it does appear as though you have placed more than 25 cubic yards of fill as defined by Section 272-4.

With all due respect, the code is very clear on its applicability to the work on your site and, if you elect not to submit the required permits your only recourse is to request a hearing before the Board of Appeals as Scott Botcher noted in December and reiterated to you recently.

Sincerely,

Scott

December 6, 2023 screenshot



March 19, 2024 screenshots



Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Monday, March 18, 2024 4:18 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <scottbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>
Subject: Re: 8339

Scott

section 285 refers to bluffs and we have never referenced that- nor does it apply here.

☐ § 285-1 **Purpose.**

Because of the danger of erosion or increasing the erosion of the banks of ravines and the Lake Michigan bluff, and the possibility of disturbing the natural runoff of surface and percolating water which in either case could lead to the partial or complete collapse of buildings; to promote the public health, safety and welfare; to ensure proper access for fire, emergency and police vehicles; to preserve the natural beauty of the ravines and bluffs; and to protect the natural environment, the regulations hereinafter set forth are hereby established.

Just explain to me why the exemptions don't apply and justify your requirement. The exemptions can't get any clearer. How do I apply for a permit to do nothing.

1. Show me where it says in the code you can only add 12" of fill for a driveway or patio
2. Show me how landscaping and top dressing are not exempt
3. Show me where boulders are considered fill for grading purposes- how would a decorative boulder affect drainage? and how would that fit into a drainage and grading plan.
4. Explain how the drainage ditch is not exempt from repairs - you have this in the drawing along with the driveway, sidewalks, stoops and patio.
5. Explain how you come up with 12000 sq.ft. of disturbed area-even your own definition of disturbed area clearly states that the landscaping activities are exempt. We are required to repair the grass as is done in any construction site.
6. Explain why you didn't require the grading permit in the beginning but now you want it- even though that permit must be approved before construction begins. This required a bond, plan review etc. - you don't do it after its completed and show that you did nothing.
7. There was no fill brought into the site except for the top dressing of 12 yards. All the dirt from the excavation was removed- all of it and then some.
8. We did get the erosion permit even though we were under the minimum per your request to satisfy the neighbors- That was not needed either but we paid 400.00 for it regardless.

As a compromise I will hire a civil engineer to do final elevations. That was the only requirement for the original permit you asked for after our grading. Since we never graded anything I assumed we didn't need it but I will do that as a compromise. With that done there can be no dispute.

Let me know

Ralph Benciscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Monday, March 18, 2024 2:48 PM
To: Ralph Benciscutto <ralphb@towerenergypartners.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: RE: 8339

Ralph,

It appears from your email that you are asking me to reassess what is and isn't a disturbed area. I sent you an email in December 2023 that noted the disturbed area (including the drawings you had submitted in May which reflected over 4,000 square feet of disturbed area) and included a figure that reflected an amount that was over 12,000 square feet (which was quite conservative because it excluded the area that abutted the path along Lake Drive). Given what is on site currently, it also appears as though the area along Lake Drive was disturbed which then increases the amount reflected in the December 2023 email.

I do believe Scott Botcher already mentioned that, based on his research, the applicable sections of the code apply to the work you have done and continue to do at the property and he mentioned this in his emails to you. The question that you have is whether the exceptions in one section of the code (Chapter 272) apply to another section of the code (Chapter 285) and they do not. Unfortunately, you continue to argue that they do apply. You ask that the fill permit not apply for the project but ignore prior emails I sent to you regarding this matter. In an email from May 2023, I noted that while driveways are generally exempt from the fill permit requirements I added that was unless you added, for example, a foot of fill to allow you to build the driveway and then placed the stone above the fill.

I understand your desire to meet to discuss this matter, but we did that in December 2023; you provided your interpretation of the code and I noted mine. Scott Botcher then thoroughly researched the matter and provided you with his response that what you did on the site was a land disturbing activity subject to the code. He also provided you with his determination of the applicability of the fill ordinance. Unless you have a rationale or explanation or further evidence beyond what you presented in December 2023 at our last meeting, I don't think another meeting will accomplish much; that is, you will walk away believing that the code doesn't apply to you and we will be stuck in this perpetually circular debate where you believe it doesn't apply in spite of a determination by the Manager that it does apply. Again, if you seek a different opinion on the matter, you should appeal the determination to the Board of Appeals.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Monday, March 18, 2024 12:50 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>
Subject: Re: 8339

Scott
Thanks for your response.

We would have had a different conclusion if Scott had more time. He did not take the time to answer the exemptions and made a conclusion on the semantics of "land disturbing"

What I'm not seeing is how the project now exceeds the original scope. The exemptions are the same.

This description is right out of your own code book- not a google search and it clearly exempts landscaping etc as part of the description.

285-39{9} LAND-DISTURBING CONSTRUCTION ACTIVITY



 Code / Ch 285: Stormwater Management, Erosion Control and Bluff Regulation / Ch 285 Art IV: Construction Site Erosion Control / 285-39: Definitions.

Any man-made change of the land surface including removing vegetation cover, excavating, filling and **grading**, but not including agricultural land uses such as planting, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

§ 272-10 Exceptions.

The following activities are excluded from the requirements of this chapter:

A.

Top dressing. This chapter shall not apply to customary top dressing or fertilizing of lawns and gardens.

B.

Patios and driveways. This chapter shall not apply to construction of block or concrete patios, or driveways permitted under the Village Code, or the filling of such areas with soil after they have been removed from the property.

C.

Berms. This chapter shall not apply to the construction of a berm of 2.5 feet or less in height, provided the berm shall not change the capacity or rate of flow of water so as to adversely effect the drainage of surface water in the vicinity of the berm.

D.

Existing barrier repair. This chapter shall not apply to the repair of an existing lake or stream barrier.

E.

Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.

F.

Razing activities. This chapter shall not apply to fill that is placed following razing activities that are regulated by § 756-10B of this Code.

G.

Trench filling. This chapter shall not apply to fill that is placed into a trench that is excavated for utility or drainage purposes, provide the trench is filled to the level of the preexisting grade.

I can't even apply for the permit unless we agree on the scope. Your letter outlining the basis includes the driveway, easements, planters, landscaping, decorative boulders, patio etc. The driveway and patio didn't need a fill permit and the easement should not be included. I also removed the dirt under the patio. Top dressing is not grading and that affects the scope per your letter- you included all of it. Since it was your original assessment that I changed the scope than I would ask you to quantify that and agree that driving on the grass is not a parameter for this expensive permit. And with no grade change proposed- what is the basis for the permit to apply for? What plan would there be to submit? Logically how would the driveway fill affect drainage since it has to slope to the road which is lower. That's why they are exempt.

Let's meet again and work this out. Mr Botcher referred to follow what you are requiring- that's what we are discussing- not changing the code. I've paid over \$ 4000.00 in permits to date and am not trying to get out of anything. This will be the fourth time I've asked you to re- quantify your assessment. If we meet on site perhaps you will things differently since we have done a lot of work to clean up the site and you can now see the original grass growing back.

thanks for your re-consideration.

Ralph Bencrisutto

President

ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Monday, March 18, 2024 9:46 AM

To: Ralph Bencrisutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>

Subject: RE: 8339

Ralph,

Thank you for your email. I have included Scott Botcher and Christine Symchych on this response as Scott is the individual who rendered the decision on your request in December and Christine is included as you have recently emailed her with your concerns.

In your note below, you have demanded that I respond by the end of the day today and I am providing you with that courtesy with this response. Please understand that, contrary to what you note below, the Village Code is not subject to negotiation. That is, an individual or business cannot come to the Village and note that they want to build something and then dictate or negotiate the terms under which that development is to occur. In your case, if you recall, you were informed prior to the start of the addition that your project likely fell into the categories/criteria requiring you to perform the grading and drainage analysis and applying for the fill permit. You, however, noted you would stay below the thresholds and I noted that if at any point those thresholds would be exceeded that the requirements would then apply.

In November and December of last year it became apparent that you exceeded the thresholds identified in the code and I reiterated that the permit applications would apply to your project. You disagreed with my conclusion and asked to have Scott Botcher determine whether the requirements for fill and grading and drainage applied. Both of us, prior to meeting with Scott, agreed to be bound by his decision. He researched the matter and rendered his decision – namely, that your project did fall within the thresholds identified in the code and that you did need to submit the applications to me. You have elected to not do so and I cannot overrule his decision – contrary to what you note below.

Whether the Forester issues you permission to remove the Village street tree or not is immaterial in this matter; the issue truly is your reluctance to file the necessary permit applications per Scott's decision. Further, as he has noted, you can appeal his decision to the Board of Appeals. If I am not mistaken, I believe that can be done with a simple email request and payment of appropriate fee upon which a meeting would be scheduled for the Board of Appeals. Please understand that neither Scott Botcher nor I are members of the Board of Appeals but includes residents of the Village of Fox Point.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Sunday, March 17, 2024 7:33 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: 8339

Scott

First off- a decision by the supreme court (or any court)doesn't come without detailed justification- I have no idea why you will not provide that.

The appeals process has Botcher on the committee. The same for ethics complaints. This makes no sense when filing a complaint or appeal. This forces me to hire an attorney. Unfortunately that process will end up listing you and Botcher personally along with the village.

I've asked for another meeting and a quantified response which you have not done. If you are planning a response, I will hold off giving you time to quantify your requirement. If you do not respond by the end of the day Monday I will assume you have no interest in negotiating.

The forester has stated you are holding up the permit for the tree. If that is the case you are holding up finishing of the project.

Please confirm in writing you are not allowing the tree removal and the new culvert along with it.

Ralph Bencriscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

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2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



Attachment 24

March 20, 2024 Email to Mr. Bencriscutto

From: [Scott Brandmeier](#)
To: [Ralph Bencriscutto](#)
Cc: [Scott Botcher](#); [Christine Symchych](#); [Scott Brandmeier](#)
Subject: Re: 8339
Date: Wednesday, March 20, 2024 8:15:10 AM
Attachments: [image.png](#)
[Outlook-x5xo1rpu.png](#)

Ralph,

As I noted yesterday, you will continue to argue ad nauseum that the code does not apply to you. With all due respect, we sought the advice of counsel on this matter and we were provided with legal definitions of disturbed area. You have provided nothing to refute that other than your opinion.

You have heard and read our position on this matter and I cannot spend countless hours in an endless debate with you simply because you feel the code doesn't apply to you. As Scott noted, you can either submit the necessary applications or appeal the determination to the Board of Appeals. Further, as has been noted, no occupancy permit can be issued until you have submitted the appropriate applications.

Respectfully,

Scott

Get [Outlook for iOS](#)

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Wednesday, March 20, 2024 7:29 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>
Subject: Re: 8339

Scotts

Some additional clarification from your analysis is needed : This will be in our report.

1. We had to remove all the clay that we excavated even under the driveway and patio because it couldn't be smoothed out. That's why it was moved off the driveway to the yard and picked up later. This plan was our scope that you approved initially and we did not change it.
2. The scope of "disturbed area" per the grading chapter 285 which is in the grading and fill section application clarifies what the definition is relative to- only the area to be graded. This is the only definition that is relative. This would also exclude the addition. That is why the application is required before starting since if the house is placed where it would change the flow to the neighbors it would be denied. It could not be corrected by grading after the house is built.
3. If we are not doing any grading of the remaining disturbed area than the permit application is not needed since we won't have a plan to review. We will still provide you with the as built to confirm.
4. Fill under the driveway, sidewalks, planters and patio are irrelevant to the grading because the driveway and patio and garage cannot be graded, That's why they are exempted. The driveway is continuous from the entire garage.

285-39{9} **LAND-DISTURBING CONSTRUCTION ACTIVITY**



 **Code** / Ch 285: Stormwater Management, Erosion Control and Bluff Regulation / Ch 285 Art IV: Construction Site Erosion Control / 285-39:

Definitions.

Any man-made change of the land surface including removing vegetation cover, excavating, filling and **grading**, but not including agricultural land uses such as planting, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

grading (1)

Thanks again

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

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2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Ralph Bencriscutto

Sent: Tuesday, March 19, 2024 5:31 PM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>

Subject: Re: 8339

Scott-

Thanks for quantifying your requirement.

I will comply with the final grading plan you have requested with elevations done by a civil engineering firm. Then you can respond accordingly.

I can get you the receipts for the top soil that was added for top dressing - 13yards. A lot is against the house but we were just planting seed. The rest of the gravel was for the patio and driveway.

Let's both agree to work together in the best interest of all and discuss any differences in a professional manner.

Thanks again

Sent from my iPhone

On Mar 19, 2024, at 4:36 PM, Scott Brandmeier <sbrandmeier@villageoffoxpoint.com> wrote:

Ralph,

I appreciate your passion as it relates to this matter; but, frankly, I do believe it is misguided by a desire to not fulfill any of the permit requirements. This isn't something that just sprang out of a meeting with you, Scott Botcher and me in December 2023; rather, this dates back to when you first sought a building permit for the project (which dates back to 2022 but my involvement began in May 2023). On May 23, 2023, I informed your designer (Tom from Stack Design Group) what portions of the Village Code applied based on the site plan that had been submitted to our office. In the email to him, I referenced the permits needed and Stack Design Group, on your behalf, submitted a proposed grading plan dated May 31, 2023 depicting a disturbed area of approximately 4,500 square feet (refer to the attached titled 8339 N Lake Drive_Grading-Drainage_Site Plans_05-31-23). Also on May 23, 2023, Tom from Stack Design Group responded by noting "there is a total of 289 yards of excavation. This could be spread on site for final landscaping but the owner will have it hauled away if you prefer."

I responded to Tom's email on May 24, 2023 (on which you were copied) noting that "it appears from my conversation with Ralph and the emails I've received that your goal is to not do some of the site grading, etc. to avoid portions of the Village Code. This may, as they saying goes, kick the can down the road." I noted a couple of other things in that email which are important to the discussion:

1. I pointed out that the foundation for the addition would be sticking out of the ground about 12-18 inches around the addition if you matched the first floor elevation of the existing structure (which is shown on the drawing as being at an elevation of 682.60). This was pretty easy to determine from the drawing your designer submitted to the Village; namely, it showed a grade elevation of 681 around the addition and the existing elevation of the ground in the area being about 679 to 680 (spot elevations depict 679.18, 679.68, etc.). The grades slope away from the addition down to 680 then 679 and then tie into what was purportedly the existing grades.
2. I also noted that construction of driveways are exempt from needing a fill permit **"unless you have to add a foot of soil for the driveway and then the stone."** Please refer to my additional comments below for more details on the applicability of the fill ordinance.

On June 12, 2023, you submitted a revised drawing to Mike Rakow and me (refer to attached drawing titled 8339NL-1 dated June 9, 2023) which reflected a disturbed area of 2,115 square feet and a small dirt stockpile area. The earlier drawing that was submitted was modified to show no grading or fill around the existing house or addition. In fact, in your email, you noted that the drawing you sent "is the final plan with no grading or fill left on site. Please disregard and discard any previous plans." On June 13, 2023, I sent you the erosion control permit approval letter (attached as 8339 Lake) and in it noted the following (among other things):

- A. Paragraph 2 notes that should you disturb more than 4,000 square feet "the project must stop and you will be required to submit the grading and drainage permit application along with an analysis of the pre- and post-development flows in the 2-, 10- and 100-year storms."
- B. Paragraph 3 specifically noted that "no fill is permitted to be added to the site and that a post-development as-built survey will be required to document that fill has not been added. An occupancy permit will not be issued until the as-built survey is submitted and approved."
- C. Paragraph 4 further noted "that any future land disturbance activities will need to include the work performed under this permit. So, the appropriate permit applications will be determined based on the sum of the disturbed areas done under this permit plus any future disturbance. For example, should you or a subsequent resident or owner elect to add fill to the site or disturb an area that, combined with the approximate 2,100 square feet of disturbed area under this permit, exceed 4,000 square feet, the permits required would be based on the total impact to the site. Future permit requirements may include, but not be limited to grading and drainage,

erosion control and fill.”

To suggest that you were not aware of the requirements of the Village Code nor the conditions upon which the erosion control permit was issued simply ignores the documented correspondence between the parties. The fact of the matter is that your actions and those of your contractors have led us to where we are today: namely, you disturbed a far greater area than what was shown on the June 9, 2023 drawing (the drawing used for the basis of the erosion control approval) and placed fill in spite of being informed in the June 13, 2023 letter that “no fill is permitted to be added to the site.” Yours and your contractor’s actions have ultimately triggered the applicability of the ordinance once you exceeded the threshold identified in Village Code. One cannot now argue that I should have required the grading and drainage permit in June when your submittal noted you would disturb less than 4,000 square feet; it is a non sequitur. Rather, I appropriately informed you of the requirements should you exceed the thresholds in the code.

As work on your project progressed, it became increasingly evident that you had no intent to abide by the June 9, 2023 drawing and June 13, 2023 approval letter. In fact, as shown on the attached pictures (2062 and 2065) from November 2023, not only did you disturb a large area (and expand the disturbance beyond what was approved) you placed the spoils over a large portion of the site. This, as Scott Botcher concluded, met the definition of disturbed area. Based on what was observed on site and clearly seen in the photographic documentation, your disturbed area was far greater than the approximate 2,100 square feet you noted would be disturbed on your June 9, 2023 drawing. Looking at the site, I had identified for you approximately 12,000 square feet of disturbed area in my December 6, 2023 email to you and Mike Rakow (see screenshot below). This was based on areas over which you spread fill, drove on the site, disturbed the ground, etc. and was a conservative estimate which excluded a large portion of the yard along Lake Drive.

At your behest, I have performed three additional screenshots (dated March 19, 2024) which shows a three perspectives of the disturbed areas – the first one only includes the area within the property lines (at your request) and the second shows that area plus the area within the Village right of way.

Please note that this does not mean we agree with your interpretation of what constitutes a disturbed area – it is simply done for the purposes of responding to your questions. Rather, the actual disturbed area, based on the definition provided to you by Scott Botcher, includes an additional 5,200 square feet along Lake Drive as well as the approximate 8,200 square feet in the yard and approximate 1,800 square feet in the Village right of way (refer to the third screen shot under the March 19, 2024 caption). Even assuming for sake of argument that the area along Lake Drive and the area within the Village right of way along Dean is not included, your disturbed area exceeds 8,000 square feet.

Clearly, you have disturbed an area greater than 4,000 square feet and therefore the requirements of Section 756-7(E)(1)(a) apply (a drainage plan is required for land disturbing activity requiring a permit that affects the surface area of 4,000 square feet or more). By virtue of the documented evidence and the definition of disturbed area, this section of the code applies to the work you are performing at the site and the grading and drainage plan is required for the work.

With respect to your other questions – namely, whether you are subject to the fill ordinance is dependent, as I noted to you in our meeting with Scott Botcher, on the elevations that will be presented to us in the grading and drainage analysis. However, based on my observations and the drawings you have submitted, it does appear as though you or your contractor’s have placed more than 25 cubic yards of fill on the property. You have asked why the exemptions do not apply to what you have done and, while I’ve explained this multiple times before, will reiterate my prior comments:

- I. The fill ordinance, Chapter 272, was adopted by the Village Board around 2004 (which

predates me). When I started, I noticed that there were no exceptions within the code (what is now currently Section 272-10) and spoke with the Manager at that time as well as our Village Attorney and noted that some exceptions needed to be adopted. You refer, for instance, to the driveway exception. The intent of this exception is to allow a person to remove and replace a driveway or patio in kind – prior to the exceptions being adopted in 2010, anyone replacing a driveway or patio would have been required to obtain a fill permit. This exception is not, however, intended to apply to a project where the grade of the house is increased (in your case almost three feet from what existed before the start of construction to match the first floor elevation of the existing structure before work began). One cannot argue that all of the fill beneath the driveway is exempt from the requirements of Chapter 272 as that was never the intent of the code. Nonetheless, I use that exemption and note to applicants that they can deduct approximately 10 inches (4 inches for concrete or asphalt and 6 inches for stone) over the area of the driveway from the calculation of the fill being placed on the site.

- II. Top dressing is generally considered a few inches of topsoil; you are arguing that the entire area where you filled is considered top dressing. That does not follow and is not the case. Top-dressing involves adding a thin layer of soil, organic matter or compost to the grass to create a smooth surface thereby eliminating any bumpy or uneven surfaces. So, in the case of a fill permit, applicants usually exclude the upper 4 inches of soil placed on the site to account for top dressing – not, as in your case you are attempting to do – the entire amount of fill placed on the site.
- III. One of the ironies in your request is that the very code you say shouldn't apply (Chapter 285) is the section of the code you use to make your argument that what you have done is considered landscaping. As we've noted before, one cannot use the exemptions in one part of the code (in your case, you appear to focus on the exemptions in Chapter 272) to apply to other parts of the code (be it Chapter 285 or Section 756-7).

No doubt, you will continue to argue ad nauseum that what you are doing should be exempt from the permit requirements. However, combined with all of our prior correspondence and the information contained herein, the Village Code clearly applies to the work you have done on the site. I do find it interesting that you continue to argue that our Village Code is subject to negotiation and compromise; it is not. I cannot deviate from the code and its applicability; to do so for the benefit of one applicant (you) would set a precedent for future applicants and is both unethical and improper and to ask me to do so is unethical. You were keenly aware of the permit requirements in June 2023 – it isn't as though this caught anyone off guard.

I look forward to you submitting the grading and drainage analysis to my attention. Upon review of the final grading plan, we can certainly confirm whether the fill ordinance applies to the work you have done. Based on my observations, however, it does appear as though you have placed more than 25 cubic yards of fill as defined by Section 272-4.

With all due respect, the code is very clear on its applicability to the work on your site and, if you elect not to submit the required permits your only recourse is to request a hearing before the Board of Appeals as Scott Botcher noted in December and reiterated to you recently.

Sincerely,

Scott

December 6, 2023 screenshot

<image003.jpg>

March 19, 2024 screenshots

<image002.png>

<image007.png>

<image008.png>

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Monday, March 18, 2024 4:18 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>
Subject: Re: 8339

Scott

section 285 refers to bluffs and we have never referenced that- nor does it apply here.
<image001.png>

Just explain to me why the exemptions don't apply and justify your requirement. The exemptions can't get any clearer. How do I apply for a permit to do nothing.

1. Show me where it says in the code you can only add 12" of fill for a driveway or patio
2. show me how landscaping and top dressing are not exempt
3. Show me where boulders are considered fill for grading purposes- how would a decorative boulder affect drainage? and how would that fit into a drainage and grading plan.
4. Explain how the drainage ditch is not exempt from repairs - you have this in the drawing along with the driveway, sidewalks, stoops and patio.
5. Explain how you come up with 12000 sq.ft. of disturbed area-even your own definition of disturbed area clearly states that the landscaping activities are exempt. We are required to repair the grass as is done in any construction site.
6. Explain why you didn't require the grading permit in the beginning but now you want it- even though that permit must be approved before construction begins. This required a bond, plan review etc. - you don't do it after its completed and

show that you did nothing.

7. There was no fill brought into the site except for the top dressing of 12 yards. All the dirt from the excavation was removed- all of it and then some.
8. We did get the erosion permit even though we were under the minimum per your request to satisfy the neighbors- That was not needed either but we paid 400.00 for it regardless.

As a compromise I will hire a civil engineer to do final elevations. That was the only requirement for the original permit you asked for after our grading. Since we never graded anything I assumed we didn't need it but I will do that as a compromise. With that done there can be no dispute.

Let me know

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image004.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Monday, March 18, 2024 2:48 PM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: RE: 8339

Ralph,

It appears from your email that you are asking me to reassess what is and isn't a disturbed area. I sent you an email in December 2023 that noted the disturbed area (including the drawings you had submitted in May which reflected over 4,000 square feet of disturbed area) and included a figure that reflected an amount that was over 12,000 square feet (which was quite conservative because it excluded the area that abutted the path along Lake Drive). Given what is on site currently, it also appears as though the area along Lake Drive was disturbed which then increases the amount reflected in the December 2023 email.

I do believe Scott Botcher already mentioned that, based on his research, the applicable sections of the code apply to the work you have done and continue to do at the property and he mentioned this in his emails to you. The question that you have is whether the exceptions in one section of the code (Chapter 272) apply to another section of the code (Chapter 285) and they do not. Unfortunately, you continue to argue that they do apply. You ask that the fill permit not apply for the project but ignore prior emails I sent to you regarding this matter. In an email from May 2023, I noted that while driveways are generally exempt from the fill permit requirements I added that was unless you added, for example, a foot of fill to allow you to build the driveway and then placed the stone above the fill.

I understand your desire to meet to discuss this matter, but we did that in December 2023; you provided your interpretation of the code and I noted mine. Scott Botcher then thoroughly researched the matter and provided you with his response that what you did on the site was a land disturbing

activity subject to the code. He also provided you with his determination of the applicability of the fill ordinance. Unless you have a rationale or explanation and further evidence beyond what you presented in December 2023 at our last meeting, I don't think another meeting will accomplish much; that is, you will walk away believing that the code doesn't apply to you and we will be stuck in this perpetually circular debate where you believe it doesn't apply in spite of a determination by the Manager that it does apply. Again, if you seek a different opinion on the matter, you should appeal the determination to the Board of Appeals.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Monday, March 18, 2024 12:50 PM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Cc: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>
Subject: Re: 8339

Scott
Thanks for your response.

We would have had a different conclusion of Scott had more time. He did not take the time to answer the exemptions and made a conclusion on the semantics of "land disturbing." What I'm not seeing is how the project now exceeds the original scope. The exemptions are the same.

This description is right out of your own code book- not a google search and it clearly exempts landscaping etc as part of the description.

<image005.png>

<image006.png>

I can't even apply for the permit unless we agree on the scope. Your letter outlining the basis includes the driveway, easements, planters, landscaping, decorative boulders, patio etc. The driveway and patio didn't need a fill permit and the easement should not be included. I also removed the dirt under the patio. Top dressing is not grading and that affects the scope per your letter- you included all of it. Since it was your original assessment that I changed the scope than I would ask you to quantify that and agree that driving on the grass is not a parameter for this expensive permit. And with no grade change proposed- what is the basis for the permit to apply for? What plan would there be to submit? Logically how would the driveway fill affect drainage since it has to slope to the road which is lower. That's why they are exempt.

Let's meet again and work this out. Mr Botcher referred to follow what you are requiring- that's what we are discussing- not changing the code. I've paid over \$

4000.00 in permits to date and am not trying to get out of anything. This will be the fourth time I've asked you to re- quantify your assessment. If we meet on site perhaps you will think things differently since we have done a lot of work to clean up the site and you can now see the original grass growing back.

thanks for your re-consideration.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image004.png>

From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Sent: Monday, March 18, 2024 9:46 AM

To: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>

Subject: RE: 8339

Ralph,

Thank you for your email. I have included Scott Botcher and Christine Symchych on this response as Scott is the individual who rendered the decision on your request in December and Christine is included as you have recently emailed her with your concerns.

In your note below, you have demanded that I respond by the end of the day today and I am providing you with that courtesy with this response. Please understand that, contrary to what you note below, the Village Code is not subject to negotiation. That is, an individual or business cannot come to the Village and note that they want to build something and then dictate or negotiate the terms under which that development is to occur. In your case, if you recall, you were informed prior to the start of the addition that your project likely fell into the categories/criteria requiring you to perform the grading and drainage analysis and applying for the fill permit. You, however, noted you would stay below the thresholds and I noted that if at any point those thresholds would be exceeded that the requirements would then apply.

In November and December of last year it became apparent that you exceeded the thresholds identified in the code and I reiterated that the permit applications would apply to your project. You disagreed with my conclusion and asked to have Scott Botcher determine whether the requirements for fill and grading and drainage applied. Both of us, prior to meeting with Scott, agreed to be bound by his decision. He researched the matter and rendered his decision – namely, that your project did fall within the thresholds identified in the code and that you did need to submit the applications to me. You have elected to not do so and I cannot overrule his decision – contrary to what you note below.

Whether the Forester issues you permission to remove the Village street tree or not is immaterial in this matter; the issue truly is your reluctance to file the necessary permit applications per Scott's decision. Further, as he has noted, you can appeal his decision to the Board of Appeals. If I am not mistaken, I believe that can be done with a simple email request and payment of appropriate fee upon which a meeting would be scheduled for the Board of Appeals. Please understand that neither Scott

Botcher nor I are members of the Board of Appeals but includes residents of the Village of Fox Point.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>

Sent: Sunday, March 17, 2024 7:33 AM

To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: 8339

Scott

First off- a decision by the supreme court (or any court)doesn't come without detailed justification- I have no idea why you will not provide that.

The appeals process has Botcher on the committee. The same for ethics complaints. This makes no sense when filing a complaint or appeal. This forces me to hire an attorney. Unfortunately that process will end up listing you and Botcher personally along with the village.

I've asked for another meeting and a quantified response which you have not done. If you are planning a response, I will hold off giving you time to quantify your requirement. If you do not respond by the end of the day Monday I will assume you have no interest in negotiating.

The forester has stated you are holding up the permit for the tree. If that is the case you are holding up finishing of the project.

Please confirm in writing you are not allowing the tree removal and the new culvert along with it.

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

<image004.png>

<8339 N Lake Drive_Grading-Drainage_Site Plans_05-31-23.pdf>

<8339NL~1.PDF>

<8339 Lake.pdf>

<IMG_2062.jpg>

<IMG_2065.jpg>

Attachment 25

March 25, 2024 Emails

From: [Scott Brandmeier](#)
To: [Ralph Benciscutto](#); [Scott Botcher](#); [Christine Symchych](#); [stackgroup@aol.com](#)
Cc: [Scott Brandmeier](#)
Subject: RE: 8339- June 2023 agreement to proceed
Date: Monday, March 25, 2024 1:27:00 PM
Attachments: [image001.png](#)
[image002.png](#)

Ralph,

It appears you want to continue to debate what is a land disturbing activity when that definition was already provided to you in December by Scott Botcher. I will answer your question with a question: what, if any, agricultural activities have you undertaken on your parcel? And, if you are of the opinion some of your activities falls within an agricultural use, please provide a definition of the same, supported by Fox Point Village Code and how that may apply in your particular situation.

Additionally, as you've read before in our multitude of responses, you cannot use the exemptions listed in one part of the code to apply to another part of the code.

Also, if Tom will be your engineer for these tasks, I will be happy to discuss the matter with him as your representative.

Respectfully,

Scott

Scott Brandmeier, P.E.
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext. 6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Monday, March 25, 2024 11:19 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>; stackgroup@aol.com
Subject: Re: 8339- June 2023 agreement to proceed

Good Morning

We have forwarded Mr Botchers definition but that doesn't answer the questions they have on the permit. We need you to clarify the answers to their questions before we can create a scope of work for either the permit application or an appeal. If you feel that " land disturbing activities " is the only basis for the permit than you need to clarify that.

Please answer the questions below sent on 3/21:

Our engineering firm is asking for clarification to finish their report.

We do not disagree with the definition of land disturbing activities. That has a broad definition.

If that was the only parameter requiring a filling and grading permit than agricultural activities would be prohibited like farming, landscaping etc. Laying sod and planting grass would trip the permit. You could argue as you have done that just driving on the grass and staging construction is disturbing it. That is why it is clarified in section 285.- see below. Section 272 and 245 also list the same exemptions for clarification.

So our civil engineering firm is asking if you are including agricultural activities in the scope. If not then lets agree to the following:

The permit has a minimum size requirement since grading under the minimum size will not affect erosion and drainage for the village - as long as it doesn't re-direct the flow to another neighbor. It is this minimum size that is the current basis for requiring the permit so that is why we need to agree here.

The engineering firm's calculation will be as follows:

The minimum size of the fill and grading project requiring a permit =

(Land disturbing activities - agricultural activities) - exemptions (driveways etc.) = area of filling and grading permit (scope)

285-39{9} LAND-DISTURBING CONSTRUCTION ACTIVITY

 **Code** / Ch 285: Stormwater Management, Erosion Control and Bluff Regulation / Ch 285 Art IV: Construction Site Erosion Control / 285-39:

Definitions.

Any man-made change of the land surface including removing vegetation cover, excavating, filling and **grading**, but not including agricultural land uses such as planting, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

grading (1)

Ralph Benciscutto
President
ralphb@towerenergypartners.com
(262) 664-3166

www.towerenergypartners.com
2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Sent: Thursday, March 21, 2024 7:43 AM

To: Ralph Benciscutto <ralphb@towerenergypartners.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>
Cc: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339- June 2023 agreement to proceed

Ralph,

Scott Botcher has previously provided you with the definition; by all means, feel free to forward that to your engineering firm. Also, should your engineering firm have any specific questions, have them reach out to me directly.

Scott

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From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Thursday, March 21, 2024 6:19:35 AM
To: Scott Botcher <sbotcher@villageoffoxpoint.com>; Christine Symchych <csymchych@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Re: 8339- June 2023 agreement to proceed

Gentlemen

Our engineering firm is asking for clarification to finish their report.

We do not disagree with the definition of land disturbing activities. That has a broad definition.

If that was the only parameter requiring a filling and grading permit than agricultural activities would be prohibited like farming, landscaping etc. Laying sod and planting grass would trip the permit. You could argue as you have done that just driving on the grass and staging construction is disturbing it. That is why it is clarified in section 285.- see below. Section 272 and 245 also list the same exemptions for clarification.

So our civil engineering firm is asking if you are including agricultural activities in the scope. If not then lets agree to the following:

The permit has a minimum size requirement since grading under the minimum size will not affect erosion and drainage for the village - as long as it doesn't re-direct the flow to another neighbor. It is this minimum size that is the current basis for requiring the permit so that is why we need to agree here.

The engineering firm's calculation will be as follows:

The minimum size of the fill and grading project requiring a permit =

(Land disturbing activities - agricultural activities) - exemptions (driveways etc.) = area of filling and grading permit (scope)

285-39{9} LAND-DISTURBING CONSTRUCTION ACTIVITY



Code / Ch 285: Stormwater Management, Erosion Control and Bluff Regulation / Ch 285 Art IV: Construction Site Erosion Control / 285-39:

Definitions.

Any man-made change of the land surface including removing vegetation cover, excavating, filling and **grading**, but not including agricultural land uses such as planting, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

grading (1)

Please confirm so we can agree on the scope before finishing the report.

Thanks

Ralph Benciscutto

President

ralphb@towerenergypartners.com

(262) 664-3166

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2425 S. Memorial Drive
Racine, WI 53403
T (262) 632-1464
F (262) 632-3446



From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Thursday, March 14, 2024 7:08 AM
To: Scott Botcher <sbotcher@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: Fw: 8339- June 2023 agreement to proceed

Scott- This was the agreement to start to addition. - see below

From: Ralph Benciscutto <ralphb@towerenergypartners.com>
Sent: Friday, June 9, 2023 10:52 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>
Subject: 8339- we are cancelling the permit

Hi Scott- thanks for responding- doesn't seem like you received this and my e-mail keeps calling it an unsent draft. let me know if you get this.

Please cancel our application for erosion control. After reviewing the site further, we have no need and do not want the excavated dirt from the addition spread around the site. The dirt will be removed. This puts our project well below any erosion control permit requirements.

Chapter 765-1 Min required 8339 N Lake

Disturbed area minimum	4000 sq.ft	1600 (with garage)
------------------------	------------	----------------------

Section 245 Min required 8339 N Lake

minimum grading	8000sq.ft	no grading
Minimum Excavation	800 cu yards	289

Please hold the fee we paid for future permits or issue a refund. We are not asking for a storm water charge adjustment. If you still would like that form filled out, just let me know. The additional impervious roof area will be around 1400 sq.ft. per the print. I will be getting water/sewer service turned on shortly and will follow that application procedure.

We are giving you 48 hr notice per requirements that we will be starting the footings and addition.

Thank you for all your help finding the minimum requirements- we are looking forward to a good working relationship with the village. If you know of any projects nearby looking for clean fill let us know. We will be removing about 250 cu yds

272 exemption :

Minor grading. This chapter shall not apply to filling activities of 25 cubic yards of fill or less, provided that the direction of the flow of water is not altered or the grading work changes the flow from a back pitch into a residential structure to a pitch away from the residential structure, provided that such change does not direct flow toward another residential structure. The intent of this exception is to allow for minor grading and construction of planting beds, flower gardens, rain gardens, and similar activities.

285-39{9} LAND-DISTURBING CONSTRUCTION ACTIVITY



 **Code** / Ch 285: Stormwater Management, Erosion Control and Bluff Regulation / Ch 285 Art IV: Construction Site Erosion Control / 285-39:

Definitions.

Any man-made change of the land surface including removing vegetation cover, excavating, filling and **grading**, but not including agricultural land uses such as planting, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.

grading (1)

Lets settle this today please

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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Ralph Bencriscutto

President

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F (262) 632-3446



Attachment 26

May 21, 2024 Emails

From: [Scott Brandmeier](#)
To: [Ralph Bencriscutto](#); [Scott Botcher](#); [stackgroup@aol.com](#)
Cc: [Scott Brandmeier](#)
Subject: RE: 8339 N Lake final elevations
Date: Tuesday, May 21, 2024 2:52:00 PM
Attachments: [image001.png](#)

Ralph,

I will not be reviewing the information you submitted as your assumption is incorrect. We informed you of the requirements and you have chosen to ignore them. Please refer to the prior communications as evidence that we never waived from the requirement that you comply with the applicable provisions of the Village Code as noted in those communications.

Respectfully,

Scott

Scott Brandmeier
Director of Public Works
Village of Fox Point
7200 North Santa Monica Boulevard
Fox Point, WI 53217
414-351-8900 ext.6624
sbrandmeier@villageoffoxpoint.com

From: Ralph Bencriscutto <ralphb@towerenergypartners.com>
Sent: Tuesday, May 21, 2024 6:09 AM
To: Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>; Scott Botcher <sbotcher@villageoffoxpoint.com>; stackgroup@aol.com
Subject: 8339 N Lake final elevations

Good Morning

Please note the final elevations taken by the surveyor. Of note the back patio isn't finished but has the gravel on it. Landscaping in the front is completed and the grass is growing back nicely. The single box elevations were taken before and the double box are the after. The Historical elevations are also included.

This meets the requirements of the original permit. Our original drawing of the disturbed area referred to the area proposed to utilize some of the excavated dirt but we removed that dirt instead. The clay could not be utilized.

Since there is no data or plans to support a grading permit I will assume the matter is closed.

I am requesting you inform the forester that I want to remove the tree at the driveway

and apply for the culvert permit to make the driveway opening larger. Id like to re-plant the same kind of tree at the west end of the new driveway when completed.

Please let me know if you have any issues with the culvert.

thanks

Ralph Bencriscutto

President

ralphb@towerenergypartners.com

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Attachment 27

June 20, 2024 Notice of Injury

**NOTICE OF INJURY GIVING RISE TO CLAIM FOR DAMAGES
PURSUANT TO WISCONSIN STATUTE SEC. 893.80(1)(d)**

TO: VILLAGE OF FOX POINT

Sara Bruckman, Clerk, and Scott Botcher, Village Manager
7200 N. Santa Monica Blvd., Clerk
Fox Point, WI 53217

VILLAGE OF FOX POINT PUBLIC WORKS DEPT.

Scott Brandmeier, Village Engineer
7200 N. Santa Monica Blvd., Clerk
Fox Point, WI 53217

NAME AND ADDRESS OF CLAIMANT:

Ralph Bencrisutto (Tower Circle Investments)
2425 S. Memorial Dr.
Racine, WI 53403

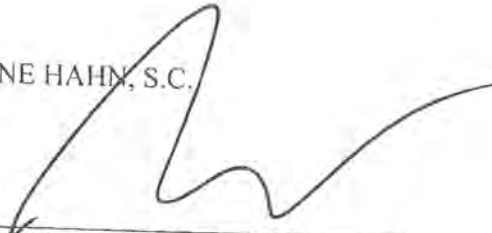
ATTORNEY FOR CLAIMANT:

Thomas M. Devine
Devine Hahn, SC
840 Lake Avenue, Suite 300
Racine, WI 53403

Please take notice that Tower Circle Investments ("Tower") hereby gives notice to the Village of Fox Point ("The Village"), Scott Brandmeier and Scott Botcher that on March 12, 2024, they were damaged when The Village denied an occupancy permit for Tower's 8339 N. Lake Dr. property. The denial was based on The Village's arbitrary requirement of a grading and fill permit, despite circumstances warranting no such permit. The Village has also arbitrarily denied additional permits allowing tower to finish the culvert and to remove trees for the driveway. As a result of these actions, Tower has accrued and continues to accrue damages in the form of unrealized profit from the sale of 8339 N. Lake Dr.

Dated June 20, 2024.

DEVINE HAHN, S.C.
By:



Thomas M. Devine, No. 1017536
Attorney for Tower Circle Investments

Mailing Address:
840 Lake Avenue, Suite 300
Racine, WI 53403
Telephone (262) 632-7541