

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

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

WEDNESDAY  
JANUARY 22, 2025  
5:00 P.M.

**AGENDA**

- 1. Roll Call**
- 2. Approval of Minutes and Determinations – September 25, 2024 Meeting**
- 3. Approval of Minutes and Determinations – October 9, 2024 Meeting**
- 4. Case 2025-01 1130 E Dean Rd – Special Exception.** The applicant is requesting a special exception to install 6ft tall fencing within the street yard setback. The special exception request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Fox Point Code.
- 5. Adjourn**

Published and Posted: January 16, 2025

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.

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Village of Fox Point, Wisconsin  
Board of Appeals - September 25, 2024

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
2 BRANDMEIER: Yeah, now it's recording.  
3 VILLAGE MANAGER SCOTT BOTCHER: Oh,  
4 right there. It's over there now?  
5 DIRECTOR OF PUBLIC WORKS SCOTT  
6 BRANDMEIER: Yeah.  
7 CHAIR NANCY FILSINGER: Ready? Meeting  
8 is called to order of the Board of Appeals, into  
9 roll call please.  
10 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
11 Nancy Filsinger?  
12 CHAIR NANCY FILSINGER: Here.  
13 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
14 Thomas Dunst?  
15 BOARD MEMBER THOMAS DUNST: Here.  
16 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
17 Mark Grady?  
18 BOARD MEMBER MARK GRADY: Here.  
19 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
20 Scott Ratke?  
21 BOARD MEMBER SCOTT RATKE: Here.  
22 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
23 Adam Bazelon?  
24 BOARD MEMBER ADAM BAZELON: Here.  
25 CHAIR NANCY FILSINGER: Agenda Item

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1 Number 2 is (indiscernible) and determinations.  
2 Any comments from the Board? Adam?  
3 BOARD MEMBER ADAM BAZELON: No comment.  
4 BOARD MEMBER MARK GRADY:  
5 (indiscernible) May 22, 2024 minutes and  
6 determinations.  
7 BOARD MEMBER THOMAS DUNST: Second.  
8 CHAIR NANCY FILSINGER: (indiscernible)  
9 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
10 Nancy Filsinger?  
11 CHAIR NANCY FILSINGER: Aye.  
12 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
13 Thomas Dunst?  
14 BOARD MEMBER THOMAS DUNST: Aye.  
15 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
16 Mark Grady?  
17 BOARD MEMBER MARK GRADY: Aye.  
18 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
19 Scott Ratke?  
20 BOARD MEMBER SCOTT RATKE: Aye.  
21 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
22 Adam Bazelon?  
23 BOARD MEMBER ADAM BAZELON: Aye.  
24 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
25 Motion carries.

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1 VILLAGE ATTORNEY ERIC LARSON: Madam  
2 Chair, I have a few procedural comments before we  
3 get going. We have one case on our agenda today  
4 and we have a preliminary matter once we get to  
5 that. This is an appeal of an administrative  
6 decision. It's got some statutes.  
7 They empower the Board of Appeals to  
8 hear and decide appeals where it is alleged there  
9 was an error in any order, requirement, decision  
10 or determination made by an administrative  
11 official in the enforcement of this section or of  
12 any ordinance adopted pursuant thereto. So,  
13 that's why we're here.  
14 This is different than any appeal I can  
15 remember in a few years anyway. Typically, we're  
16 hearing requests for variances or special  
17 exceptions. That's not what we're here to do  
18 today. What we're here to do today is make a  
19 determination of whether a determination made by  
20 staff was accurate or not and that determination  
21 is being challenged.  
22 I just want you to be aware of that  
23 context and we will consider the limitations of  
24 that further as we go. Next, your rules say the  
25 following, this is Item 3 of your agenda. Your

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1 rules say, "Every appeal to the Board shall be  
2 taken and filed with the Secretary of the Board  
3 within 30 days from the date of refusal to issue  
4 a permit from the date of the making of any  
5 order, ruling, decision or determination on which  
6 an appeal is taken."  
7 Your rules also say, Section 5, that,  
8 "These rules are for the benefit of the Board and  
9 are enforceable by the Board. The Board reserves  
10 the right to conduct its proceedings differently  
11 than as described herein as it deems appropriate  
12 in the circumstances. Failure of the Board to  
13 follow or enforce the requirements of these rules  
14 shall not be actionable."  
15 If you look at the materials that have  
16 been provided, I think it shows that what is  
17 being appealed was determined many months ago by  
18 staff. Much longer than the 30-day time limit  
19 required by your votes. When staff has made its  
20 determinations, I think it is, inform the  
21 applicant that they have the right to appeal to  
22 the Board of Appeals.  
23 So, because of that, I think -- and  
24 we'll hear from staff, but I think it's their  
25 position that they do not object to that 30-day

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1 time limit being waived and the applicant also is  
 2 requesting that you waive them a few days. But  
 3 it is for your determination to decide.  
 4 So, maybe we should hear from them  
 5 directly. I don't want to put words in their  
 6 mouths. Maybe starting with the Village's  
 7 position on that.  
 8 VILLAGE MANAGER SCOTT BOTCHER: We are  
 9 willing to waive the 30-day requirement.  
 10 CHAIR NANCY FILSINGER: We don't need  
 11 to swear them in, for this piece?  
 12 VILLAGE ATTORNEY ERIC LARSON: No, not  
 13 for this.  
 14 CHAIR NANCY FILSINGER: Okay. And the  
 15 Applicant?  
 16 RALPH BENCRISSUTO: Yes, I'm waiving  
 17 the -- I didn't even know it was 30 days.  
 18 VILLAGE ATTORNEY ERIC LARSON: So, with  
 19 that, it's the Board decision whether you waive  
 20 that.  
 21 BOARD MEMBER ADAM BAZELON: Where is  
 22 the 30 days in the statute? I'm just trying to  
 23 follow along.  
 24 VILLAGE ATTORNEY ERIC LARSON: It's not  
 25 in the statutes. It's in the Board rules.

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1 BOARD MEMBER ADAM BAZELON: Oh, okay.  
 2 VILLAGE ATTORNEY ERIC LARSON: So, if  
 3 you have the training packet there --  
 4 BOARD MEMBER ADAM BAZELON: Yeah, I do.  
 5 VILLAGE ATTORNEY ERIC LARSON: -- it's  
 6 on Page --  
 7 BOARD MEMBER ADAM BAZELON: My packet  
 8 might be old. It's dated December 5, 2017.  
 9 CHAIR NANCY FILSINGER: December --  
 10 BOARD MEMBER THOMAS DUNST: Do you have  
 11 the same packet?  
 12 BOARD MEMBER ADAM BAZELON: Yeah, we  
 13 trained on the same day. But I think it was  
 14 outdated when we trained.  
 15 BOARD MEMBER THOMAS DUNST: I think it  
 16 was outdated.  
 17 VILLAGE ATTORNEY ERIC LARSON: It's at  
 18 the bottom of Page 10, Section 3 - Appeals, Time.  
 19 See that?  
 20 BOARD MEMBER ADAM BAZELON: I don't  
 21 think I have that, but that's okay. If it's just  
 22 the Board rules -- I was just more curious. I  
 23 don't have any objection to waiving it. It seems  
 24 like it was probably done for our convenience, so  
 25 we didn't have to convene a special meeting on

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1 the spot, so I am in favor of waiving, if we're  
 2 discussing right now.  
 3 CHAIR NANCY FILSINGER: Tom?  
 4 BOARD MEMBER THOMAS DUNST:  
 5 (indiscernible)  
 6 BOARD MEMBER MARK GRADY: Yeah, I --  
 7 given the sort of way this is developed to ensure  
 8 we have a packet with conversations and emails  
 9 going on back and forth over many months, I think  
 10 waiving the 30-day requirement is appropriate.  
 11 And if necessary, I would make a motion to waive  
 12 that requirement.  
 13 CHAIR NANCY FILSINGER: Second the  
 14 motion?  
 15 BOARD MEMBER SCOTT RATKE: I second.  
 16 CHAIR NANCY FILSINGER: All right.  
 17 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 18 Nancy Filsinger?  
 19 CHAIR NANCY FILSINGER: Aye.  
 20 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 21 Thomas Dunst?  
 22 BOARD MEMBER THOMAS DUNST: Aye.  
 23 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 24 Mark Grady?  
 25 BOARD MEMBER MARK GRADY: Aye.

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1 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 2 Scott Ratke?  
 3 BOARD MEMBER SCOTT RATKE: Aye.  
 4 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 5 Adam Bazelon?  
 6 BOARD MEMBER ADAM BAZELON: Aye.  
 7 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 8 Motion carries to waive.  
 9 CHAIR NANCY FILSINGER: (indiscernible)  
 10 anything. Anything else?  
 11 VILLAGE ATTORNEY ERIC LARSON: No, I  
 12 was ready to call the case. This is again, not  
 13 really evidence-based, it's more argument-based.  
 14 So, you can decide whether you think it's  
 15 appropriate to swear the witnesses in.  
 16 BOARD MEMBER ADAM BAZELON: Can I ask a  
 17 preliminary question?  
 18 VILLAGE ATTORNEY ERIC LARSON: Yeah.  
 19 BOARD MEMBER ADAM BAZELON: Is there a  
 20 standard of review that's applicable to the  
 21 Village's decision in this case? Like, are we  
 22 reviewing it de novo? Is it deference to their  
 23 decision? Is it --  
 24 VILLAGE ATTORNEY ERIC LARSON: There  
 25 really is not a standard of review. I think it's

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1 the applicant's burden, as they are challenging  
 2 it. But beyond that, there is really no standard  
 3 of review.  
 4 CHAIR NANCY FILSINGER: All right.  
 5 Agenda Item 4, Case 2024-078339, Lake Drive,  
 6 appeal of administrative decision. The applicant  
 7 is requesting an appeal of the decision of Fox  
 8 Point Village Manager, Scott Botcher, regarding  
 9 the requirement for grading and day drainage  
 10 permit pursuant to Section 756-7E(1) of the Fox  
 11 Point municipals. Why don't we have them swear  
 12 in?  
 13 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 14 Should I start with the applicant first or do you  
 15 want to start with staff?  
 16 CHAIR NANCY FILSINGER: Staff.  
 17 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 18 All right. Raise your right hand and state your  
 19 name and address for the record, please?  
 20 VILLAGE MANAGER SCOTT BOTCHER: Scott  
 21 Botcher, 714 (indiscernible), Wisconsin.  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: Scott Brandmeier, 8525 North  
 24 (indiscernible) Street, (indiscernible)  
 25 Wisconsin.

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1 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 2 Do you solemnly swear that the testimony you  
 3 shall give in this matter shall be the truth, the  
 4 whole truth and nothing but the truth, so help  
 5 you God?  
 6 VILLAGE MANAGER SCOTT BOTCHER: I do.  
 7 DIRECTOR OF PUBLIC WORKS SCOTT  
 8 BRANDMEIER: I do.  
 9 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 10 Thank you.  
 11 CHAIR NANCY FILSINGER: Okay. Scott or  
 12 Scott, do you want to discuss why you brought  
 13 this to us? Or why it was brought to us?  
 14 BOARD MEMBER MARK GRADY: Can I ask,  
 15 we've got a very thick (indiscernible). I don't  
 16 know how many pages. I don't personally, maybe  
 17 others disagree, I don't want you to go through  
 18 it, page by page.  
 19 DIRECTOR OF PUBLIC WORKS SCOTT  
 20 BRANDMEIER: No, no, no, no, no.  
 21 BOARD MEMBER MARK GRADY: I would  
 22 rather you just tell me what permits you've  
 23 requested the applicant obtain and why.  
 24 DIRECTOR OF PUBLIC WORKS SCOTT  
 25 BRANDMEIER: I would encourage you, then, to go

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1 to the memo that I prepared for you. And on the  
 2 page that it starts on, it's dated September 19th  
 3 (indiscernible) from your packet, probably  
 4 around, I would say Page 45, 46, somewhere in  
 5 there.  
 6 CHAIR NANCY FILSINGER: Oh, okay.  
 7 DIRECTOR OF PUBLIC WORKS SCOTT  
 8 BRANDMEIER: In your packet of information. I've  
 9 prepared a five-page memorandum (indiscernible)  
 10 permits that are required.  
 11 (Cross talk)  
 12 BOARD MEMBER SCOTT RATKE: Is it within  
 13 your emails, or is it a --  
 14 DIRECTOR OF PUBLIC WORKS SCOTT  
 15 BRANDMEIER: (indiscernible)  
 16 BOARD MEMBER SCOTT RATKE: Okay. I got  
 17 you, letterhead.  
 18 BOARD MEMBER ADAM BAZELON: It looks  
 19 like this.  
 20 BOARD MEMBER SCOTT RATKE: Okay. That  
 21 helps.  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: Thank you, Adam. Yeah.  
 24 BOARD MEMBER SCOTT RATKE: Was it near  
 25 the beginning or the end?

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1 VILLAGE MANAGER SCOTT BOTCHER: You're  
 2 very close. It's, I think, after the pictures.  
 3 BOARD MEMBER SCOTT RATKE: Okay.  
 4 DIRECTOR OF PUBLIC WORKS SCOTT  
 5 BRANDMEIER: I thought you maybe went too far.  
 6 Yeah, it's right --  
 7 DIRECTOR OF PUBLIC WORKS SCOTT  
 8 BRANDMEIER: I'm at Attachment 12.  
 9 VILLAGE MANAGER SCOTT BOTCHER: Here at  
 10 Attachment 12 (indiscernible)  
 11 BOARD MEMBER SCOTT RATKE: Okay.  
 12 VILLAGE MANAGER SCOTT BOTCHER: Near  
 13 the front. The applicant has (indiscernible)  
 14 after that.  
 15 BOARD MEMBER THOMAS DUNST: Yeah, I  
 16 found it.  
 17 CHAIR NANCY FILSINGER: I found it,  
 18 yeah.  
 19 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 20 We had (indiscernible)  
 21 BOARD MEMBER SCOTT RATKE: Right there?  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: (indiscernible)  
 24 BOARD MEMBER SCOTT RATKE: Ah, thank  
 25 you.

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
 2 BRANDMEIER: (indiscernible), correct, correct,  
 3 correct, correct, correct. (indiscernible) All  
 4 right, so depending on what an applicant does on  
 5 their property. We'll help construct the  
 6 petition, planning certain activities, et cetera.  
 7 where a number of permits that may be required by  
 8 the Village Code and there's certain triggers  
 9 within each section of the Village Code.  
 10 And I go through that in this memo, and  
 11 I included copies of the Code for your reference  
 12 and for your benefit. Looking at the first one,  
 13 Article 4 of Chapter 285, which is at the bottom  
 14 of Page one of your memo, requires  
 15 (indiscernible) control permit to an individual  
 16 performing land surveying activities, et cetera.  
 17 Affecting a service area of 8,000  
 18 square feet or more. Now, of course, there's  
 19 other triggers within the Code Section of Chapter  
 20 285 that would trigger (indiscernible) cases.  
 21 Then on the top of Page two, Chapter 272 is our  
 22 Fill Ordinance. That requires applicants to  
 23 obtain a fill permit if they place more than 25  
 24 cubic yards of fill on their project.  
 25 The impetus to having the field

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1 ordinance was a project that was undertaken by a  
 2 property owner here in the Village, before I  
 3 started, eighteen and a half years ago, where he  
 4 wanted 7,000 cubic yards of fill, roughly, and  
 5 there was no permitting process in place at the  
 6 time.  
 7 So, it affected service water drainage  
 8 and ran off of private parcels. So, the Village  
 9 got embroiled in lawsuits and that property owner  
 10 got involved in other lawsuits with other  
 11 neighbors on that particular situation. So, that  
 12 ordinance was adopted to address where applicants  
 13 are placing more than 25 cubic yards of fill and  
 14 may adversely impact neighboring property owners  
 15 from a drainage perspective.  
 16 And then 756-7E is within your building  
 17 code and that requires individuals to form a  
 18 grading and drainage analysis where applications  
 19 for land disturbing activities requiring a permit  
 20 that affects the surface area for those square  
 21 feet or more. And so, as you read through the  
 22 memo, there's ample attachments of the history  
 23 behind all of this, 27, if memory serves me  
 24 correctly.  
 25 And if you go to the bottom of Page

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1 four, the determination being what we found in  
 2 all of this is that the applicant initially sent  
 3 in an application showing roughly 4,500 square  
 4 feet of disturbed area when he first applied for  
 5 a permit. We explained permitting requirements  
 6 to the applicant and his engineer.  
 7 We subsequently received a revised  
 8 application saying, "Well, we're only going to  
 9 affect 2,100 square feet." All that information  
 10 is contained within the attachments. A permit  
 11 was issued with the understanding that if those  
 12 quantities were ever exceeded, if more than 25  
 13 yards of fill was placed on the property, if you  
 14 disturb more than the 4,000 or 8,000 square feet  
 15 of surface area, you would then have to comply  
 16 with -- it would be retroactive to the date  
 17 (indiscernible) application and comply with the  
 18 permit requirements.  
 19 And so, what we found in the pictures  
 20 to show, and the documentation that has been  
 21 presented, is that the land disturbing activity  
 22 affected more than 8,000 square feet. So, that  
 23 kicked them into a number of Code requirements.  
 24 (indiscernible), grading and drainage and also  
 25 that, from the naked eye, it appears as though

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1 more than 25 cubic yards of fill has been placed  
 2 on the property.  
 3 But we have not been able to determine  
 4 that definitively because we don't have the post  
 5 grades compared against what were the existing  
 6 grades before the project started. When you get  
 7 those, that's a requirement of the fill ordinance  
 8 that applicants have to provide that information.  
 9 And that'll tell us whether 25 cubic yards of  
 10 fill is placed or less.  
 11 And if we don't have that information,  
 12 then we can't say definitively whether it applies  
 13 or not. So, when we obtain that, we do require,  
 14 especially when somebody is placing fill, you  
 15 have to prepare that drawing by an engineer that  
 16 will show that comparative analysis so we can  
 17 say, definitively, "Yes, it applies" or "No, it  
 18 does not." So, those are the requirements and  
 19 the steps that we go through with all of this.  
 20 There is a disagreement between the  
 21 applicant and staff on whether it applies. And  
 22 then you fast forward through the months of  
 23 November and December and as attachments show,  
 24 and the agreement was, we would go to Mr.  
 25 Botcher, and he would serve as almost a quasi-

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1 judicial arbitrator in the matter.  
 2 And before Mr. Botcher, the three of us  
 3 sat in his office and the issue was, what is a  
 4 land disturbing activity? Mr. Botcher researched  
 5 it, consulted with the Village Attorney and  
 6 rendered a decision on December 23, 2023, that it  
 7 was a land disturbing activity. Subsequent to  
 8 that, the thought was, (indiscernible) rendered  
 9 his decision.  
 10 You now are required to comply with the  
 11 various components of the Village Code because  
 12 all parties agreed at the time that we would  
 13 abide by the decision. If the definition of  
 14 "land disturbing activity" kept them out of the  
 15 Village Code of Requirements, there would be no  
 16 need for him to apply for the various permit  
 17 requirements.  
 18 But based on the definition of "land  
 19 disturbing activities" and the opinion that we  
 20 received from the Village Attorney, it triggered  
 21 all the requirements to comply with Chapter 285,  
 22 Chapter 756-7E and then, quite likely, Chapters  
 23 272 for the fill ordinance. We're here today  
 24 because there's the continual disagreement, for  
 25 lack of a better term, on the part of the

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1 applicant, that what he has done constitutes a  
 2 land disturbing activity.  
 3 But based on our ordinance and the  
 4 opinion that we received from the Village  
 5 Attorney, (indiscernible) by Mr. Botcher, it  
 6 would appear that he does fall within the  
 7 requirements of (indiscernible)  
 8 VILLAGE ATTORNEY ERIC LARSON: I -- are  
 9 you done?  
 10 DIRECTOR OF PUBLIC WORKS SCOTT  
 11 BRANDMEIER: I (indiscernible) for the moment.  
 12 VILLAGE ATTORNEY ERIC LARSON: So,  
 13 there were several references to me. And I just  
 14 want to be clear, I have had nothing to do with  
 15 this, other than I was asked to question, "What  
 16 does the term 'land disturbing activity' mean?"  
 17 That was the question. It was out of the context  
 18 of nothing.  
 19 What does that definition mean? And I  
 20 provided, I believe, two statutory definitions  
 21 and the Code definition and said, "Here's a  
 22 definition. Here's a definition. Here's a  
 23 definition." I don't believe I had any other  
 24 involvement and correct me if I'm wrong.  
 25 DIRECTOR OF PUBLIC WORKS SCOTT

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1 BRANDMEIER: That is correct.  
 2 VILLAGE ATTORNEY ERIC LARSON: So, I  
 3 don't believe I have a conflict, but I think it's  
 4 important that this be a fair process. I'd be  
 5 happy to step down and get you special counsel if  
 6 you believe that's a concern.  
 7 BOARD MEMBER MARK GRADY: Just for  
 8 reference, I believe the three definitions that  
 9 Attorney Larson referenced are contained in Mr.  
 10 Botcher's -- it's an email or a letter.  
 11 VILLAGE MANAGER SCOTT BOTCHER:  
 12 (indiscernible)  
 13 BOARD MEMBER MARK GRADY: I don't  
 14 remember the date of it. Do you have it in front  
 15 of you?  
 16 VILLAGE MANAGER SCOTT BOTCHER:  
 17 Correct. Mr. Larson (indiscernible) the  
 18 statutory citation.  
 19 BOARD MEMBER MARK GRADY: Right. But  
 20 you incorporated it into something you sent to  
 21 the applicant?  
 22 VILLAGE MANAGER SCOTT BOTCHER: What's  
 23 that?  
 24 BOARD MEMBER MARK GRADY: You  
 25 incorporated those definitions into something you

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1 sent to the applicant?  
 2 VILLAGE MANAGER SCOTT BOTCHER: Yeah.  
 3 I went and looked at the statutes myself.  
 4 (indiscernible)  
 5 BOARD MEMBER MARK GRADY: And what was  
 6 the -- I don't have it in front of me. What was  
 7 the date of that communication?  
 8 VILLAGE MANAGER SCOTT BOTCHER:  
 9 December 21, 2023.  
 10 BOARD MEMBER MARK GRADY: Email or  
 11 letter?  
 12 VILLAGE MANAGER SCOTT BOTCHER: It was  
 13 an email.  
 14 BOARD MEMBER MARK GRADY: Okay.  
 15 DIRECTOR OF PUBLIC WORKS SCOTT  
 16 BRANDMEIER: And I apologize I misspoke. I  
 17 thought it was the 23rd. I was just going off of  
 18 memory. It was the 21st of December.  
 19 BOARD MEMBER MARK GRADY: All I'm  
 20 trying to do is confirm the information Attorney  
 21 Larson passed to you is contained in that  
 22 communication, correct?  
 23 VILLAGE MANAGER SCOTT BOTCHER: That's  
 24 correct.  
 25 BOARD MEMBER SCOTT RATKE: Where is

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1 that email? Do you know, in relation to the  
2 memo?  
3 DIRECTOR OF PUBLIC WORKS SCOTT  
4 BRANDMEIER: The applicant has it in his and it  
5 is also contained within my (indiscernible)  
6 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
7 It's right after the pictures. So, there's the  
8 pictures, and then the email.  
9 BOARD MEMBER SCOTT RATKE: I see it.  
10 Yeah, okay.  
11 BOARD MEMBER MARK GRADY:  
12 (indiscernible) Attachment 21.  
13 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
14 (indiscernible)  
15 BOARD MEMBER MARK GRADY: Yeah  
16 (indiscernible) Brandmeier, you said that it  
17 appears there's over 8,000 square feet of land  
18 disturbing activities.  
19 DIRECTOR OF PUBLIC WORKS SCOTT  
20 BRANDMEIER: Yes.  
21 BOARD MEMBER MARK GRADY: Just  
22 factually, what is your basis for that? What are  
23 you saying has been disturbed?  
24 DIRECTOR OF PUBLIC WORKS SCOTT  
25 BRANDMEIER: For that, I provided images. Let me

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1 find the attachment for you. I'll have to look  
2 back at my memo again.  
3 BOARD MEMBER MARK GRADY: I saw several  
4 different things and I just want you to point me  
5 to one.  
6 DIRECTOR OF PUBLIC WORKS SCOTT  
7 BRANDMEIER: Well, I prepared a number of emails  
8 for the applicant, which I included in the packet  
9 that I sent out.  
10 BOARD MEMBER MARK GRADY: If it's --  
11 DIRECTOR OF PUBLIC WORKS SCOTT  
12 BRANDMEIER: It's in there, but I would like  
13 (indiscernible) so, what I did was, I looked at -  
14 - there were personal observation of a site,  
15 erosion control, (indiscernible) provided to the  
16 applicant. That's one of them, where you see the  
17 pictures of disturbing area, that's early  
18 disturbing area on the site.  
19 And then what I ended up doing for the  
20 benefit of the applicant, as well as for  
21 (indiscernible) was, digitizing, through GIS,  
22 what the disturbance area was based on  
23 observations on-site and the pictures that we  
24 have. Yes, thank you. You found them.  
25 BOARD MEMBER MARK GRADY: So, what I'm

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1 looking at is a photograph or computer drawing,  
2 whichever you call it, attached to an email from  
3 you to the applicant dated December 6, 2023.  
4 There's more than one copy in our packets.  
5 DIRECTOR OF PUBLIC WORKS SCOTT  
6 BRANDMEIER: Yes, yes.  
7 BOARD MEMBER MARK GRADY: And that area  
8 --  
9 DIRECTOR OF PUBLIC WORKS SCOTT  
10 BRANDMEIER: Attachment 15, for everybody's  
11 benefit.  
12 BOARD MEMBER MARK GRADY: The area  
13 you're --  
14 BOARD MEMBER THOMAS DUNST:  
15 (indiscernible)  
16 BOARD MEMBER MARK GRADY: The area that  
17 you're including within that 12,000 square feet  
18 is the greyish-blue area, correct?  
19 DIRECTOR OF PUBLIC WORKS SCOTT  
20 BRANDMEIER: That is correct.  
21 BOARD MEMBER MARK GRADY: That's the  
22 area you're considering to be land disturbing --  
23 where land disturbing activities took place?  
24 DIRECTOR OF PUBLIC WORKS SCOTT  
25 BRANDMEIER: That is correct.

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1 BOARD MEMBER MARK GRADY: And then you  
2 also reference the photographs of the  
3 construction.  
4 DIRECTOR OF PUBLIC WORKS SCOTT  
5 BRANDMEIER: That is correct.  
6 BOARD MEMBER ADAM BAZELON: You said  
7 December 6, 2023?  
8 BOARD MEMBER MARK GRADY: Yes. There's  
9 more than one in the packet, so --  
10 DIRECTOR OF PUBLIC WORKS SCOTT  
11 BRANDMEIER: You are -- that is correct, yes.  
12 VILLAGE ATTORNEY ERIC LARSON: Madame  
13 Chair?  
14 CHAIR NANCY FILSINGER: Oh, I'm sorry.  
15 VILLAGE ATTORNEY ERIC LARSON: I have a  
16 couple of questions. Is the work done?  
17 DIRECTOR OF PUBLIC WORKS SCOTT  
18 BRANDMEIER: Yes.  
19 VILLAGE ATTORNEY ERIC LARSON: The work  
20 is done?  
21 DIRECTOR OF PUBLIC WORKS SCOTT  
22 BRANDMEIER: The exterior work appears to be  
23 done, though the applicant has requested an  
24 additional -- has made an additional request to  
25 remove the (indiscernible) tree in order to

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1 expand the driveway to the west.  
 2 So, it depends on the applicant's  
 3 actions and whether that proceeds or not. That  
 4 request has not been considered at this time.  
 5 VILLAGE ATTORNEY ERIC LARSON: Okay.  
 6 So, if the conclusion is that these permits are  
 7 required, mostly what we're talking about is the  
 8 money for a permit fee? Is that correct?  
 9 BOARD MEMBER MARK GRADY:  
 10 (indiscernible)  
 11 DIRECTOR OF PUBLIC WORKS SCOTT  
 12 BRANDMEIER: Well, you're looking at an analysis  
 13 to ensure that they're not adversely impacting  
 14 (indiscernible) property owners. The rationale  
 15 behind the grading and drainage analysis is to  
 16 perform a (indiscernible) and 100-year storm  
 17 analysis of pre-development conditions and post-  
 18 development conditions.  
 19 And the reason for that is, when I  
 20 started here eighteen and a half years ago, there  
 21 was no such process in place. And we had some  
 22 developments going up, we've got residential  
 23 inflow, and I would get complaints from so many  
 24 property owners that this was adversely affecting  
 25 their property, the developer.

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1 So, after consultation with other  
 2 staff, my experience in the private sector, we  
 3 adopted that portion of the Code to include if  
 4 you needed a permit, if you needed a fill permit,  
 5 if you needed a building permit, you'd have to go  
 6 through that analysis so that you could show you  
 7 were not adversely impacting a neighbor.  
 8 So, it's not just the permit fee that  
 9 is being discussed here, it's the analysis that's  
 10 the critical component of, does the action of the  
 11 applicant, by raising the grade, by disturbing  
 12 this area, adversely impact the neighbors with  
 13 additional flow off this property onto an  
 14 adjacent property. And that's what we look at in  
 15 this analysis.  
 16 BOARD MEMBER MARK GRADY: Just to  
 17 follow that up, then, assuming the permit was  
 18 applied for, the information was submitted, the  
 19 analysis was done and you found that there was an  
 20 effect on neighboring properties, then some  
 21 remedial work would have to be done as well.  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: That is correct.  
 24 BOARD MEMBER MARK GRADY: So, I mean,  
 25 it's --

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
 2 BRANDMEIER: And what we've required in the past,  
 3 for example, if you're wondering, some sort of  
 4 rain garden to slow down the flow of water to a  
 5 neighboring property or a storage basin on the  
 6 property because you do have that component of  
 7 residential infill.  
 8 It's tough, but we use an approach of,  
 9 let's look at what the impacts are to the  
 10 neighbors, make sure that it's not a significant  
 11 impact, for lack of a better term.  
 12 BOARD MEMBER ADAM BAZELON: And so,  
 13 this is holding up the occupancy permit being  
 14 issued? Everything else is done other than this  
 15 issue?  
 16 DIRECTOR OF PUBLIC WORKS SCOTT  
 17 BRANDMEIER: I cannot speak for Mr. Rocco. I  
 18 don't believe that everything is done from his  
 19 perspective on that.  
 20 BOARD MEMBER ADAM BAZELON: Okay.  
 21 DIRECTOR OF PUBLIC WORKS SCOTT  
 22 BRANDMEIER: There are still other issues, if I'm  
 23 not mistaken, that need to be addressed from a  
 24 building perspective, and I don't know where  
 25 those stand at the moment. But from our -- from

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1 a Village perspective, on the engineering side of  
 2 things, these have not been --  
 3 CHAIR NANCY FILSINGER: Thank you. Any  
 4 other questions? Tom?  
 5 BOARD MEMBER THOMAS DUNST: No  
 6 questions.  
 7 CHAIR NANCY FILSINGER: Scott? Adam?  
 8 BOARD MEMBER SCOTT RATKE: Not for now.  
 9 BOARD MEMBER ADAM BAZELON: No.  
 10 CHAIR NANCY FILSINGER: Nothing for Mr.  
 11 Botcher? (indiscernible) Any closing testimony  
 12 for these (indiscernible)  
 13 BOARD MEMBER MARK GRADY:  
 14 (indiscernible)  
 15 VILLAGE ATTORNEY MARK LARSON: We'll  
 16 just move on to the next one.  
 17 CHAIR NANCY FILSINGER: All right.  
 18 VILLAGE ATTORNEY MARK LARSON: You  
 19 don't need to close the testimony.  
 20 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 21 All right. Very good. If you could raise your  
 22 right hand and state your name and address for  
 23 the record, please?  
 24 RALPH BENCRISCIOTTO: Ralph  
 25 Bencriscutto, (indiscernible).

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1 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 2 All right. Do you solemnly swear that the  
 3 testimony you give in this matter shall be the  
 4 truth, the whole truth and nothing but the truth,  
 5 so help you God?  
 6 RALPH BENCRISCIUTTO: Yes.  
 7 DIRECTOR OF PUBLIC WORKS SCOTT  
 8 BRANDMEIER: May I ask a question? The applicant  
 9 (indiscernible)  
 10 CHAIR NANCY FILSINGER: Address  
 11 (indiscernible)  
 12 DIRECTOR OF PUBLIC WORKS SCOTT  
 13 BRANDMEIER: -- the property that's being under  
 14 development, is that his home address or --  
 15 RALPH BENCRISCIUTTO: It's not my home  
 16 address. It's (indiscernible) but that's  
 17 (indiscernible)  
 18 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 19 (indiscernible)  
 20 VILLAGE ATTORNEY MARK LARSON: Well, we  
 21 need to know your address, where you're living  
 22 because there may be --  
 23 RALPH BENCRISCIUTTO: (indiscernible)  
 24 VILLAGE CLERK TREASURER SARA BRUCKMAN:  
 25 Thank you.

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
 2 BRANDMEIER: Can I ask another question?  
 3 CHAIR NANCY FILSINGER: Yes.  
 4 DIRECTOR OF PUBLIC WORKS SCOTT  
 5 BRANDMEIER: Is that your business address?  
 6 CHAIR NANCY FILSINGER: Well, I  
 7 wouldn't mind as to what Scott just did for us,  
 8 if Ralph could -- may I call you Ralph? Could,  
 9 sort of, summarize -- I know you gave us  
 10 something. This is from you, right? As you see  
 11 the issue evolving?  
 12 RALPH BENCRISCIUTTO: Well, I don't  
 13 disagree with most of what staff said on the  
 14 permits and the reasons for permits and why  
 15 they're important for everybody. (indiscernible)  
 16 We want to make sure the buyers' going to sell  
 17 this. The first (indiscernible) or history, I  
 18 guess (indiscernible) is, (indiscernible). ES is  
 19 a good firm for the neighbors. (indiscernible).  
 20 So, we did get Permit 285. We  
 21 submitted a plan. I mean (indiscernible) at some  
 22 point, by an engineer, to say that this is how  
 23 it's going to end up. So, after doing that, the  
 24 requirement was to (indiscernible) and if you  
 25 look at the property, you can't grade the

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1 property because, not only (indiscernible) feet  
 2 from the (indiscernible) to the west and we're  
 3 the low spot in the yard.  
 4 So, (indiscernible). We couldn't add  
 5 any dirt, or we could push the water into his  
 6 yard. And while we were doing construction, we  
 7 saw this because the (indiscernible) piled up  
 8 there. And we tried to get rid of most of it and  
 9 see -- we not only did -- we had to get ducts in  
 10 the process. So, we scraped all the dirt off  
 11 (indiscernible) bricks.  
 12 And I don't know if you guys drove by  
 13 the project when it was going on, but it rained  
 14 for the entire summer and it was a mud pit, and  
 15 we couldn't get the stuff out of there. And then  
 16 I have three contractors with five trucks and all  
 17 this equipment to get this mud out of there  
 18 because it just -- it was that clay that you've  
 19 got around here. It's terrible.  
 20 And we finally got it all out of there  
 21 by fall and then we started putting the grass  
 22 back together because we were driving on the  
 23 grass, messed up the yard.  
 24 BOARD MEMBER MARK GRADY: May I just  
 25 interrupt you just for a second. But the mud

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1 you're referring to is from the excavation of the  
 2 basement or something else?  
 3 RALPH BENCRISCIUTTO: We had a small  
 4 addition, 680 feet and we had 262 yards of clay  
 5 that we took out and had to get rid of. That's  
 6 the only requirement for (indiscernible). So, we  
 7 were doing what we thought we were supposed to  
 8 do. We got rid of all this mud and then messed  
 9 up the yard. So, we started to replant the yard  
 10 (indiscernible). We had to re-seed it.  
 11 So, we spread (indiscernible) and then  
 12 re-seeded it. We tried to get it to grow back  
 13 before winter. The dispute comes when the  
 14 definition of "land disturbing activity", which  
 15 has been reiterated here two times. It's a broad  
 16 term. In the permit for (indiscernible) grades,  
 17 land surveying activity is relating to what  
 18 you're grading. It has to be 4,000 feet. Land  
 19 disturbing activity still describes grading and  
 20 filling of a minimum of 4,000 feet.  
 21 The second section (indiscernible) has  
 22 a minimum of 8,000 square feet, as Scott  
 23 (indiscernible). We were well below. So, when  
 24 we went over 8,000 feet, we already had  
 25 (indiscernible) and it didn't really matter the

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1 argument of, "Well, you're riding on the grass,  
 2 so you disturbed the land." Now, I understand  
 3 the broad definition of "land disturbing  
 4 activity" because, let's say, you're on a bluff,  
 5 that's Section 3.  
 6 Well, now we can't just go and take off  
 7 the grass or the plants because now, all the  
 8 water is going to -- you're going to lose  
 9 (indiscernible). It's going to run to the  
 10 (indiscernible) of somebody's yard or what have  
 11 you. So, there's stricter definitions of "land  
 12 disturbing activity". If you follow the strict  
 13 definition of "land disturbing activity", we  
 14 couldn't even cut the grass because we're  
 15 disturbing the vegetation.  
 16 So, this interpretation of "land  
 17 disturbing activity", all of a sudden gets  
 18 flipped. Well, wait a minute, you disturbed more  
 19 than 4,000 feet, so now you need a grading here.  
 20 But we're not grading it. So, I asked, even the  
 21 Code itself has the exceptions (indiscernible)  
 22 plants and (indiscernible) grass, landscaping,  
 23 sidewalks. It's all spelled out. It's in the  
 24 (indiscernible). It's clear.  
 25 There's no disputing it. These are the

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1 exemptions for (indiscernible) a permit. So, if  
 2 you take those exemptions off, we didn't grade  
 3 anything or fill anything. All we filled was the  
 4 driveway and the patio and we put some dirt  
 5 around the house for the landscaping. You could  
 6 see the pictures. If you go to the house and  
 7 look at it, we had the same walkway that was  
 8 there before we got the house, in the yard, right  
 9 where it was.  
 10 So, the definition all of a sudden  
 11 becomes, "Wait a minute. We already had the  
 12 (indiscernible) permit, but now we need a fill  
 13 and grading permit too." Now, this isn't just a  
 14 matter of paying bucks. This is a \$5,000 cash  
 15 bond, engineered plots, 45-day plan  
 16 (indiscernible). And how am I supposed to make  
 17 this permit? I'm not grading anything.  
 18 So, and then you come back to me and  
 19 say, "Well, you added fill underneath the  
 20 driveway." I said, "Well, sure did." You come  
 21 back and say, "Wait a minute. It's exempt but  
 22 you can't just add a foot of fill there because  
 23 your garage is higher than it was and now you had  
 24 to add a foot of fill underneath your driveway."  
 25 There's no (indiscernible) in this fill

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1 and grading permit where the drive is exempt, but  
 2 if you add your fill there, well then there's  
 3 another implied permit for that portion. And  
 4 that includes the patio and the planters. We  
 5 stated that we added fill. That's the only place  
 6 that's agreed to that we added fill.  
 7 We had to add gravel underneath the  
 8 driveway. I mean, we had to. We had to put it  
 9 there so -- where everybody could sit. So, this  
 10 is where the argument comes in and then, there's  
 11 no discussing it because it just came to the  
 12 conclusion that, well, we disturbed the land,  
 13 over 4,000. Now, you need a grading and fill  
 14 permit. This is the whole premise. I said,  
 15 "Well, I already have an erosion control permit,  
 16 which makes sense."  
 17 But if you look at the drawing, he  
 18 included the garage, the driveway, the patio and  
 19 sidewalks, the planters, everything. Boulders.  
 20 The boulders, they said, required a fill and  
 21 grading permit. It said that's fill. Boulders.  
 22 This, to me, was total nonsense. But not only  
 23 that, it's impossible to get this permit. What  
 24 am I supposed to do, give a plan where I'm not  
 25 going to do anything?

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1 So, then, I gave them the before and  
 2 after elevations. It's in the package. This was  
 3 done by the engineer (indiscernible). He says he  
 4 didn't get it. He says he didn't get it because  
 5 he refused to open it. It's in his emails. He  
 6 refused to open the final elevations that I  
 7 supplied from (indiscernible). Why?  
 8 Because it showed I didn't include  
 9 them. So, I don't know if he ever did look at  
 10 it, but here they are. You have a copy, and the  
 11 elevations show there's no difference. So, how  
 12 would I get a permit for grading unless it's  
 13 related to the exemptions? And even if you took  
 14 the exemptions of the driveway, patio, sidewalks,  
 15 and add them all up, it's still (indiscernible)  
 16 square feet.  
 17 So, how did that get to 4,000 square  
 18 feet, filling and grading? You don't. The only  
 19 way you get to that number, 4,000 square feet, is  
 20 land disturbing activities. Now, that was the  
 21 case, the land disturbing activity  
 22 (indiscernible) requirements of the grading  
 23 permit, then you would have to get a grading  
 24 permit (indiscernible) because it's nonsense.  
 25 BOARD MEMBER ADAM BAZELON: I have a

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1 couple of questions. What is the exemptions  
 2 listed in 756-7? I'm just trying to like -- I  
 3 see where it talks about -- I have it right in  
 4 front of me. You just have the citation?  
 5 RALPH BENCRISCIUTTO: It's 72-20, Page  
 6 4.  
 7 BOARD MEMBER ADAM BAZELON: So  
 8 (indiscernible)  
 9 BOARD MEMBER SCOTT RATKE: Do you want  
 10 to look at that?  
 11 BOARD MEMBER ADAM BAZELON: Okay, so --  
 12 well, the requirement for the permit comes from  
 13 756-7, correct?  
 14 BOARD MEMBER MARK GRADY: We're talking  
 15 about three permits. Fill permit?  
 16 BOARD MEMBER ADAM BAZELON: Yeah.  
 17 BOARD MEMBER MARK GRADY: Grading and  
 18 drainage permit and erosion control permit.  
 19 BOARD MEMBER ADAM BAZELON: Okay. So,  
 20 the exceptions apply to all --  
 21 BOARD MEMBER MARK GRADY: I'm just -- I  
 22 just -- I'm not saying that. I'm just saying 272  
 23 is the fill ordinance, fill permit, with the  
 24 exceptions he's talking about for the driveway  
 25 and patio. 756 is the grading section, which has

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1 the 4,000-foot land disturbance requirement.  
 2 BOARD MEMBER ADAM BAZELON: Right, and  
 3 I don't see any exceptions in 756-7.  
 4 BOARD MEMBER MARK GRADY: Yes.  
 5 RALPH BENCRISCIUTTO: (indiscernible)  
 6 getting the (indiscernible) permit says -- the  
 7 first line, it's "grading activity exceeded --  
 8 grading and filling exceed 4,000 feet." When we  
 9 get further down, explaining (indiscernible).  
 10 Then they go back to the generic term, "land  
 11 disturbing activity" and it's already defined in  
 12 this.  
 13 And it's in that (indiscernible), it's  
 14 directly related to the above subheading of,  
 15 Grading. The land disturbing activity  
 16 (indiscernible) in that (indiscernible). It's  
 17 not relating to not grading.  
 18 BOARD MEMBER ADAM BAZELON: And this  
 19 was a tear down of a home, correct?  
 20 RALPH BENCRISCIUTTO: No. It was an  
 21 addition.  
 22 BOARD MEMBER ADAM BAZELON: Okay.  
 23 RALPH BENCRISCIUTTO: A small addition.  
 24 So, it's not a new (indiscernible). No,  
 25 (indiscernible)

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1 BOARD MEMBER ADAM BAZELON: When was  
 2 the house -- the main house constructed? I swear  
 3 this is a brand new house.  
 4 RALPH BENCRISCIUTTO: It looks like it  
 5 now because (indiscernible)  
 6 CHAIR NANCY FILSINGER: He just added  
 7 to it.  
 8 BOARD MEMBER MARK GRADY: I think --  
 9 well, the old house that was there was  
 10 essentially gutted.  
 11 BOARD MEMBER ADAM BAZELON: Okay, so  
 12 the structure --  
 13 BOARD MEMBER MARK GRADY: The frame --  
 14 the structural framing was left behind  
 15 (indiscernible) and then a new addition was added  
 16 onto it with garages. An addition and garages.  
 17 RALPH BENCRISCIUTTO: I have a picture  
 18 (indiscernible)?  
 19 BOARD MEMBER ADAM BAZELON: Sure.  
 20 RALPH BENCRISCIUTTO: The before and  
 21 after grades and this (indiscernible).  
 22 BOARD MEMBER MARK GRADY: It looks like  
 23 a new house.  
 24 BOARD MEMBER ADAM BAZELON: Yeah. So,  
 25 do you have an alternate definition of "land

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1 disturbing activity" or do you just believe that  
 2 the Village is interpreting it too broadly?  
 3 RALPH BENCRISCIUTTO: No, they're not --  
 4 not interpreting that broadly. I mean, it is a  
 5 broad description (indiscernible) all three  
 6 parts. Because if you're grading, your land  
 7 disturbing activity is related to the grading.  
 8 If you're erosion control, and that's all you're  
 9 doing is messing up and you don't want the dirt  
 10 to run off, then that's 8,000 feet, but that's  
 11 land disturbing activity.  
 12 If you're on a bluff, there's different  
 13 parameters because you can't do things on a  
 14 bluff. You have to have a 10 percent grading and  
 15 then some. Now that's where you'd say you  
 16 wouldn't want to take the grass off without doing  
 17 something. So, your definition is related to the  
 18 subsection (indiscernible). The definition of  
 19 land disturbing activities is not  
 20 (indiscernible).  
 21 BOARD MEMBER ADAM BAZELON: And did you  
 22 already move all the grass, the top level of the  
 23 soil?  
 24 RALPH BENCRISCIUTTO: No, but it got  
 25 wrecked, kind of. We went over it and

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1 (indiscernible). We had to re-plant it.

2 BOARD MEMBER MARK GRADY: I just want

3 to clarify a comment you made when you said the

4 permit just references grading. You're talking

5 about, I think it's your Attachment 4. The

6 permit from the Village of Fox Point that says,

7 "A grading and drainage plan must be submitted

8 pursuant to 756.

9 If, among other things, a new principal

10 building is to be constructed, or a grading

11 activity affects more than 4,000 square feet."

12 So, that's the basis of your argument, that you

13 didn't grade 4,000 feet?

14 RALPH BENCRISSUTTO: Exactly, and

15 there's exemptions because it's relating to the

16 building grade code 272 and exemptions are 272-

17 10. So, those things are not in the permit

18 requirement for grading and fill, but there's no

19 (indiscernible). So, if I put gravel in my

20 driveway, you can't (indiscernible)

21 BOARD MEMBER MARK GRADY: Let's -- for

22 a second, let's leave the driveway and patio

23 alone. Let's just talk about the rest of the

24 area because I think I see them as two different

25 things, two different questions. So, if we just

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1 look at the areas, apart from the driveway and

2 the patio, Mr. Brandmeier had that diagram, or

3 whatever you want to call it, that we looked at

4 earlier, that showed all the blue and grey

5 surrounding pretty much the entire lot.

6 It's included within what he considered

7 a land disturbing activity. And you're saying

8 that, forgetting about the driveway and patio,

9 the rest of that that he has as land disturbing

10 activity, you don't think it's land disturbing

11 activity.

12 RALPH BENCRISSUTTO: It doesn't matter

13 to me at all if it's land disturbing activity.

14 (indiscernible) That's not relative. I had an

15 erosion control permit 285, which I paid for and

16 submitted erosion control plans. It was accepted

17 and I was well under the 8,000 feet. Now, he

18 says I'm over the 8,000 feet. It doesn't matter.

19 That was the minimum. The 8,000 feet was the

20 minimum. I got (indiscernible) for his

21 (indiscernible)

22 BOARD MEMBER MARK GRADY: Got it. But

23 if we exclude the patio and driveway, the rest of

24 the surface area of your property is more than

25 8,000 square feet. You would agree with that,

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1 wouldn't you?

2 RALPH BENCRISSUTTO: It's --

3 BOARD MEMBER MARK GRADY: I mean, all

4 the yard around the sides, the front and back.

5 RALPH BENCRISSUTTO: Well, the backyard

6 is only 25 feet long, so it's not 8,000 -- it's

7 still not 8,000 feet of grass, (indiscernible)

8 grass.

9 BOARD MEMBER MARK GRADY: So, we have a

10 fundamental dispute about whether there's 8,000

11 square feet of property.

12 RALPH BENCRISSUTTO: I think the

13 problem -- it's a third of an acre, so that's

14 15,000 with the house and everything.

15 BOARD MEMBER ADAM BAZELON: Can I ask a

16 very fundamental question? I don't know what

17 we're supposed to be deciding. This, to me, is a

18 garbled mess. But maybe you guys know what's

19 going on here, but I don't. There's factual

20 issues, there's legal issues, there's three

21 codes, there's one code, there's exceptions that

22 I can't find.

23 I have no idea what we're even debating

24 or talking about. Am I the only one who is that

25 confused?

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1 RALPH BENCRISSUTTO: You didn't see the

2 (indiscernible)?

3 BOARD MEMBER ADAM BAZELON: I --

4 BOARD MEMBER MARK GRADY: I --

5 RALPH BENCRISSUTTO: When I looked at

6 this packet --

7 BOARD MEMBER MARK GRADY: I don't know

8 if this is appropriate at this point of the

9 proceeding.

10 BOARD MEMBER ADAM BAZELON: If a judge

11 got this in court, he'd throw it in the garbage

12 and say, "I don't know what's going on here."

13 BOARD MEMBER MARK GRADY: Well, I think

14 --

15 BOARD MEMBER ADAM BAZELON: I'm not a

16 judge, but that's about where I am.

17 BOARD MEMBER MARK GRADY: They've made

18 a decision that -- setting erosion control aside

19 for a moment, because they got that permit. But

20 he needs to obtain a grading and drainage permit

21 because he's for sure more than 4,000 square

22 feet. And he needs a fill permit because he's

23 filled more than 25 cubic yards of fill.

24 VILLAGE ATTORNEY ERIC LARSON: And just

25 a caveat to that, what I heard was that they need

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1 to submit plans so that a determination can be  
 2 made on whether they need a fill permit.  
 3 BOARD MEMBER ADAM BAZELON: So, can you  
 4 --  
 5 BOARD MEMBER MARK GRADY: But to the  
 6 naked eye, you're right. I agree with that.  
 7 BOARD MEMBER ADAM BAZELON: So, what  
 8 code section are we or what code or statutory  
 9 sections are we looking at? I would like to get  
 10 an understanding of which sections I can pick up  
 11 and look at and say, "We need your interpretation  
 12 on this." And then I'd like to know if it's a  
 13 purely legal issue or what we decide a legal  
 14 issue then relates to a factual issue as to how  
 15 many feet were actually disturbed.  
 16 So, if we agree with the land  
 17 disturbing definition, it sounds like then  
 18 there's a factual issue because under one  
 19 interpretation put forth by Ralph, he says, "Even  
 20 if you include the patio in this, I'm still under  
 21 4,000 feet", so --  
 22 VILLAGE ATTORNEY ERIC LARSON: Here's  
 23 my suggestion. This is the petitioner's petition  
 24 to you saying, "I've been asked to do something  
 25 that I don't think I should be asked to do." So,

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1 I think we should have the petitioner begin this  
 2 saying -- to tell us, what is he being asked to  
 3 do that he thinks he should not be asked to do?  
 4 What exactly?  
 5 RALPH BENCRISCIUTTO: That's where we  
 6 are?  
 7 VILLAGE ATTORNEY ERIC LARSON: Yes.  
 8 BOARD MEMBER ADAM BAZELON: Okay. So,  
 9 what code sections do you believe were improperly  
 10 interpreted? Can you give me the code, section  
 11 and the statutory section, by number, to start?  
 12 RALPH BENCRISCIUTTO: Well --  
 13 BOARD MEMBER ADAM BAZELON: Are you  
 14 able to do that?  
 15 RALPH BENCRISCIUTTO: Yes.  
 16 BOARD MEMBER ADAM BAZELON: Okay.  
 17 RALPH BENCRISCIUTTO: It's 272.  
 18 BOARD MEMBER ADAM BAZELON: 272.  
 19 RALPH BENCRISCIUTTO: (indiscernible)  
 20 BOARD MEMBER ADAM BAZELON: 272 point -  
 21 - 272-10, I see is the exceptions.  
 22 RALPH BENCRISCIUTTO: 272-1 is  
 23 (indiscernible) determined for solid fill  
 24 (indiscernible)  
 25 BOARD MEMBER ADAM BAZELON: All right.

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1 BOARD MEMBER MARK GRADY: If it helps,  
 2 the code and ordinance sections --  
 3 BOARD MEMBER ADAM BAZELON: Yeah.  
 4 BOARD MEMBER MARK GRADY: -- are in Mr.  
 5 Brandmeier's packet or attachments. All three of  
 6 them came in the main section.  
 7 BOARD MEMBER SCOTT RATKE:  
 8 (indiscernible)  
 9 BOARD MEMBER MARK GRADY: Attachment 2.  
 10 CHAIR NANCY FILSINGER: (indiscernible)  
 11 BOARD MEMBER SCOTT RATKE: Okay.  
 12 RALPH BENCRISCIUTTO: (indiscernible)  
 13 the Village (indiscernible)  
 14 BOARD MEMBER MARK GRADY: They're in  
 15 the packet.  
 16 CHAIR NANCY FILSINGER: They're in the  
 17 packet.  
 18 RALPH BENCRISCIUTTO: They're in that.  
 19 But that's what I was required to do for the  
 20 (indiscernible), to make sure I didn't change the  
 21 grading. That's what I did.  
 22 BOARD MEMBER ADAM BAZELON: Okay. So,  
 23 we have 272-1 and now we have code 756-7, right?  
 24 And then there's section 285 or Chapter 285. Are  
 25 we (indiscernible) too?

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1 CHAIR NANCY FILSINGER: 285-43, is that  
 2 right? No, that's the permit application.  
 3 RALPH BENCRISCIUTTO: To clarify, it's  
 4 (indiscernible) 256 is the permit, which  
 5 (indiscernible)  
 6 BOARD MEMBER MARK GRADY:  
 7 (indiscernible)  
 8 RALPH BENCRISCIUTTO: So, the idea is,  
 9 there you get (indiscernible). So, the code is  
 10 272 (indiscernible), 285.  
 11 BOARD MEMBER ADAM BAZELON: Okay.  
 12 BOARD MEMBER MARK GRADY: I'm  
 13 concerned, and I think the (indiscernible) code  
 14 sections apply there. I'm concerned about any  
 15 factual disputes. That's what we need  
 16 information from. We've heard the argument, I  
 17 think, from the applicant that he believes these  
 18 exceptions that are in 272 apply to the grading  
 19 and drainage permit under whatever section it is,  
 20 756.  
 21 But I thought we had a general  
 22 agreement that if you ignore the driveway and  
 23 patio for the moment, that's there's more than  
 24 4,000 square feet of yardage -- more than 8,000  
 25 square feet of yardage around this property,

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1 around the building. And now I'm hearing the  
 2 applicant say no, so I don't even know how we  
 3 resolve that factual dispute.  
 4 RALPH BENCRISUTTO: Well, that's not a  
 5 dispute. The 8,000 feet is the minimum for the  
 6 erosion --  
 7 BOARD MEMBER MARK GRADY: I understand.  
 8 But the question --  
 9 RALPH BENCRISUTTO: It doesn't matter,  
 10 the total. That's the minimum, that's the lowest  
 11 number that you (indiscernible)  
 12 BOARD MEMBER MARK GRADY: Right.  
 13 RALPH BENCRISUTTO: Also, in that same  
 14 permit, 285, the exemption is on landscaping  
 15 activity (indiscernible). So, everything I did  
 16 on grass is exempt from that also.  
 17 BOARD MEMBER MARK GRADY: I understand  
 18 you disagree with Mr. Brandmeier's inclusion, or  
 19 you believe there's inclusion of the landscaping  
 20 activity. My fundamental point is, whether or  
 21 not there's 8,000 square feet, more than 8,000  
 22 square feet of yard around that building that you  
 23 drove over or you evened out or you top-dressed  
 24 or you did whatever you want to call it, around  
 25 that building.

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1 RALPH BENCRISUTTO: (indiscernible)  
 2 BOARD MEMBER ADAM BAZELON: The entire  
 3 property was a mud pit at one point. Was it not?  
 4 RALPH BENCRISUTTO: Yeah, because we  
 5 had to -- we took out the (indiscernible) mud,  
 6 never getting (indiscernible) and we had to do it  
 7 again. So, the next (indiscernible). And have  
 8 you ever tried to move wet clay?  
 9 BOARD MEMBER MARK GRADY: But your  
 10 argument is, that's not land disturbing activity,  
 11 when you did that. Right?  
 12 RALPH BENCRISUTTO: It's land  
 13 disturbing activity, but I had an erosion control  
 14 permit. It's just not fill and grading.  
 15 BOARD MEMBER MARK GRADY: Okay. I  
 16 understand that too. But I'm still trying to get  
 17 the point, you agree that it's land disturbing  
 18 activity. Was it more than 8,000 square feet?  
 19 Whether it was an exception or not, I mean,  
 20 decide that later.  
 21 RALPH BENCRISUTTO: Without the  
 22 exemptions, it's probably about 4,000 or 5,000 of  
 23 grass.  
 24 BOARD MEMBER MARK GRADY: Let's take  
 25 (indiscernible). Mr. Brandmeier, do you agree

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1 with that? That it's about 4,000 square feet,  
 2 excluding the driveway and patio?  
 3 DIRECTOR OF PUBLIC WORKS SCOTT  
 4 BRANDMEIER: No, because you can't exclude the  
 5 driveway or patio.  
 6 BOARD MEMBER MARK GRADY: I know, but I  
 7 just -- just help me.  
 8 DIRECTOR OF PUBLIC WORKS SCOTT  
 9 BRANDMEIER: I understand (indiscernible) so --  
 10 BOARD MEMBER MARK GRADY: I want to try  
 11 to eliminate a factual dispute here if I can.  
 12 That's what I'm trying to do.  
 13 DIRECTOR OF PUBLIC WORKS SCOTT  
 14 BRANDMEIER: Correct, and that's why I provided  
 15 that drawing that was in that exhibit --  
 16 BOARD MEMBER MARK GRADY: Right.  
 17 DIRECTOR OF PUBLIC WORKS SCOTT  
 18 BRANDMEIER: -- that showed the roughly 12,000  
 19 square feet.  
 20 BOARD MEMBER MARK GRADY: Right, and  
 21 so, but --  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: Because --  
 24 BOARD MEMBER MARK GRADY: -- your  
 25 12,000 square feet includes the driveway and

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1 patio?  
 2 DIRECTOR OF PUBLIC WORKS SCOTT  
 3 BRANDMEIER: And let me explain why.  
 4 BOARD MEMBER MARK GRADY: I understand  
 5 why.  
 6 DIRECTOR OF PUBLIC WORKS SCOTT  
 7 BRANDMEIER: (indiscernible) because -- well,  
 8 yes. It does include the driveway and patio  
 9 because under 756-7D, there are no exceptions.  
 10 BOARD MEMBER ADAM BAZELON: Yeah, I  
 11 didn't see any.  
 12 BOARD MEMBER MARK GRADY: It is over  
 13 4,000 square feet of disturbed area.  
 14 DIRECTOR OF PUBLIC WORKS SCOTT  
 15 BRANDMEIER: The applicant is taking exceptions  
 16 in one part of the code and hoping to apply them  
 17 to a different part of the code, which one cannot  
 18 do. Now, if you ask me to look at what is the  
 19 disturbed area outside of the patio and the  
 20 driveway, I could bring up GIM right now and  
 21 digitize that for you for the benefit of this  
 22 work right now.  
 23 Because that's how I developed that  
 24 drawing and I could exclude the driveway and the  
 25 patio just for, as they say, shits and giggles,

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1 so you could see what the disturbed area was on  
 2 the other parts of the "land". And what it would  
 3 have to reasonably include the addition that he  
 4 was doing, because that addition was a disturbed  
 5 area. He disturbed the land in order to build an  
 6 addition.  
 7 RALPH BENCRISCUITO: (indiscernible)  
 8 DIRECTOR OF PUBLIC WORKS SCOTT  
 9 BRANDMEIER: And I'm happy to bring that up  
 10 because you can see, you've got aerial images  
 11 that will go back to 1937, and I can bring up a  
 12 2022 aerial and a 2024 aerial and you can show  
 13 the difference between the two. This  
 14 construction of the property began in 2023.  
 15 So you'll easily be able to see what  
 16 was existing in 2024 versus what is there now in  
 17 -- I'm sorry, in 2022 and what is there in 2024.  
 18 BOARD MEMBER MARK GRADY: I --  
 19 DIRECTOR OF PUBLIC WORKS SCOTT  
 20 BRANDMEIER: And that will provide you, Mr.  
 21 Grady, with an opportunity to see what that  
 22 disturbed area is.  
 23 BOARD MEMBER MARK GRADY: And I -- this  
 24 is my fault. What I really wanted to focus on  
 25 was not the 8,000, it was the 4,000. So, in 756-

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1 7(1), it says, "Grading of Lots". It says, "A  
 2 drainage plan is required for applications for  
 3 land disturbing activity barring a permit that  
 4 affects the surface area of 4,000 square feet or  
 5 more." It says other things too, but it says  
 6 that.  
 7 And I think I just heard you say that  
 8 you agree that what you did with the rest of the  
 9 yard was land disturbing activity, you agree that  
 10 it was more than 4,000 square feet, but you  
 11 believe an exception applies. Correct? The  
 12 exception being that you didn't fill any of that.  
 13 Correct or not? Is that not correct?  
 14 RALPH BENCRISCUITO: Close, but what he  
 15 just said is that permit application 756-7, I  
 16 believe it is, is not relating to the code  
 17 exemptions in 272 --  
 18 BOARD MEMBER MARK GRADY: Right.  
 19 RALPH BENCRISCUITO: -- which is the  
 20 code that that permit is applied to. So, how  
 21 could you say that if the permit and application  
 22 is not related to the exemptions in that code  
 23 itself?  
 24 BOARD MEMBER MARK GRADY: But even if  
 25 we exempt -- we accept your argument that the

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1 driveway and patio shouldn't be included in that  
 2 4,000 square feet. I think you agreed with me  
 3 that the rest of yard is still over 4,000 square  
 4 feet. Your argument is that you didn't grade,  
 5 you didn't fill and so therefore, it doesn't  
 6 require a permit. That's what I thought I heard  
 7 you say.  
 8 RALPH BENCRISCUITO: And that's my  
 9 whole argument is that I have a permit  
 10 (indiscernible) 8,000 square feet minimum. So,  
 11 I'm not arguing (indiscernible) 8,000 feet, I  
 12 just --  
 13 BOARD MEMBER MARK GRADY: Right. But  
 14 that was my mistake. Sorry.  
 15 RALPH BENCRISCUITO: So, if I drove on  
 16 the grass. We did, we drove on the grass.  
 17 BOARD MEMBER MARK GRADY: Right.  
 18 RALPH BENCRISCUITO: But that's not a  
 19 requirement for a fill and grading permit.  
 20 That's relating to the erosion control permit,  
 21 and it makes sense. It better make sense that  
 22 (indiscernible) dirt all on the street into  
 23 (indiscernible) and that's what we didn't do.  
 24 So, that makes sense. That's the problem we had.  
 25 BOARD MEMBER MARK GRADY: So, I want to

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1 switch gears now and talk about fill for a  
 2 minute. It talks about a fill permit being  
 3 required. You used more than 25 cubic yards of  
 4 fill. Right? Correct? And your argument is,  
 5 you get to exclude the driveway and the patio,  
 6 under your argument, and if you exclude them, you  
 7 didn't put 25 yards of fill on the rest of the  
 8 property.  
 9 RALPH BENCRISCUITO: I put 13 yards of  
 10 black dirt (indiscernible). But that, you know,  
 11 it's sort of a -- it's an ambiguous part of the  
 12 code (indiscernible). 25 yards of fill, but does  
 13 that include --  
 14 BOARD MEMBER MARK GRADY: Let's assume  
 15 the top dressing is not included, just for the  
 16 sake of argument. You didn't put any other fill  
 17 anywhere else, along the house or anywhere else?  
 18 Because I thought it looked like the --  
 19 RALPH BENCRISCUITO: We probably put --  
 20 we pushed it around the house because we took out  
 21 all the bushes and pushed it back.  
 22 BOARD MEMBER MARK GRADY: And you  
 23 created slope grading away from the house, right?  
 24 RALPH BENCRISCUITO: But if you look at  
 25 the house, it's (indiscernible). It's

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1 (indiscernible) and we didn't (indiscernible).  
 2 We couldn't because the basement windows, we only  
 3 had this much room for it the way it was. But  
 4 the house was already (indiscernible). You can  
 5 build a house, you can't make it lower.  
 6 BOARD MEMBER MARK GRADY: If you didn't  
 7 raise the building, why did you need to raise --  
 8 put dirt underneath the driveway to raise it? I  
 9 don't understand that.  
 10 RALPH BENCRISCIUTTO: Well, if you look  
 11 at the elevations, there's a pretty steep grade  
 12 from the driveway to the fence line of the west  
 13 (indiscernible), almost two feet.  
 14 BOARD MEMBER MARK GRADY: Okay.  
 15 RALPH BENCRISCIUTTO: But previously, in  
 16 the picture, you can see that the front of the  
 17 driveway (indiscernible), it was higher. It was  
 18 680 and then when you go down the fence line,  
 19 it's 678. So, there was a real good grade  
 20 (indiscernible). When we put our new driveway  
 21 and the garage in, it just pushed it over another  
 22 15, 10 feet or so.  
 23 But we had to add dirt underneath the  
 24 new driveway anyway. (indiscernible) dirt and  
 25 gravel to fill it.

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1 BOARD MEMBER MARK GRADY: There was a  
 2 reference in one of the communications from  
 3 Brandmeier that there was 12-18 inches of  
 4 foundation above grade for the -- I think it's  
 5 the addition and the garages. Is that not  
 6 correct?  
 7 RALPH BENCRISCIUTTO: It's correct. So,  
 8 we put planters in.  
 9 BOARD MEMBER MARK GRADY: My point is,  
 10 so, this is higher than the preexisting grade?  
 11 RALPH BENCRISCIUTTO: The garage is  
 12 higher because it's level.  
 13 BOARD MEMBER MARK GRADY: With the  
 14 house?  
 15 RALPH BENCRISCIUTTO: Yeah, and the yard  
 16 is -- correct. And you got (indiscernible).  
 17 BOARD MEMBER MARK GRADY: So, you took  
 18 the elevation of the house, extended it west and  
 19 that resulted in 12-18 inches above grade, pre-  
 20 existing grade that was there?  
 21 RALPH BENCRISCIUTTO: You see the  
 22 pictures. That's why we put planters and rocks  
 23 (indiscernible) to make that transition.  
 24 BOARD MEMBER MARK GRADY: And again,  
 25 your argument is that there's exemption for that,

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1 is your argument?  
 2 RALPH BENCRISCIUTTO: Yes.  
 3 BOARD MEMBER ADAM BAZELON: And so, if  
 4 he had applied for a permit, these as-built  
 5 elevation drawings would not be sufficient for  
 6 the plan he would need?  
 7 DIRECTOR OF PUBLIC WORKS SCOTT  
 8 BRANDMEIER: The (indiscernible) that he  
 9 submitted?  
 10 BOARD MEMBER ADAM BAZELON: Yeah.  
 11 DIRECTOR OF PUBLIC WORKS SCOTT  
 12 BRANDMEIER: We would compare them. The  
 13 requirement is that they submit as-built against  
 14 (indiscernible) existing as-built with the  
 15 proposed. Because if it followed the normal  
 16 process, I have a topographic map of the existing  
 17 conditions. And then I have a map showing the  
 18 proposed conditions, so it'll show the footprint  
 19 of what's going to be added on or new  
 20 construction, plus what the grades are going to  
 21 be after construction is complete.  
 22 So, as you referenced, the 12-18 inches  
 23 and he acknowledged it raised up 12-18 inches  
 24 because there's two feet of drop from the  
 25 existing house down to the west property line.

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1 So, then, that would show what the new grades  
 2 would be around the addition, and we'd be able to  
 3 say, "Okay. That gives us our fill in that  
 4 area", and then we'd be able to take that  
 5 proposed grade, proposed and approved, once that  
 6 permit is issued and then compare it against the  
 7 as-built.  
 8 And then we'd say, "Okay, your as-built  
 9 grades are showing that you are closer to the  
 10 approved grades", and we allow a reasonable  
 11 (indiscernible) because we know that contractors  
 12 aren't using GPS coordinates on their equipment.  
 13 They're roughly grading the overall and they  
 14 assume some elevations and they usually get  
 15 within a half a foot.  
 16 BOARD MEMBER ADAM BAZELON: All right,  
 17 so we have the before and after. We don't have  
 18 the proposed. Let's say he paid to get the  
 19 permit, and we have the after, could he review  
 20 this? Could he pay --  
 21 RALPH BENCRISCIUTTO: That's the  
 22 proposal. It's done.  
 23 BOARD MEMBER ADAM BAZELON: Why don't  
 24 you just have him pay the permit fee and review  
 25 this?

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
 2 BRANDMEIER: Because he hasn't done the analysis  
 3 of the 210 and under (indiscernible), which is  
 4 the crux of the matter.  
 5 BOARD MEMBER ADAM BAZELON: Okay, so  
 6 that's what I'm trying to get at. So, he would  
 7 need an engineer to take this after and do a 210  
 8 and 100-year analysis?  
 9 DIRECTOR OF PUBLIC WORKS SCOTT  
 10 BRANDMEIER: That is correct, for both the pre-  
 11 development condition, before he even put a  
 12 shovel in the ground and put the addition on,  
 13 look at what the flows are coming off the  
 14 property in that pre-existing or pre-development  
 15 condition and then show what it is after  
 16 development.  
 17 RALPH BENCRISCIUTTO: You can see in the  
 18 before and after, it was the same. So, are you  
 19 saying I need a permit to do nothing? Because I  
 20 can't grade the driveway or the patio. I still  
 21 have the elevation showing on the foundation.  
 22 BOARD MEMBER ADAM BAZELON: Have you  
 23 reviewed this? I know you, on procedural  
 24 grounds, you didn't review it, but at least when  
 25 you initially got it, have you reviewed it since

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1 then?  
 2 RALPH BENCRISCIUTTO: I have not.  
 3 BOARD MEMBER MARK GRADY: You made the  
 4 comment that to the naked eye, it looks like  
 5 there's 25 cubic yards of fill. What -- is that  
 6 based on the driveway or is that based on other  
 7 things?  
 8 DIRECTOR OF PUBLIC WORKS SCOTT  
 9 BRANDMEIER: That's based on not just the  
 10 driveway, but the other additions around the  
 11 property. And when I went through the process  
 12 with the applicant last May of '23, just looking  
 13 at it logically, if you're raising that first  
 14 floor elevation of the garage and the small  
 15 addition, both 18 inches above the existing  
 16 property and you do a quick calculation, you can  
 17 come up with, easily 25 cubic yards.  
 18 You will arrive at in excess of 25  
 19 yards. The whole point of these permit  
 20 applications are not only to protect the  
 21 applicant from potential lawsuits from  
 22 neighboring property owners saying, "Hey, you've  
 23 added all this fill and now you're adversely  
 24 impacting me", it's to protect the neighboring  
 25 property owners from potential adverse impact.

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1 To say, "Look, you're flowing more off  
 2 the property in the post-development condition  
 3 and you're not allowed to do that." And that's  
 4 the whole point behind these ordinances. And  
 5 there are three separate and distinct ordinances,  
 6 each with their own, perhaps, exceptions. The  
 7 fill permit has exceptions, 756-7 does not.  
 8 BOARD MEMBER MARK GRADY: There's --  
 9 RALPH BENCRISCIUTTO: Can I make a  
 10 comment?  
 11 BOARD MEMBER MARK GRADY: Sure.  
 12 RALPH BENCRISCIUTTO: (indiscernible)  
 13 CHAIR NANCY FILSINGER: Yes.  
 14 RALPH BENCRISCIUTTO: My interpretation  
 15 of the (indiscernible) when they say that you  
 16 can't have 25 cubic yards of the fill. That's  
 17 talking about outside the planters, outside of  
 18 the top dressing. It's not related to  
 19 (indiscernible) because that wouldn't make any  
 20 sense. (indiscernible)  
 21 CHAIR NANCY FILSINGER: Why wouldn't it  
 22 make any sense? Why wouldn't it make any -- why  
 23 are you saying it doesn't make any sense?  
 24 RALPH BENCRISCIUTTO: Because when  
 25 you're talking about fill and grading, then that

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1 would be like (indiscernible) 25 yards. That's  
 2 all (indiscernible) because the purpose of the  
 3 cover page, as he keeps saying is, to not change  
 4 topography, the flow to our neighbor. So, the  
 5 topography is the same, which is (indiscernible)  
 6 ended up. 25 yards of fill -- I couldn't have  
 7 put 25 yards in there.  
 8 Say I wanted to put a little hill in  
 9 front so that the, for some reason, a berm.  
 10 Like, where they had a berm, it's going to be two  
 11 feet high. It doesn't say the berm can only be  
 12 so much yards. The planters, it doesn't say,  
 13 "Well, the planters can be added all up can only  
 14 be 5 yards or 10 yards." So, it says 25 cubic  
 15 yards of fill, which, to me, is talking about  
 16 grading and topography of the yard itself so that  
 17 you don't change the slope and the direction of  
 18 flow, which is the purpose of the  
 19 (indiscernible).  
 20 So, you have to ask yourself, "Why do I  
 21 need a permit if I didn't do anything? When it's  
 22 done. The grass has all grown back." You can  
 23 see (indiscernible) and we gave the elevations  
 24 per request of the village, approved the  
 25 (indiscernible).

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1 So, why would I need an application for  
 2 a permit? This is not an easy permit, and it  
 3 would take months and months (indiscernible).  
 4 And I wonder what (indiscernible) do. You're not  
 5 grading -- you're not changing the topography.  
 6 Planters are exempt, so is the driveway. So,  
 7 what would the planning committee look at?  
 8 An engineer is going to look at it and  
 9 say, "Well, we can't give you a plan to do  
 10 nothing." It just doesn't make any -- it's just  
 11 not logical. It's almost like they're trying to  
 12 get into the semantics of (indiscernible). What  
 13 is the purpose of the permit? He explained that  
 14 accurately. That we want to change the fill of  
 15 the water to (indiscernible) neighbors. The  
 16 neighbors (indiscernible).  
 17 We've got two neighbors  
 18 (indiscernible). We can't change the water  
 19 (indiscernible). You can probably  
 20 (indiscernible) and everyone's fine. Their yard  
 21 is not and (indiscernible) is the same to us.  
 22 And we did that on purpose. We had to. We  
 23 couldn't add slope (indiscernible) we thought we  
 24 needed to add slope for the house because it  
 25 would be this much higher. We would have had to

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1 add a foot and a half of slope and how far could  
 2 they go, 5 feet, 10 feet? (indiscernible) But  
 3 now all that water runs (indiscernible). It just  
 4 couldn't be done.  
 5 So, that's why we put a little planting  
 6 in (indiscernible) change the topography of the  
 7 yard. That doesn't change the drainage. It  
 8 doesn't affect the drainage at all because it's  
 9 the same amount of square footage. So, it's  
 10 higher than (indiscernible). It's the same  
 11 amount of water.  
 12 CHAIR NANCY FILSINGER: Mark  
 13 (indiscernible)  
 14 BOARD MEMBER MARK GRADY: But actually,  
 15 you touched on what I was just going to -- here's  
 16 the photographs. And one of them, for example,  
 17 shows the west side of the house with the HVAC  
 18 equipment. And it's sitting on what looks to me,  
 19 an elevated section of I don't know if it's dirt  
 20 or gravel or whatever. It was stones along it  
 21 and some bushes along it, correct?  
 22 RALPH BENCRISSUTTO: Yes.  
 23 BOARD MEMBER MARK GRADY: So, assuming  
 24 for the sake of argument, the rest of what's  
 25 shown in that photograph is the same grade, same

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1 elevation as what was there before construction.  
 2 There's no question that you've added a 3-4-foot-  
 3 wide section of -- and a footer 18-inch-tall  
 4 section of dirt and gravel to put your HVAC  
 5 equipment on, right?  
 6 RALPH BENCRISSUTTO: Right. That  
 7 planter goes along the whole (indiscernible)  
 8 driveway, and it goes (indiscernible)  
 9 BOARD MEMBER MARK GRADY: Right.  
 10 RALPH BENCRISSUTTO: It's for looks.  
 11 But I needed it to make the transition. So, I  
 12 couldn't grade them. If I didn't have the  
 13 boulders there in the plan, I would have had to  
 14 create some kind of slope from the driveway  
 15 toward the neighbor's yard. That would not have  
 16 passed the plan approval.  
 17 It could not be done. Because if we  
 18 pushed the water into the neighbor's yard, that's  
 19 exactly the reason we got the permit  
 20 (indiscernible).  
 21 BOARD MEMBER MARK GRADY: But by that  
 22 logic, you could have raised your entire yard 18  
 23 inches.  
 24 RALPH BENCRISSUTTO: No, I couldn't.  
 25 That would be 18 inches higher than

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1 (indiscernible)  
 2 BOARD MEMBER MARK GRADY: Well, but you  
 3 are, for three feet outside your house. Correct?  
 4 RALPH BENCRISSUTTO: That's not logical  
 5 because the front yard is three feet higher than  
 6 the backyard. The elevation -- the existing  
 7 driveway is two feet -- almost two feet higher  
 8 (indiscernible) the west yard. It adds slope on  
 9 it. But the slope started right there on the  
 10 driveway (indiscernible), it sloped down  
 11 (indiscernible).  
 12 BOARD MEMBER MARK GRADY: You made --  
 13 RALPH BENCRISSUTTO: The rest of the  
 14 yard, the front yard is exactly (indiscernible)  
 15 BOARD MEMBER MARK GRADY: I don't know  
 16 whether you're right about whether you could  
 17 grade that or not, I have no idea, to prevent  
 18 water -- to successfully grade it to prevent  
 19 water from going to your neighbors. But you have  
 20 definitely added fill around your house, say 18  
 21 inches or whatever it is.  
 22 And created planters, created a  
 23 substrate for the HVAC equipment, added fill to  
 24 put your driveway on top of so that it would come  
 25 up even with the garage. And your argument is,

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1 "Well, but everything else in the yard is at the  
 2 original grade. So, it's fine." Right?  
 3 RALPH BENCRISSUTTO: Well, the code  
 4 says in 272-10 that there's exemptions. Why were  
 5 they exemptions to the driveway (indiscernible)  
 6 if there wasn't some logic to it? The exceptions  
 7 are clear, and you can't say they're not.  
 8 (indiscernible)  
 9 BOARD MEMBER ADAM BAZELON: You removed  
 10 the driveway that was originally there, correct?  
 11 RALPH BENCRISSUTTO: We just graveled  
 12 it.  
 13 BOARD MEMBER ADAM BAZELON: So, when I  
 14 read it, it says the driveway is exempt. To me,  
 15 that assumes you're not disturbing the driveway  
 16 as it existed when you started the project. It  
 17 doesn't mean you can remove the driveway, put  
 18 back a driveway and then say, "I didn't disturb  
 19 the driveway."  
 20 RALPH BENCRISSUTTO: No, it does say  
 21 you can take out the driveway and that's not a  
 22 code requirement to take it out (indiscernible).  
 23 BOARD MEMBER MARK GRADY: I don't  
 24 disagree with that, but it doesn't -- what I  
 25 don't -- what I do disagree with is the argument

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1 that I can remove a driveway, put in,  
 2 hypothetically, six feet of fill and raise the  
 3 driveway up six feet, put a driveway on top of  
 4 it, none of that fill counts because it's a  
 5 driveway.  
 6 As opposed to what Mr. Brandmeier has  
 7 said is, "We give you an exemption for a  
 8 driveway. The gravel substrate, cement and  
 9 that's not counted as fill because that's the  
 10 driveway."  
 11 BOARD MEMBER ADAM BAZELON: Right, but  
 12 if you expand it --  
 13 BOARD MEMBER MARK GRADY: But if you  
 14 raise the driveway a foot, six feet, whatever,  
 15 whatever reason you want to do it, everything  
 16 underneath the driveway construction. It wasn't  
 17 necessary to create a --  
 18 BOARD MEMBER ADAM BAZELON: Or it can  
 19 make it wider, right?  
 20 BOARD MEMBER MARK GRADY: It can make  
 21 it wider, yeah, (indiscernible)  
 22 RALPH BENCRISSUTTO: It says  
 23 specifically that, "-- or and been removed, there  
 24 is no driveway (indiscernible) concrete patios or  
 25 driveways permitted under (indiscernible) or fill

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1 (indiscernible) various and soil after they had  
 2 been removed, are exempt from the filling  
 3 (indiscernible)." Section 217.10B.  
 4 BOARD MEMBER MARK GRADY: If, for the  
 5 sake of argument, if we assume Mr. Brandmeier is  
 6 right, that the fill you had to add underneath  
 7 the new driveway to get it up to the grade of the  
 8 garage, not counting the cement, the gravel  
 9 itself, is not exempted. Let's assume, for the  
 10 sake of argument, (indiscernible) that's not  
 11 exempted. Is there 25 yards of fill underneath  
 12 that driveway?  
 13 RALPH BENCRISSUTTO: Well, I don't  
 14 know. I can --  
 15 BOARD MEMBER MARK GRADY: You don't  
 16 know?  
 17 RALPH BENCRISSUTTO: I didn't add it  
 18 up.  
 19 BOARD MEMBER MARK GRADY: Okay.  
 20 RALPH BENCRISSUTTO: But the thing is,  
 21 the original permit at 2,100 feet land disturbing  
 22 activity, which was under the 4,000 --  
 23 BOARD MEMBER MARK GRADY: I'm just  
 24 talking about fill now. I'm not talking about  
 25 land disturbing.

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1 RALPH BENCRISSUTTO: Okay, but you're  
 2 really just talking about 4,000 feet, not cubic  
 3 yards. Because if you look at 217-10E, Minor  
 4 Grading, this only applies to the yard. It  
 5 doesn't apply to the planters or even a house.  
 6 Because otherwise, none of the other requirements  
 7 or exemptions would make any sense.  
 8 BOARD MEMBER MARK GRADY: Do you have  
 9 an opinion, Mr. Brandmeier, on whether or not the  
 10 fill under the driveway constitutes 25 square  
 11 yards, by itself?  
 12 DIRECTOR OF PUBLIC WORKS SCOTT  
 13 BRANDMEIER: I'm doing the calculation in my head  
 14 right now. About 40 feet long and 20 feet wide  
 15 is 800 square feet. You probably had to add a  
 16 foot of fill before you got to stone and  
 17 concrete. So, that's 800 cubic feet divided by  
 18 27, we'll just call it 30, you're at about 30  
 19 yards, 35 yards, just under the driveway.  
 20 BOARD MEMBER MARK GRADY: And that  
 21 doesn't count anything around the house?  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: Correct. And that's just a quick  
 24 and dirty calculation of going 40 by 20 by one  
 25 foot worth of fill because you've got -- the

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1 applicant has acknowledged both the 18 inches in  
 2 difference between the first-floor elevation at  
 3 the existing house and what was adjacent to it.  
 4       So, if it's 18 inches, you're going to  
 5 want to put a foot of fill to get to that garage  
 6 to get to roughly eight inches beneath the garage  
 7 slab and then add four inches of stone and four  
 8 inches of concrete. That puts you within where  
 9 you need to be, so I could rough and dirty calc  
 10 of 40 by 20 by 1 divided by 27, roughly 35  
 11 (indiscernible)  
 12       RALPH BENCRISCUTTO: You're looking at  
 13 the 25 cubic yards underneath the driveway, but  
 14 that -- those exceptions to the driveway got  
 15 cleared and the permit for the fill is 4,000  
 16 square feet. It has nothing to do with yardage.  
 17 4,000 square feet of disturbed area when you're  
 18 changing the topography. You can't change the  
 19 topography of the driveway.  
 20       It's going toward the street and his  
 21 calculations are way off anyway because it is  
 22 (indiscernible) where it was (indiscernible).  
 23 The elevations at the house, where it started  
 24 before are 680. If you look at it right now,  
 25 it's probably 685 or something. It's like 681

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1 (indiscernible). It's just not -- you know, it  
 2 slopes.  
 3       But the grading per 272-10E is not  
 4 related to any of the other exemptions. It's  
 5 grading that changes. It says it had to change  
 6 the flow of water and not to change the flow from  
 7 one place to the next. I can't add 25 yards and  
 8 then, all of a sudden, push the water to the  
 9 neighbor's yard. But I can add 25 yards if I've  
 10 got a low spot in my yard, and I keep the  
 11 topography the same.  
 12       So, that's what that exemption is for.  
 13 It's trying to make it easy to landscape property  
 14 at a new house. I mean, that's what it's trying  
 15 to do. (indiscernible) I offered to pay the  
 16 permit fee if that was the end of it. No, I need  
 17 a \$5,000 (indiscernible) bond. 5, 10 and 100-  
 18 year drainage plans, engineered drawings, plan  
 19 review, permits, all this stuff. And to do what?  
 20 It's done and I haven't changed the topography of  
 21 the yard, which is affecting the drainage  
 22 (indiscernible)  
 23       DIRECTOR OF PUBLIC WORKS SCOTT  
 24 BRANDMEIER: Might I add a few things?  
 25       CHAIR NANCY FILSINGER: Yeah.

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1       DIRECTOR OF PUBLIC WORKS SCOTT  
 2 BRANDMEIER: As I noted in my memo,  
 3 (indiscernible) what are the legal issues here?  
 4 What are the facts (indiscernible)? And I think  
 5 this board has done a nice job of trying to get  
 6 at the facts (indiscernible). I believe the  
 7 issues rolled out to which of the three permits  
 8 apply, erosion control, grading and drainage and  
 9 then fill.  
 10       Now when we look at the ones that have  
 11 been submitted and we look at the evidence that  
 12 has been presented here this evening, you have to  
 13 acknowledge that there's at least 4,000-5,000  
 14 square feet of disturbed area under the  
 15 definition. So, under Chapter 756-7E, it clearly  
 16 states that if you disturb more than 4,000 square  
 17 feet, you are required to do the 210 and 100-year  
 18 (indiscernible) and post-development flow  
 19 analysis. It's that simple. He's acknowledged  
 20 4,000-5,000 square feet, whether it's 12,000,  
 21 8,000, 4,000 or 5,000, he's over 4,000, it  
 22 applies.  
 23       RALPH BENCRISCUTTO: (indiscernible)  
 24       DIRECTOR OF PUBLIC WORKS SCOTT  
 25 BRANDMEIER: And you -- just -- the exceptions

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1 within Chapter 272 do not apply to 756. If they  
 2 were intended to apply, they'd either be  
 3 incorporated by reference, or they would be  
 4 written in there intentionally. They have not  
 5 been for a very good reason. Because in the  
 6 particular case of this applicant, the driveway,  
 7 if I'm not mistaken, was moved.  
 8       So, that's a disturbed area. You're  
 9 removing the driveway from one location and  
 10 putting it in a different location. So, if we  
 11 get at the heart of the matter, 756-7E does apply  
 12 to this applicant and the project that was  
 13 undertaken.  
 14       BOARD MEMBER ADAM BAZELON: So, if we  
 15 agree with you on that point, does that make the  
 16 other points moot because then, he has to get the  
 17 same plan under the other permits?  
 18       DIRECTOR OF PUBLIC WORKS SCOTT  
 19 BRANDMEIER: It would identify how much fill is  
 20 there and --  
 21       BOARD MEMBER ADAM BAZELON: Or that it  
 22 (indiscernible)  
 23       DIRECTOR OF PUBLIC WORKS SCOTT  
 24 BRANDMEIER: -- then you address the grading  
 25 because 272 does say you have to do grading and

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1 drainage if you place more than 25 cubic yards of  
 2 fill. So, yes, it would pretty much address what  
 3 272 is calling for, but 272 is a separate permit.  
 4 So, you can get into the meat of, is the  
 5 driveway, regardless of how much fill is  
 6 underneath that, exempt under this part of the  
 7 code?  
 8 Is the patio completely exempt under  
 9 the code? Are the planters, regardless of how  
 10 much fill is there, exempted under the code? But  
 11 I think the board has to look at the three  
 12 separate and distinct codes that apply in this  
 13 particular case, 285, which is the erosion  
 14 control, 756-7E, which is the grading and  
 15 drainage under the building code, and then 272,  
 16 which is the fill permit.  
 17 And as I note in the memo, 272 is hard  
 18 to determine at this juncture because frankly,  
 19 there's this disagreement between the applicant  
 20 and the Village of, is that exception, the  
 21 exemptions within 272-10, for patios, driveways,  
 22 sidewalks, whatever the case might be, planters?  
 23 You exclude all of it or you exclude what a  
 24 rational applicant would -- and I'm speaking for  
 25 the sake of that way.

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1 When a rational person would look at in  
 2 terms of four inches of concrete or asphalt and  
 3 four inches of substrate or stone to support that  
 4 surface, okay, and then everything underneath  
 5 that is fill. And that's for the board to  
 6 determine. Of whether everything is exempted or  
 7 not.  
 8 And if it is, we march along saying,  
 9 "Okay, then we have this direction from the board  
 10 of appeals saying that, in your opinion,  
 11 everything underneath the driveway, regardless of  
 12 how much fill is there, is exempted", and then we  
 13 know how to apply these applications moving  
 14 forward into the future.  
 15 But that doesn't eliminate the fact  
 16 that, under 756-7, you've still disturbed the  
 17 area, which still requires you to evaluate  
 18 whether that disturbance is going to adversely  
 19 impact a neighboring property owner by  
 20 (indiscernible).  
 21 BOARD MEMBER MARK GRADY: Do you  
 22 believe the top dressing is any kind of an  
 23 exception to the land disturbance under 756?  
 24 DIRECTOR OF PUBLIC WORKS SCOTT  
 25 BRANDMEIER: Top dressing -- no, you cannot use

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1 the exceptions under that to apply to 756, but --  
 2 BOARD MEMBER MARK GRADY: So, even if  
 3 we -- let me just finish.  
 4 DIRECTOR OF PUBLIC WORKS SCOTT  
 5 BRANDMEIER: Yeah.  
 6 BOARD MEMBER MARK GRADY: So, even if  
 7 we assume what I think I heard the applicant  
 8 saying is that what he did with the rest of the  
 9 yard was essentially top dressing. It's your  
 10 position that it doesn't matter whether it's top  
 11 dressing or not, because that exception doesn't  
 12 exist at 756, it's still 4,000 square feet of  
 13 land disturbing activity.  
 14 DIRECTOR OF PUBLIC WORKS SCOTT  
 15 BRANDMEIER: That is correct. And that disturbed  
 16 area, when you look at the pictures and if you  
 17 drove past the site at any point in time during  
 18 construction, particularly last October, November  
 19 or December, you'd see that there was a large  
 20 area that was disturbed. And the pictures  
 21 clearly show and the image that I created for the  
 22 benefit of the applicant and for the benefit of  
 23 the board, shows what was documented in the  
 24 pictures, the disturbed area in the pictures.  
 25 Where the placement and stockpiling of

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1 the soils on top of the land surface is a  
 2 disturbed area, while you were driving around and  
 3 disturbing the area. And then the question  
 4 becomes, "Okay, if you (indiscernible) 756-7, do  
 5 you now trigger Chapter 285 in the erosion  
 6 control permit by exceeding 8,000 square feet or  
 7 any one of the other requirements within the  
 8 ordinance (indiscernible)?"  
 9 BOARD MEMBER MARK GRADY: Is erosion  
 10 control moot at this point?  
 11 DIRECTOR OF PUBLIC WORKS SCOTT  
 12 BRANDMEIER: It is moot because he did obtain the  
 13 -- yes, he did file that and he provided the fee.  
 14 We had an erosion control plan. So, the real  
 15 issue is now, is this 756-7 applicable to this  
 16 applicant and is Chapter 272 applicable to this  
 17 applicant and the project that was undertaken?  
 18 BOARD MEMBER ADAM BAZELON: And 285  
 19 defines, "land disturbing construction activity".  
 20 But that's not applicable, that definition, to  
 21 756-7E? Is that your position?  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: We did not have that cross-  
 24 referenced in there and that's why we obtained  
 25 that definition from the attorney and that's when

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1 Mr. Botcher rendered his opinion on December  
2 21st.  
3 BOARD MEMBER MARK GRADY: Your position  
4 is, you're using that definition in 756, in the  
5 absence of a different one in 756?  
6 DIRECTOR OF PUBLIC WORKS SCOTT  
7 BRANDMEIER: Yeah, what was provided to us by the  
8 attorney, yes.  
9 BOARD MEMBER MARK GRADY: 756 doesn't  
10 have a definition for "land disturbing activity",  
11 correct?  
12 DIRECTOR OF PUBLIC WORKS SCOTT  
13 BRANDMEIER: It didn't have --  
14 BOARD MEMBER MARK GRADY: In and of  
15 itself?  
16 DIRECTOR OF PUBLIC WORKS SCOTT  
17 BRANDMEIER: I don't believe that it does. I'd  
18 have to check the building code itself. 756-7  
19 likely does not, but I have not looked at the  
20 entirety of the building code.  
21 BOARD MEMBER MARK GRADY: So, you've  
22 looked elsewhere in the code for that definition,  
23 plus the state statutes?  
24 DIRECTOR OF PUBLIC WORKS SCOTT  
25 BRANDMEIER: State statutes.

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1 VILLAGE ATTORNEY ERIC LARSON: So --  
2 RALPH BENCRISSUTTO: (indiscernible)  
3 CHAIR NANCY FILSINGER: (indiscernible)  
4 VILLAGE ATTORNEY ERIC LARSON: Again,  
5 you referred to me and I just want to be very  
6 clear, I provided three definitions. I didn't  
7 apply them to this situation. I wasn't even  
8 aware of the situation. So, that was applied by  
9 staff. That's my recollection.  
10 DIRECTOR OF PUBLIC WORKS SCOTT  
11 BRANDMEIER: My apologies.  
12 VILLAGE ATTORNEY ERIC LARSON: So, on  
13 272 -- so 285 is moot. We don't have to deal  
14 with 282.  
15 BOARD MEMBER MARK GRADY: 5.  
16 VILLAGE ATTORNEY ERIC LARSON: 272, the  
17 fill ordinance, it's been described as being  
18 about drainage and it tends to address drainage.  
19 But I see this as also addressing protection of  
20 roads and we want to know the proposed traffic  
21 routes for hauling fill, location of the filling  
22 operations. I see 285 as addressing drainage.  
23 But I guess my question is, if we try to identify  
24 the purpose of 272, isn't it broader than simply  
25 drainage?

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
2 BRANDMEIER: Yes.  
3 VILLAGE ATTORNEY ERIC LARSON: So, the  
4 argument that it is not affecting drainage may be  
5 immaterial because if he's hauling 25 yards of  
6 fill, this ordinance is about ensuring that it's  
7 high-quality fill and that the roads are  
8 protected and that they're not going to be  
9 hauling this fill in a way that's going to be a  
10 nuisance to the neighbors. Isn't that what 272  
11 is about?  
12 DIRECTOR OF PUBLIC WORKS SCOTT  
13 BRANDMEIER: Yes.  
14 BOARD MEMBER MARK GRADY: In addition  
15 to drainage?  
16 DIRECTOR OF PUBLIC WORKS SCOTT  
17 BRANDMEIER: Yes.  
18 VILLAGE ATTORNEY ERIC LARSON: It does  
19 speak to obstructing water courses, and it does  
20 address some drainage issues.  
21 BOARD MEMBER MARK GRADY: Well, if you  
22 look at 272-2G, it talks about the plan. It  
23 describes the terrain and the grading, etc., so  
24 there's a (indiscernible) --  
25 VILLAGE ATTORNEY ERIC LARSON: Sure.

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1 BOARD MEMBER MARK GRADY: -- that  
2 aspect of it. I agree with you that there are  
3 other aspects, as well. It's much broader than  
4 just drainage. (indiscernible)  
5 RALPH BENCRISSUTTO: Can I make a  
6 comment?  
7 VILLAGE ATTORNEY ERIC LARSON: I'm  
8 done.  
9 RALPH BENCRISSUTTO: Can I address the  
10 attorney?  
11 BOARD MEMBER MARK GRADY: Sure. Well,  
12 you can address his arguments.  
13 RALPH BENCRISSUTTO: So, your attorney,  
14 obviously, quote 256-7, and had certain  
15 activities over 4,000 feet, meaning, that permit  
16 application of 272. The subheading of "Grading"  
17 and then description land disturbing activity  
18 over 4,000 feet. That has nothing to do with  
19 cubic yards. Nobody's adding up yardage.  
20 It's 4,000 square feet for the purpose  
21 of drainage control so it doesn't affect the  
22 topography of the yard. (indiscernible)  
23 activity, that point relates to grading. Nothing  
24 else. And the heading in the application says,  
25 "Grading activities exceeding 4,000 square feet".

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1 It doesn't say 25 cubic yards, it says 4,000  
 2 square feet. And in the exemptions of 272.10,  
 3 each exemption, top dressing, patios and  
 4 driveways (indiscernible), nothing has cubic  
 5 yards listed.  
 6 It doesn't say you can only put five  
 7 cubic yards of top dressing. They think you're  
 8 going to cover the whole yard. Patios and  
 9 driveways, they don't know how big the yard is or  
 10 the driveway and they're not saying so many cubic  
 11 yards (indiscernible). It's exempt. When it's  
 12 exempt, it means there's no permit required,  
 13 period.  
 14 So, minor grading only applies to the  
 15 yard itself or it could have kept the drainage,  
 16 and it says clearly, "So it doesn't pitch toward  
 17 the residential structure." It spells it out.  
 18 The intent of this exemption is (indiscernible)  
 19 minor grading of construction of planting beds,  
 20 flower gardens, (indiscernible) and similar  
 21 activities which do not --  
 22 BOARD MEMBER MARK GRADY: I'm sorry.  
 23 Where are you reading from? I'm sorry.  
 24 RALPH BENCRISCUTTO: (indiscernible)  
 25 BOARD MEMBER MARK GRADY: Okay, I got

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1 it. Okay, got it. Got it.  
 2 BOARD MEMBER ADAM BAZELON: If we find  
 3 that those exemptions don't apply to the 4,000  
 4 square feet, would you concede that 4,000 square  
 5 feet is disturbed? Are you relying on the --  
 6 RALPH BENCRISCUTTO: It's disturbed,  
 7 but that's why we got a building permit. It has  
 8 nothing to do with disturbed. If you -- I asked  
 9 the attorney the question because --  
 10 BOARD MEMBER MARK GRADY: He's not here  
 11 to answer questions for you. I'm sorry.  
 12 RALPH BENCRISCUTTO: (indiscernible)  
 13 BOARD MEMBER MARK GRADY: You can make  
 14 arguments, but --  
 15 RALPH BENCRISCUTTO: It's a legal  
 16 opinion.  
 17 BOARD MEMBER MARK GRADY: You can make  
 18 your arguments, but --  
 19 BOARD MEMBER ADAM BAZELON: Well, my  
 20 understanding is 756-7E is at issue, right? It's  
 21 not moot.  
 22 RALPH BENCRISCUTTO: Well, that's  
 23 really the whole argument.  
 24 BOARD MEMBER ADAM BAZELON: Right, and  
 25 so this says, "For applications for land

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1 disturbing activities requiring a permit that  
 2 affects the surface area of 4,000 square feet or  
 3 more." And my question is, if we determine that  
 4 we don't think the exemptions are applicable,  
 5 would you agree that 4,000 square feet are  
 6 disturbed?  
 7 RALPH BENCRISCUTTO: Sure.  
 8 BOARD MEMBER ADAM BAZELON: Okay.  
 9 RALPH BENCRISCUTTO: Isn't that why I  
 10 got the erosion permit, because I'm not grading,  
 11 I'm disturbing, and this is why I got the erosion  
 12 permit. And that's an 8,000 foot  
 13 (indiscernible). If it was -- otherwise, then  
 14 we'd have to get two permits for everything.  
 15 You'd have to get a grading permit when you're  
 16 not grading. This is the whole argument. But if  
 17 you look at the thing you're looking at, 256-7.  
 18 BOARD MEMBER ADAM BAZELON: 756-7,  
 19 yeah.  
 20 RALPH BENCRISCUTTO: 756-7. If you  
 21 look at the top where the subheading is,  
 22 "Grading", everything below that is relative to  
 23 grading. It has nothing to do with anything  
 24 else. Everything in that subcategory. So, when  
 25 they say, "land disturbing activities", it's

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1 related to grading. It's not really --  
 2 BOARD MEMBER ADAM BAZELON: Well, it  
 3 just says you have to apply for a drainage permit  
 4 if you disturb it. It doesn't make an assumption  
 5 one way or the other.  
 6 RALPH BENCRISCUTTO: Yeah  
 7 (indiscernible). Well, okay, this is where the  
 8 ambiguity is. This is my -- in their defense.  
 9 I'm saying it's a little ambiguous because they  
 10 picked up on that and they wrote the whole code  
 11 requirement to me based on just land disturbing  
 12 activity. And there's no logic in that because  
 13 I'm not going to grade anything. The project is  
 14 already finished. So, if you said I needed a  
 15 grading permit --  
 16 BOARD MEMBER MARK GRADY: Well, if you  
 17 hadn't finished the project without the permit,  
 18 you might have had to grade something. Right?  
 19 RALPH BENCRISCUTTO: No, I couldn't  
 20 grade anything. It was all recently graded. The  
 21 front yard grade is fine, and the backyard is too  
 22 close to the neighbors. I can't change the  
 23 grading.  
 24 BOARD MEMBER MARK GRADY: Well, you  
 25 wouldn't have been able to put any of the dirt

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1 you pushed up around the house, right?

2 RALPH BENCRISUTTO: No, there's no

3 proof required for that. It's in the exemptions.

4 BOARD MEMBER MARK GRADY: I --

5 RALPH BENCRISUTTO: I don't think I

6 understand your question (indiscernible)

7 VILLAGE ATTORNEY ERIC LARSON: So, I

8 want to go back to something that was said some

9 time (indiscernible). It's my understanding that

10 there was some fill placed to raise up some of

11 the construction that was done. So, it's under

12 new construction at this point. Do you consider

13 that to be fill? Dirt that was added that is now

14 underneath a structure.

15 BOARD MEMBER MARK GRADY: No, they

16 didn't add dirt under a structure.

17 VILLAGE ATTORNEY ERIC LARSON: I

18 thought they added under the addition.

19 BOARD MEMBER MARK GRADY: No, they

20 excavated under the addition. That's where the

21 big pile of dirt came from. But -- right? Am I

22 wrong?

23 BOARD MEMBER ADAM BAZELON: There

24 wasn't any dirt added under --

25 RALPH BENCRISUTTO: No, we took it

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1 out.

2 DIRECTOR OF PUBLIC WORKS SCOTT

3 BRANDMEIER: It was -- you had the existing house

4 and again, if the board so (indiscernible) I can

5 bring it up on GIS and show the differences. But

6 there's an existing house to which there was an

7 addition, plus the garage. And underneath that

8 addition and garage, that's the area that was

9 excavated.

10 There was no fill, per se, placed

11 underneath that, other than stone for the

12 concrete slab for the addition if you do a full

13 basement addition. But then that fill was placed

14 around in the parcel while construction was

15 ongoing. And then the placement of that fill is

16 really what's at dispute. Where was it placed

17 and do the exceptions fall (indiscernible)?

18 BOARD MEMBER MARK GRADY: Some of it

19 was trucked off-site. Some of it was pushed

20 around the house and treated the planters that

21 are around the house and treated the base for the

22 driveway that was raised up.

23 DIRECTOR OF PUBLIC WORKS SCOTT

24 BRANDMEIER: That is correct.

25 RALPH BENCRISUTTO: No, we couldn't

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1 use the clay. We had to go (indiscernible). So,

2 I mean, maybe that's the issue.

3 BOARD MEMBER MARK GRADY: It doesn't

4 matter to me whether it's new dirt or old dirt.

5 I don't care.

6 RALPH BENCRISUTTO: Well, this

7 (indiscernible)

8 BOARD MEMBER MARK GRADY: It makes a

9 difference to you in constructing it, but for

10 purposes of how much fill you used, it's fill,

11 whether it's new fill or old fill or clay or

12 dirt. But no, there was no fill under the

13 structure.

14 RALPH BENCRISUTTO: Well, underneath

15 (indiscernible)

16 BOARD MEMBER MARK GRADY: No, it's just

17 gravel. But you didn't throw dirt into the hole

18 after you dug the hole.

19 RALPH BENCRISUTTO: There's gravel in

20 my driveway. In fact, there's (indiscernible)

21 BOARD MEMBER MARK GRADY: Right, but

22 there's dirt under the gravel.

23 RALPH BENCRISUTTO: (indiscernible)

24 BOARD MEMBER MARK GRADY: Yeah.

25 CHAIR NANCY FILSINGER: All right.

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1 Adam?

2 BOARD MEMBER ADAM BAZELON: What?

3 CHAIR NANCY FILSINGER: See, if Mark

4 wants to -- still confused as to what we are

5 determining?

6 BOARD MEMBER ADAM BAZELON: I have a

7 better idea. I mean, I would almost like a post-

8 hearing briefing on this. But if someone wants

9 to make the motion, I'll entertain it. I mean, I

10 don't have a choice. I --

11 BOARD MEMBER MARK GRADY: I wanted to

12 ask Mr. Brandmeier one last question to respond

13 to the applicant. He was essentially saying that

14 there's no point in having an erosion permit and

15 a permit under 756 because they do the same

16 thing. I'm oversimplifying. But I mean, what is

17 the distinction between the two in terms of

18 purchase of the policy or the reasoning behind

19 this?

20 DIRECTOR OF PUBLIC WORKS SCOTT

21 BRANDMEIER: Well, the distinction really is in

22 the description itself. So, (indiscernible)

23 permit identifies what you're going to do to

24 prevent sediment from floating off site during

25 construction, okay. And so, that's why we have

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1 separate code requirements. For some reason, and  
 2 again, it predates me, that one was written with  
 3 an 8,000 square foot minimum disturbed area.  
 4 I don't know why, but that predates me  
 5 why it was written as that. It might have been a  
 6 DNR model ordinance that 8,000 square feet of  
 7 disturbed area would trigger, amongst other  
 8 things, placement of 600 linear feet by  
 9 excavating 800 cubic yards, et cetera. Those all  
 10 trigger the need for an erosion control permit.  
 11 So, whether it's silk socks, core logs,  
 12 which are coconut fiber logs, an erosion control  
 13 fence around the property, the whole purpose  
 14 behind that is to say, "Hey, this is how I'm  
 15 going to protect sediment from running off site  
 16 during my construction activities."  
 17 The grading and drainage plan is a  
 18 completely different animal. And that 4,000  
 19 square feet trigger was written during my tenure  
 20 here, as I noted, and I recommended this be done  
 21 because I had done it in the private sector many  
 22 times. And the board adopted that 4,000 square  
 23 foot trigger to say, okay, if you're going to  
 24 build something.  
 25 Let's just say, hypothetically, a new

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1 principal home and you've got a virgin lot,  
 2 you're putting up a new principal home, you've  
 3 got to identify how that construction is going to  
 4 impact the neighboring property owners because of  
 5 the residential infill that we have in a  
 6 completely built out community. And so, therein  
 7 lies the distinction between the two.  
 8 You can get into the discussion of,  
 9 "Well, shouldn't they match? Shouldn't you do  
 10 4,000 and 4,000 or 8,000 and 8,000?" Certainly,  
 11 that's an agreement, but an argument that could  
 12 be made, but that's not the way the code is  
 13 defined. So, they have separate and distinct  
 14 purposes. One is to say, "Hey, you're disturbing  
 15 more than 4,000 square feet of land", or if you  
 16 need a fill permit, you have to undertake this  
 17 activity to show that you're not going to  
 18 adversely affect the neighboring property owner.  
 19 Do the analysis with an engineer. The  
 20 8,000 square feet or 600 feet of pipe or 800  
 21 cubic yards says, "What are you going to do to  
 22 control the runoff from your site while you're  
 23 doing this project?" Theoretically, you may not  
 24 begin the requirement for 756-7. You might be  
 25 stripping the entire property and keeping it a

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1 virgin property, but you're affecting more than  
 2 8,000 square feet.  
 3 You may not need that permit under 756-  
 4 7, but you could be stripping off 800 cubic yards  
 5 and affecting more than 8,000 square feet. So,  
 6 that would kick in the requirement for an erosion  
 7 control plan. Tell us what you're going to do to  
 8 make sure that you do not have sediment in --  
 9 from a DNR company perspective, you'll look at  
 10 phosphorous in the sediment and bacteria flowing  
 11 off site from a parcel.  
 12 And what are you going to do to restore  
 13 that area after you've done with that particular  
 14 application, that activity? And therein lies the  
 15 distinction between the two. So, they're  
 16 separate and distinct and that's why I laid it  
 17 out in my memo when I said all three are separate  
 18 and distinct.  
 19 BOARD MEMBER ADAM BAZELON: Now is it  
 20 25 square feet or cubic?  
 21 DIRECTOR OF PUBLIC WORKS SCOTT  
 22 BRANDMEIER: Cubic.  
 23 BOARD MEMBER ADAM BAZELON: And that's  
 24 in 272?  
 25 DIRECTOR OF PUBLIC WORKS SCOTT

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1 BRANDMEIER: That is correct.  
 2 BOARD MEMBER ADAM BAZELON: What  
 3 section?  
 4 DIRECTOR OF PUBLIC WORKS SCOTT  
 5 BRANDMEIER: E.  
 6 BOARD MEMBER ADAM BAZELON: E?  
 7 DIRECTOR OF PUBLIC WORKS SCOTT  
 8 BRANDMEIER: Well, and B. So, we provided an  
 9 exception. When I arrived at the Village, there  
 10 were no exceptions, and I worked with the Village  
 11 attorney and made the call where we adopted --  
 12 BOARD MEMBER ADAM BAZELON: I see.  
 13 DIRECTOR OF PUBLIC WORKS SCOTT  
 14 BRANDMEIER: -- certain exceptions and one of  
 15 them was 25 cubic yards.  
 16 BOARD MEMBER ADAM BAZELON: So, you're  
 17 making the exception into a requirement,  
 18 essentially?  
 19 DIRECTOR OF PUBLIC WORKS SCOTT  
 20 BRANDMEIER: Yes.  
 21 BOARD MEMBER ADAM BAZELON: It's a de  
 22 minimis exception and you're saying if it's above  
 23 that, then that means --  
 24 BOARD MEMBER MARK GRADY: The exception  
 25 doesn't apply and therefore, you have to have a

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1 permit.  
2 DIRECTOR OF PUBLIC WORKS SCOTT  
3 BRANDMEIER: Yes.  
4 BOARD MEMBER ADAM BAZELON: But it's  
5 not an affirmative requirement?  
6 DIRECTOR OF PUBLIC WORKS SCOTT  
7 BRANDMEIER: No.  
8 BOARD MEMBER MARK GRADY: There's a  
9 requirement, 272-1A.  
10 DIRECTOR OF PUBLIC WORKS SCOTT  
11 BRANDMEIER: 1A says if you place --  
12 BOARD MEMBER MARK GRADY: Any fill --  
13 DIRECTOR OF PUBLIC WORKS SCOTT  
14 BRANDMEIER: -- any fill, you need a permit.  
15 BOARD MEMBER ADAM BAZELON: Got it.  
16 Okay. Thank you.  
17 DIRECTOR OF PUBLIC WORKS SCOTT  
18 BRANDMEIER: And then, you'll get exception --  
19 BOARD MEMBER ADAM BAZELON: I see that  
20 now, yes.  
21 DIRECTOR OF PUBLIC WORKS SCOTT  
22 BRANDMEIER: -- if it's less than 25 cubic yards.  
23 BOARD MEMBER ADAM BAZELON: Understood.  
24 DIRECTOR OF PUBLIC WORKS SCOTT  
25 BRANDMEIER: And then it's for this board to

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1 decide whether that exception includes a greater  
2 amount to fill underneath the driveway, the  
3 sidewalk, the patio, planters, et cetera. That  
4 is the applicant's argument. And that's what I  
5 note in my memo. That's really -- if the board  
6 says, "We agree with the applicant", we move  
7 forward with that definition.  
8 If the board says, "No, you can't do  
9 that", you'll get a reasonable amount, which  
10 would be four inches of concrete, four inches of  
11 stone and anything beneath that is fill because  
12 the intent never was to add 8 feet or 6 feet, as  
13 you noted, of fill to get to the elevation that  
14 you need in order to put in the driveway, or the  
15 sidewalk or the patio or whatever it might be, or  
16 the planter.  
17 That's for the board to determine. I  
18 don't think anything's in dispute now based on  
19 what was agreed to by the applicant that 4,000 or  
20 8,000 square feet was disturbed. So, 756-7 seems  
21 to certainly apply.  
22 BOARD MEMBER MARK GRADY: He's made an  
23 argument about the interplay of these sections.  
24 DIRECTOR OF PUBLIC WORKS SCOTT  
25 BRANDMEIER: Yes.

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1 BOARD MEMBER MARK GRADY: A legal  
2 argument. I'm not talking about a factual  
3 argument, but a legal argument --  
4 DIRECTOR OF PUBLIC WORKS SCOTT  
5 BRANDMEIER: That's correct.  
6 BOARD MEMBER MARK GRADY: -- about why  
7 they don't apply but --  
8 DIRECTOR OF PUBLIC WORKS SCOTT  
9 BRANDMEIER: Yes. That's correct.  
10 RALPH BENCRISCUITO: Can I respond?  
11 BOARD MEMBER MARK GRADY: Sure.  
12 VILLAGE ATTORNEY ERIC LARSON: Before  
13 we leave it though, I mean, that distinguishes  
14 756 from 272. What about (indiscernible)?  
15 (indiscernible) said that was moot, right? So,  
16 it's a 285, but you addressed two, and I'm  
17 wondering about the third.  
18 DIRECTOR OF PUBLIC WORKS SCOTT  
19 BRANDMEIER: That is -- go ahead. I'm sorry.  
20 VILLAGE ATTORNEY ERIC LARSON: And his  
21 argument is, "Hey, if I get one of these, I'm  
22 really doing all three, aren't I?" And I think  
23 actually the one that hasn't been talked about is  
24 272.  
25 DIRECTOR OF PUBLIC WORKS SCOTT

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1 BRANDMEIER: Yes.  
2 VILLAGE ATTORNEY ERIC LARSON: So, the  
3 fill ordinance. Why doesn't that overlap with  
4 the building permit ordinance?  
5 DIRECTOR OF PUBLIC WORKS SCOTT  
6 BRANDMEIER: It can, and it does. But again,  
7 you've got the disagreement between the Village  
8 and the applicant over whether the exemptions in  
9 272-10 apply to everything underneath the  
10 driveway, everything underneath the planters,  
11 everything underneath the patio. And even if it  
12 were to apply, what is the amount of fill that  
13 has been added beyond that footprint of those  
14 three areas?  
15 And the only way to know that for sure  
16 is if the drawing, which is required by 756-7,  
17 will show, okay, these are the grades. Here was  
18 the existing, here is the proposed. You'll be  
19 able to calculate what the difference is. Even  
20 if you were to exempt everything within the  
21 footprint of driveways, patios and planters. We  
22 would be able to determine whether that threshold  
23 that de minimis exception, for instance, of 25  
24 cubic yards, applies or does not apply.  
25 And therein lies the three separate and

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1 distinct arenas that how they could apply in  
 2 mind, and I think the 756-7 probably was adopted  
 3 16-17 years ago. The fill ordinance has been in  
 4 existence predating me, probably 20-25 years, and  
 5 the erosion control ordinance predates me.  
 6 Now, as Attorney Larson noted, you can  
 7 see in 756-7, that if a fill permit is needed,  
 8 the requirements of 756-7 are then triggered.  
 9 Because it says, "For all circumstances where a  
 10 fill permit is required, you have to do it."  
 11 BOARD MEMBER MARK GRADY: You're just  
 12 sitting here today saying you're not definitively  
 13 certain that a fill permit is required because  
 14 you're not certain whether, number one, what the  
 15 answer to the interpretation question is, and  
 16 number two, whether there's 25 yards of fill?  
 17 DIRECTOR OF PUBLIC WORKS SCOTT  
 18 BRANDMEIER: That is correct. But 756-7  
 19 certainly seems to apply. And if you do that,  
 20 creating a drainage analysis, that helps the  
 21 applicant as it relates to 272. 272 is just an  
 22 additional permitting process where you will be  
 23 doing this regardless with 756-7.  
 24 BOARD MEMBER MARK GRADY: At this  
 25 point, are what the fill permit requires is moot

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1 as well because, coupled with the plan for  
 2 trucking and routes and et cetera, et cetera, and  
 3 essentially that's all done now?  
 4 DIRECTOR OF PUBLIC WORKS SCOTT  
 5 BRANDMEIER: It's already been done, but there is  
 6 a requirement that you provide a 21-day notice  
 7 requirement to the surrounding property owners  
 8 because it gives them an opportunity to comment  
 9 on the application. So, what's happened here is  
 10 that the issue has been pushed down the road and  
 11 (indiscernible) property owners within 500 feet  
 12 of not being given that opportunity to comment.  
 13 Well, certainly (indiscernible) on this  
 14 board might say, "Okay, we agree with the  
 15 applicant. Let's figure out whether, with the  
 16 exception argument, well, let's figure out  
 17 whether 25 cubic yards applies or is there or not  
 18 beyond the footprint." And if the board so does  
 19 decide that, like they did waive the 30-day  
 20 requirement, perhaps, I may be speaking out of  
 21 turn, they waived the requirement for the 21-day  
 22 notice period as well.  
 23 Because, as you know, it ends up being  
 24 almost a moot point because the project, from a  
 25 grading perspective, appears to be done other

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1 than the request that the applicant does expand  
 2 the driveway.  
 3 BOARD MEMBER MARK GRADY: Well, it's  
 4 done from a fill perspective. But if you --  
 5 let's assume --  
 6 DIRECTOR OF PUBLIC WORKS SCOTT  
 7 BRANDMEIER: Yes.  
 8 BOARD MEMBER MARK GRADY: Assuming we  
 9 agree with you completely, just for the sake of  
 10 argument. And he says, "Okay, fine. I'll pay  
 11 the fees for the permit. I'll hire the guy.  
 12 I'll give you the plans." He gives you the plans  
 13 and you look at the plans and say, "We don't like  
 14 the way it's set up for drainage." As-built for  
 15 drainage.  
 16 You could, theoretically then, say,  
 17 "No, you've got to, somehow, re-grade around the  
 18 house or around the driveway to push the drainage  
 19 towards Dean Road or something else.  
 20 Theoretically, that can happen?  
 21 DIRECTOR OF PUBLIC WORKS SCOTT  
 22 BRANDMEIER: Theoretically, yes. That is  
 23 correct. Yes. We've had situations --  
 24 BOARD MEMBER MARK GRADY: And at some  
 25 point, the neighbors might have a chance to talk

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1 about that.  
 2 BOARD MEMBER MARK GRADY: Comment on  
 3 it.  
 4 RALPH BENCRISSUTTO: (indiscernible)  
 5 These guys did a good job of explaining the  
 6 purpose of permits, drainage, (indiscernible), et  
 7 cetera. So, what's the aversion to a permit?  
 8 It's not accurate that the erosion control permit  
 9 covers everything because filling and grading is  
 10 just filling and grading. It needed a permit to  
 11 put gravel underneath the driveway, a filling and  
 12 grading permit.  
 13 First of all, you don't need a permit  
 14 for the driveway, so (indiscernible) and what  
 15 would they be looking at, cubic yards, drainage?  
 16 The drainage permit does not talk about cubic  
 17 yards, it talks about topography.  
 18 (indiscernible) or if you had a 10,000-foot lot  
 19 or a 50,000-foot lot, it's the topography that's  
 20 different. That's the reason for the berm.  
 21 It's to hold the water. You want to  
 22 maintain where it's supposed to go. You want it  
 23 to go over (indiscernible). 272-10 exemptions E,  
 24 Minor Grading. You read the entire section that  
 25 talks about the filling activities of 25 yards or

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1 less, minor grading. That's grading. That's not  
 2 fill underneath the driveway, that's not  
 3 planters, that's not top dressing, it's not  
 4 berms, it's not trench fill, it's minor grading.  
 5 It has its own definition. It's the  
 6 only thing that has a cubic yard detection. Top  
 7 dressing could be 25 yards, easy. That's not --  
 8 it's exempt. Why? Because as long as you don't  
 9 change the grading, you're not grading the fill.  
 10 And then (indiscernible) permit is designed to  
 11 mitigate problems (indiscernible), just like it  
 12 said. 7,000 yards of something, somebody brought  
 13 it in there.  
 14 They changed the whole grade of the  
 15 lot. There's no permits required so they pushed  
 16 it all to the neighbor, everybody's in lawsuits.  
 17 I can't believe (indiscernible). But what is the  
 18 reason for the permit at this site? Let's get  
 19 down to the nitty gritty. Why would you want the  
 20 grading and fill permit, and then you start  
 21 talking about the planters?  
 22 If you added up all the square footage  
 23 -- now, let's not talk about cubic yards because  
 24 cubic yards is minor grading on the lot. You add  
 25 up the square footage of the planters

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1 (indiscernible), it's not even 2,000 feet. The  
 2 topography is only 1,200 feet, that is 600-foot  
 3 (indiscernible). The literal area he said by the  
 4 house is two feet wide by 50. That's 100 feet.  
 5 You're just not getting anywhere near this 4,000  
 6 feet, even if you included that.  
 7 But what would be the purpose of a  
 8 grading permit by the driveway? Before you put  
 9 it in, it has to go from the road to the house,  
 10 the driveway. That's it. How else are you going  
 11 to do it? It's going to end up at the road.  
 12 BOARD MEMBER MARK GRADY: You lost me  
 13 on one point. Why isn't the dirt that you pushed  
 14 around the house to create the planters minor  
 15 grading? Why isn't that considered minor  
 16 grading, in your mind?  
 17 RALPH BENCRISSUTTO: Because if you  
 18 look at where this says, "minor grading", it's so  
 19 that it doesn't affect the direction of the  
 20 water. That's the yard. Right against the  
 21 house, that doesn't affect any neighbors. That's  
 22 why they say that's customary, you build it up.  
 23 BOARD MEMBER MARK GRADY: What if -- I  
 24 understand that argument. What if Mr. Brandmeier  
 25 disagrees? What is Mr. Brandmeier or the Village

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1 of Fox Point, to be (indiscernible) about it --  
 2 RALPH BENCRISSUTTO: Well, I really --  
 3 BOARD MEMBER MARK GRADY: -- feels that  
 4 the planters have affected the grading or the  
 5 flow and the drainage. I don't know if he feels  
 6 that way or not. He may look at your plans and  
 7 say, "Bingo. They're fine." I don't know. But  
 8 what if he thinks, before you had built this,  
 9 before the dirt was pushed up, you've got 18  
 10 inches, I'll just use that number, 18 inches of  
 11 foundation above grade around parts of this  
 12 house.  
 13 And if you had then come in and agreed  
 14 with him, we got to apply for a permit, you did  
 15 the work and he says, "I don't want you to grade  
 16 around that. I don't want you to raise dirt  
 17 around that house. I think that's going to  
 18 create problems, like you said, for the neighbors  
 19 because it's going to push water into the  
 20 neighborhoods. I want you to leave the 18 inches  
 21 of foundation exposed and paint it."  
 22 I'm just -- I don't know what he's  
 23 going to say. But you didn't give him the chance  
 24 to say that. Now, you're coming in and saying,  
 25 "These planters don't affect the topography, they

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1 don't affect water." The Village of Fox Point  
 2 might disagree. I don't know.  
 3 RALPH BENCRISSUTTO: Well, there's  
 4 exemptions and to say that the 272 exemptions  
 5 don't apply to the permit application for 272,  
 6 doesn't make any sense. If I want to get this  
 7 272 permit, I use 756-7. That is the application  
 8 for a permit which requires plan review and  
 9 everything else for this code. So, how many can  
 10 say that that application for the permit isn't  
 11 relative to the exemptions in this permit?  
 12 It's not a code, 272, it is the  
 13 application for the code. And I didn't add dirt  
 14 around the house, I just -- I took out all the  
 15 bushes and I pushed it around where it was. I  
 16 can't add any dirt because -- and that's the old  
 17 house. The only place I left -- and I left the  
 18 18 inches exposed on the garage, where it faces  
 19 west. The rest of the house, it was pretty much  
 20 left. It's just where it faces the west.  
 21 So, that's where you can see the 18  
 22 inches and you could see in the pictures  
 23 (indiscernible). It's the garage. The house is  
 24 the way it was. All four sides -- all three  
 25 sides of the house (indiscernible).

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1 BOARD MEMBER MARK GRADY: If I'm right,  
2 can I add a note here?  
3 CHAIR NANCY FILSINGER: (indiscernible)  
4 DIRECTOR OF PUBLIC WORKS SCOTT  
5 BRANDMEIER: When you look at 756-7, and I think  
6 what's being lost in all of this is the argument  
7 of disturbed area, not disturbed area, fill, not  
8 fill, what applies, what doesn't apply. When you  
9 look at 756-7 the point of that is to look at  
10 pervious and impervious surfaces. I don't think  
11 there's any dispute here that additional  
12 impervious area was added, particularly when you  
13 put on an addition, you expand the driveway, put  
14 in a patio, put in a sidewalk, things that did  
15 not exist before.  
16 And so, one could reasonably say,  
17 theoretically, hypothetically, that it's putting  
18 at the same elevation that existed before.  
19 There's no change in grading. But because you've  
20 added impervious area, and you've affected more  
21 than 4,000 square feet, your runoff is going to  
22 be greater because you don't have the absorption  
23 capacity of the ground in that area that's now  
24 been disturbed and has been changed over from  
25 native soils to an impervious area.

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1 So, that has to be kept in mind as you  
2 evaluate the application because you do have an  
3 addition, you do have an expanded driveway,  
4 you've got a patio and sidewalks that create  
5 additional impervious area. And so, when the  
6 grading and drainage analysis is done, engineers  
7 will look at what existed at the time of the  
8 application? How much impervious area was there?  
9 How much impervious area?  
10 And they put in what's called a "curve  
11 number". A curve number is used by engineers  
12 (indiscernible) engineers to identify the  
13 percentage of impervious versus pervious area.  
14 Like, it might be 80, it might be 95, whatever it  
15 is, and then they look at it for the proposed  
16 development. And that number likely drops,  
17 meaning there's no runoff when you have more  
18 impervious added to the lot.  
19 RALPH BENCRISSUTTO: That's why we  
20 ended up paying more for (indiscernible). We did  
21 that and (indiscernible) permit and you put  
22 together a plan, a drainage plan (indiscernible)  
23 everything in the house (indiscernible) the  
24 driveway (indiscernible) that was in the erosion  
25 control plan that we paid for.

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
2 BRANDMEIER: No-one's disputing that.  
3 RALPH BENCRISSUTTO: (indiscernible)  
4 BOARD MEMBER MARK GRADY: Let's --  
5 VILLAGE ATTORNEY ERIC LARSON: So, I  
6 feel like we're getting a little bit repetitive.  
7 CHAIR NANCY FILSINGER: I hear you.  
8 VILLAGE ATTORNEY ERIC LARSON: But I do  
9 have code specific questions, and I'll start with  
10 you, Mr. Brandmeier. 756-7E(1), do you have  
11 that?  
12 DIRECTOR OF PUBLIC WORKS SCOTT  
13 BRANDMEIER: Yes.  
14 VILLAGE ATTORNEY ERIC LARSON: Now this  
15 is related to the building permit. They needed a  
16 building permit for this project, correct?  
17 DIRECTOR OF PUBLIC WORKS SCOTT  
18 BRANDMEIER: That is correct.  
19 VILLAGE ATTORNEY ERIC LARSON: So, for  
20 their building permit sub E relates to drainage.  
21 Sub 1 says grading of lots. A says, "A drainage  
22 plan is required (1) for applications for the  
23 construction of a new principal building." That  
24 doesn't apply, right? (1) does not apply.  
25 DIRECTOR OF PUBLIC WORKS SCOTT

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1 BRANDMEIER: It's not a new principal building,  
2 it's an addition.  
3 VILLAGE ATTORNEY ERIC LARSON: "(2) For  
4 applications for land disturbing activity  
5 requiring a permit affects the surface area of  
6 4,000 square feet or more." Does that apply?  
7 DIRECTOR OF PUBLIC WORKS SCOTT  
8 BRANDMEIER: I believe that it does, yes.  
9 VILLAGE ATTORNEY ERIC LARSON: So, the  
10 phrase "requiring a permit", it says, "For  
11 applications for land disturbing activity  
12 requiring a permit that affects the surface area  
13 of 4,000 square feet." Do you have an opinion of  
14 what that language would require of you?  
15 RALPH BENCRISSUTTO: It would require  
16 it being outside of the exemptions, obviously.  
17 In the beginning of that same thing, it says --  
18 VILLAGE ATTORNEY ERIC LARSON: I -- I  
19 asked -- I'm talking to Mr. Brandmeier for the  
20 moment. And if you don't, then I'm just going to  
21 move on. But I'd just highlight that that does  
22 say that. Do you have a thought on that?  
23 DIRECTOR OF PUBLIC WORKS SCOTT  
24 BRANDMEIER: This is an activity that required a  
25 permit, the addition. So, we -- and I'd have to

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1 go back to -- frankly, I'd have to go back to our  
 2 -- the notes that (indiscernible) when we were  
 3 looking to adopt this part of the ordinance. My  
 4 recollection from 15, 16, 17 years ago is that  
 5 you have land disturbing activity requiring a  
 6 permit.  
 7 So, that could be an addition to a new  
 8 house and any other activity that might require a  
 9 permit under the code, and you're going to  
 10 disturb 4,000 square feet of land  
 11 (indiscernible). Okay.  
 12 VILLAGE ATTORNEY ERIC LARSON: So, then  
 13 sub 3 says, "For applications for land disturbing  
 14 activity, other than tree removal on the face of  
 15 the ravine bluff or lake bluff. Does that apply?  
 16 DIRECTOR OF PUBLIC WORKS SCOTT  
 17 BRANDMEIER: And that does not apply.  
 18 VILLAGE ATTORNEY ERIC LARSON: 4, "For  
 19 all circumstances where a fill permit is  
 20 required, pursuant to Chapter 272 of this code."  
 21 DIRECTOR OF PUBLIC WORKS SCOTT  
 22 BRANDMEIER: Which we don't know at this time.  
 23 VILLAGE ATTORNEY ERIC LARSON: That may  
 24 or may not be a trigger here.  
 25 DIRECTOR OF PUBLIC WORKS SCOTT

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1 BRANDMEIER: Right.  
 2 VILLAGE ATTORNEY ERIC LARSON: And then  
 3 sub 5 says, "When required by the Village in  
 4 particular cases due to particular concerns  
 5 arising in the application."  
 6 DIRECTOR OF PUBLIC WORKS SCOTT  
 7 BRANDMEIER: And that could certainly apply  
 8 because you're adding impervious area on a  
 9 smaller lot.  
 10 VILLAGE ATTORNEY ERIC LARSON: So, you  
 11 would have applied sub 5 regardless --  
 12 DIRECTOR OF PUBLIC WORKS SCOTT  
 13 BRANDMEIER: Yes.  
 14 VILLAGE ATTORNEY ERIC LARSON: -- of 1,  
 15 2, 3 or 4?  
 16 DIRECTOR OF PUBLIC WORKS SCOTT  
 17 BRANDMEIER: Yes.  
 18 VILLAGE ATTORNEY ERIC LARSON: So, you  
 19 would say that the drainage plan is required  
 20 because this code section allows you to require  
 21 it, and you did require it?  
 22 DIRECTOR OF PUBLIC WORKS SCOTT  
 23 BRANDMEIER: That is correct.  
 24 BOARD MEMBER ADAM BAZELON: Well, what  
 25 would you articulate is your particular concerns?

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1 DIRECTOR OF PUBLIC WORKS SCOTT  
 2 BRANDMEIER: Residential infill, adding  
 3 impervious area on a small lot.  
 4 RALPH BENCRISSUTTO: Adding impervious  
 5 area is not relative to filling or grading.  
 6 That's relating to storm water. And the house  
 7 itself is impervious. The garage, it's -- you  
 8 don't get grading from it from the garage. At  
 9 the top of that same 756-7, the first line on the  
 10 first page says, "Filling and grading  
 11 (indiscernible) patio justified" and that's how  
 12 they described land disturbing activities on all  
 13 three permits.  
 14 Erosion is land disturbing activities,  
 15 (indiscernible) is land disturbing activities,  
 16 filling and grading is land disturbing  
 17 activities. It's just not land disturbing  
 18 activities. It's relating to the subheading of  
 19 the permit application, which says, "Grading."  
 20 That's how the contracts read. That's a legal  
 21 document. The subheadings are related to them.  
 22 Underneath that section is related to -- and in  
 23 itself, grading.  
 24 BOARD MEMBER ADAM BAZELON: So, you're  
 25 saying it's only where you trenched or excavated

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1 to put the addition on that's subject to the  
 2 counting of the square footage for this section?  
 3 RALPH BENCRISSUTTO: No, the grading is  
 4 where you change the topography of the lot and  
 5 then (indiscernible). Scott did a great job  
 6 explaining why that permit is relative. It is.  
 7 (indiscernible) perfect. It's exactly right.  
 8 BOARD MEMBER ADAM BAZELON: Right.  
 9 You're (indiscernible) under the 4,000.  
 10 RALPH BENCRISSUTTO: I just -- I don't  
 11 -- first of all, I'm not going to grade it. I'm  
 12 done, and I can't grade it. And the driveway  
 13 can't be graded. The original permit -- why have  
 14 a gravel permit for the driveway if you're not  
 15 putting a fill requirement or somehow monitor  
 16 that? You'd need to have a permit for the  
 17 driveway.  
 18 There is no permit for it, so if  
 19 anybody wants to put a driveway -- let's say it's  
 20 all I did was put in the driveway. Nobody would  
 21 come around telling me I need a fill and grading  
 22 permit. If all I did was the patio and the  
 23 sidewalks, the planters and just, I'm the  
 24 neighbor, there would be no question of what I  
 25 did. It's all exempt. It's exempt.

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1 It makes it clear you can do this. So,  
 2 I did it without a permit. They all watched me  
 3 do it, and they watched me clean up that mess  
 4 down to the grass to try to replant it. I did  
 5 this trying to follow the codes. We had a  
 6 contract, you might say. He said, "Okay, do  
 7 this, get rid of all the dirt (indiscernible)  
 8 final elevations." That's what I did.  
 9 Everything else didn't require a  
 10 permit. So, I'm not here asking permission and  
 11 now you're saying I needed permission and there's  
 12 some sort of unseen requirement that's in some  
 13 other code? Because 756-7 is the application for  
 14 this permit. You can't say that these exemptions  
 15 don't apply. You know what? If you want to  
 16 clarify it, you need to clarify it because the  
 17 language is why we're in this argument.  
 18 And we all went around in circles,  
 19 "land disturbing activity, land disturbing  
 20 activity". That's for the (indiscernible). It's  
 21 also in the (indiscernible). It's also in the  
 22 other (indiscernible). So, this is the problem.  
 23 It's not written clearly. And, you know, Scott,  
 24 both Scotts (indiscernible) tried to make sense  
 25 of this, but they're just trying to do their job.

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1 But you have to have some logic here. It's not -  
 2 - it just doesn't make any sense.  
 3 VILLAGE ATTORNEY ERIC LARSON: So, I  
 4 think we can close our argument unless -- yeah,  
 5 unless we want a summation, or I know there was a  
 6 suggestion for a briefing. I don't know if we  
 7 want to pursue that.  
 8 BOARD MEMBER MARK GRADY: I think if  
 9 there was an attorney here for the applicant,  
 10 that might be different. But I hesitate to ask  
 11 the applicant to write a brief. I think he's  
 12 done what you would expect his attorney to do.  
 13 BOARD MEMBER ADAM BAZELON: Yeah.  
 14 Well, what I have in mind is that -- I mean,  
 15 Scott's more or less done it. But I think  
 16 there's still a lot of clutter in there, like  
 17 about the emails back and forth. I'd like to  
 18 see, "Here's the code sections that are  
 19 applicable. Here's how I interpret them and  
 20 here's the facts that make it applicable."  
 21 Like bullet points, like, one page.  
 22 And then, Mr. -- how do you pronounce your last  
 23 name?  
 24 RALPH BENCRISCUITO: Bencriscutto.  
 25 BOARD MEMBER ADAM BAZELON: You get his

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1 brief, and you respond to it, and you say, "He's  
 2 wrong on Point 1 and here's why, legally and  
 3 factually. He's wrong on Point 2. Here's why  
 4 legally and factually." Now, we give Scott a  
 5 week to give us that and then you will wait to  
 6 write it back and then we call a special meeting  
 7 because I am -- I cannot make a decision and I  
 8 believe you're entitled to a fair shake.  
 9 And I tried to be prepared to come here  
 10 and I was, to the best of my ability, I think.  
 11 But I'm not prepared to make a decision. So, at  
 12 this point, unless someone convinces me, I'd  
 13 probably abstain from a motion on the merits  
 14 because I don't think I'd be giving the applicant  
 15 a fair shake at this point.  
 16 RALPH BENCRISCUITO: Can I offer a  
 17 compromise?  
 18 BOARD MEMBER MARK GRADY: Sorry?  
 19 RALPH BENCRISCUITO: Can I offer a  
 20 compromise? Considering the before and after has  
 21 already been done. I already did the plan review  
 22 and the drainage from it (indiscernible) it's all  
 23 gone. If you just want me to get the permit, but  
 24 I don't go through all the other stuff, I would  
 25 be happy to just pay for the permit to settle.

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1 It's only \$400, but I'm not going to  
 2 post a \$5,000 cash bond and -- because I've got  
 3 the plans, and it's already finished. So, it  
 4 isn't like you have to check it. The elevations  
 5 have been shown. I'm not affecting the drainage.  
 6 BOARD MEMBER ADAM BAZELON: Here's how  
 7 I view that. I don't think we have, as a  
 8 decision-making body, I don't think we can say,  
 9 "We're going to settle it this way." I think we  
 10 can say, "We'll handle this briefing." You two  
 11 can make friends in the meantime and if you  
 12 resolve it, you could say, "I withdraw my  
 13 application", and you don't need to decide it and  
 14 you could go on with your lives.  
 15 BOARD MEMBER MARK GRADY: And I think  
 16 it's clear Mr. Brandmeier's already said that he  
 17 needs more. He needs a -- I don't know what he  
 18 called it, but a drainage analysis, for lack of a  
 19 better word, a water drainage analysis that  
 20 (indiscernible). And this has gone on -- I mean,  
 21 they can do whatever they do. I agree with you,  
 22 we're not here to resolve compromises.  
 23 On your briefing suggestion, I  
 24 personally don't think we're going to get  
 25 anything more than we've got. Mr. Brandmeier did

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1 a four or five-page summary, if you will, of the  
 2 situation. The applicant did a one or two-page  
 3 appeal of his situation. They've obviously  
 4 talked about it, at length, here. I personally  
 5 don't think we're going to get more out of  
 6 additional writings.  
 7 I do think we could give some  
 8 preliminary thoughts to our attorney who could  
 9 try to formulate a draft document that we could  
 10 then look at in terms of a determination, and  
 11 then modify, as needed, maybe in a closed  
 12 session. I don't know, but not tonight, but in  
 13 the future. I don't know. That's just my  
 14 position. We can get advice from counsel,  
 15 obviously, on what the best --  
 16 VILLAGE ATTORNEY ERIC LARSON: So, just  
 17 to summarize the status of where I think we are,  
 18 to your point, I think 756-7 is the heart of the  
 19 issue. Do they have to do that drainage plan or  
 20 not? The drainage plan is quite specific and  
 21 that's his concern is that it's going to be quite  
 22 costly and time-consuming to do that. We don't  
 23 know until we have that, whether the fill permit  
 24 is even required.  
 25 We're referencing the fill permit may

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1 be required, but we're not -- what I heard is  
 2 that the Village is not saying they have to do  
 3 that, necessarily, till we see that drainage  
 4 plan. And 285, the erosion control permit, I've  
 5 heard both sides say it's moot, it's done. So, I  
 6 think the only issue is 756-7. Do they -- is the  
 7 Village fairly requiring the applicant here to do  
 8 that drainage plan?  
 9 BOARD MEMBER MARK GRADY: The only  
 10 caveat I would add is, whether we want to do this  
 11 is not a question. But I think the Village is  
 12 looking to us, and perhaps the applicant as well,  
 13 if they get to the fill permit, does it include  
 14 the driveway and patio, the fill under the  
 15 driveway and patio? And that's, sort of, an  
 16 advisory opinion and maybe you don't want us to  
 17 do that.  
 18 But it would save them time, if they  
 19 get to that process. That's the only caveat on  
 20 272.  
 21 RALPH BENCRISSUTTO: You've got to  
 22 remember, I already submitted the permitted plans  
 23 and (indiscernible) the permit (indiscernible).  
 24 We executed that plan, and as agreed, we moved  
 25 the dirt and gave final elevations. This was the

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1 requirement for our building permit.  
 2 BOARD MEMBER MARK GRADY: I understand  
 3 you submitted an additional drawing that said  
 4 over 4,000 square feet of land disturbing  
 5 activities. You submitted a revised one to say  
 6 2,100 square feet of land disturbing activities.  
 7 And essentially, what Mr. Brandmeier and the  
 8 Village are saying is that you didn't live up to  
 9 that plan of 2,100 square feet, you've now  
 10 disturbed over 4,000 square feet. You disagree.  
 11 I get that.  
 12 RALPH BENCRISSUTTO: I (indiscernible)  
 13 disagree with the fact that (indiscernible)  
 14 control permit plan was accurate, and we did it  
 15 exactly like it was supposed to be done. Even  
 16 though we disturbed more area, the minimum was  
 17 8,000 feet, which he's acknowledging. The only  
 18 thing we're disputing is, do I need a fill permit  
 19 for grading, when I've already done my drainage  
 20 plan?  
 21 I can't change the drainage plan. I've  
 22 already submitted it. I've already finished the  
 23 job. I'm not going to change the drainage plan.  
 24 The argument is, do I need a fill permit now, for  
 25 what we put underneath the driveway, or if we put

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1 some dirt in the planters? And (indiscernible)  
 2 logic on that, even if you add it all up, it's  
 3 still under 4,000 square feet, not cubic yards.  
 4 That's not relative. It's square feet. Why?  
 5 Because it affects the topography of the lot.  
 6 So, if you go into (indiscernible) my  
 7 planter along the side of the building and say  
 8 it's affecting the drainage of the lot.  
 9 Impossible. I'm an engineer. It doesn't --  
 10 there's no more water or less and it's not  
 11 (indiscernible). It's going down through the  
 12 rocks where it was supposed to go before.  
 13 BOARD MEMBER ADAM BAZELON: But Mr.  
 14 Brandmeier said you haven't done a drainage plan  
 15 because you haven't done the 100-year something,  
 16 right?  
 17 RALPH BENCRISSUTTO: We had to have the  
 18 drainage plan for the erosion permit.  
 19 BOARD MEMBER ADAM BAZELON: Okay, so  
 20 then what requires the additional 100-year --  
 21 RALPH BENCRISSUTTO: Grading is not  
 22 changing the topography.  
 23 BOARD MEMBER ADAM BAZELON: Correct.  
 24 RALPH BENCRISSUTTO: So, let's say I  
 25 wanted to add -- let's say the lot was

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1 (indiscernible) a whole bunch of (indiscernible).  
 2 It's not changing the way it flows.  
 3 (indiscernible) careful so I don't go into the  
 4 neighbor's yard or whatever. I mean, I get that.  
 5 It makes sense.  
 6 VILLAGE ATTORNEY ERIC LARSON: So --  
 7 RALPH BENCRISSUTTO: But I can't grade  
 8 that lot.  
 9 VILLAGE ATTORNEY ERIC LARSON: Did you  
 10 provide, in your plan, flows off the property in  
 11 the 210 and 100-year storm events?  
 12 RALPH BENCRISSUTTO: That's not  
 13 required for the erosion permit because I'm not  
 14 changing the topography. The erosion permit is  
 15 (indiscernible)  
 16 VILLAGE ATTORNEY ERIC LARSON: I -- I'm  
 17 just asking, did you or did you not do that?  
 18 RALPH BENCRISSUTTO: No, because we  
 19 didn't grade it.  
 20 VILLAGE ATTORNEY ERIC LARSON: Okay.  
 21 RALPH BENCRISSUTTO: This whole  
 22 argument is, do I need a grading permit when I'm  
 23 not going to grade anything?  
 24 BOARD MEMBER MARK GRADY: So, Mr.  
 25 Brandmeier, let's assume he submitted the 210 and

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1 100-year plans and the drainage, etc. and let's  
 2 say you don't like the way (indiscernible) built.  
 3 What other kind of possibilities? And I'm not  
 4 (indiscernible). So, as an example, would you  
 5 possibly have him grade the lot to create swales  
 6 and lower levels that are sort of in the middle  
 7 of the yard that run towards Dean Road, for  
 8 example?  
 9 DIRECTOR OF PUBLIC WORKS SCOTT  
 10 BRANDMEIER: Yes.  
 11 BOARD MEMBER MARK GRADY: Is that the  
 12 kind of thing you would do?  
 13 DIRECTOR OF PUBLIC WORKS SCOTT  
 14 BRANDMEIER: Yes. So, that is correct. We  
 15 evaluate that when the -- when an applicant  
 16 submits that grading and drainage analysis of  
 17 pre- and post-development flows, there are what's  
 18 called (indiscernible)  
 19 BOARD MEMBER MARK GRADY: I just want -  
 20 - I really don't need --  
 21 DIRECTOR OF PUBLIC WORKS SCOTT  
 22 BRANDMEIER: Okay.  
 23 BOARD MEMBER MARK GRADY: -- why. I  
 24 just wanted --  
 25 DIRECTOR OF PUBLIC WORKS SCOTT

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1 BRANDMEIER: Yes.  
 2 BOARD MEMBER MARK GRADY: That's the  
 3 kind of thing. It wouldn't necessarily be what  
 4 you would do. I'm just saying that's the kind of  
 5 thing you've done on other properties?  
 6 DIRECTOR OF PUBLIC WORKS SCOTT  
 7 BRANDMEIER: Yes.  
 8 RALPH BENCRISSUTTO: But I would have  
 9 to change the grade to (indiscernible)  
 10 BOARD MEMBER MARK GRADY: Yes, you  
 11 would.  
 12 RALPH BENCRISSUTTO: But I'm not  
 13 changing the grade. It's the way it was. That's  
 14 -- I had to (indiscernible) once.  
 15 BOARD MEMBER ADAM BAZELON: Does  
 16 someone want to make a motion?  
 17 RALPH BENCRISSUTTO: I agree. I don't  
 18 see how you can come up with any other  
 19 conclusions. We're arguing (indiscernible). I  
 20 think the whole problem is -- this whole argument  
 21 is semantics of 756-7 when it said, "land  
 22 disturbing activities" instead of saying,  
 23 "grading and filling activities". And that's  
 24 because they used the same definition  
 25 (indiscernible)

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1 BOARD MEMBER ADAM BAZELON: I mean, I  
 2 think -- I think --  
 3 RALPH BENCRISSUTTO: (indiscernible)  
 4 VILLAGE MANAGER SCOTT BOTCHER:  
 5 (indiscernible)  
 6 BOARD MEMBER ADAM BAZELON: Go ahead.  
 7 Final word.  
 8 VILLAGE MANAGER SCOTT BOTCHER: This,  
 9 to me, is really silly. This really isn't that  
 10 hard, I don't think. He's going to need a fill  
 11 permit. He said he's disturbed more than 4,000  
 12 square feet. 756-7 here applies.  
 13 (indiscernible) done. That's not a question.  
 14 This is not a question.  
 15 We'll go round and round for two hours  
 16 in circles on 4,000 -- it doesn't matter. He's  
 17 admitted he (indiscernible) and he's going to  
 18 need a fill permit. It's done.  
 19 BOARD MEMBER ADAM BAZELON: He hasn't  
 20 admitted that, though. You haven't -- have you  
 21 admitted that?  
 22 RALPH BENCRISSUTTO: This --  
 23 BOARD MEMBER MARK GRADY: Wait, wait,  
 24 wait. I think we've heard enough from everybody.  
 25 VILLAGE MANAGER SCOTT BOTCHER:

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1 (indiscernible)

2 BOARD MEMBER MARK GRADY: I really --

3 for me, we've heard enough from everybody. I

4 move to close the testimony.

5 VILLAGE CLERK TREASURER SARA BRUCKMAN:

6 Testimony is closed at 7:17.

7 BOARD MEMBER MARK GRADY: Well, wait a

8 minute. I don't know if everybody else agrees

9 with me or not.

10 BOARD MEMBER SCOTT RATKE: I'll second

11 it.

12 VILLAGE ATTORNEY ERIC LARSON: I'll

13 second it. So, you can just take --

14 CHAIR NANCY FILSINGER: Unanimous

15 consent? You had unanimous consent to close

16 testimony?

17 VILLAGE ATTORNEY ERIC LARSON: Yes.

18 CHAIR NANCY FILSINGER: All right.

19 BOARD MEMBER MARK GRADY: Yes.

20 VILLAGE CLERK TREASURER SARA BRUCKMAN:

21 All right. Testimony is closed at 7:17.

22 VILLAGE ATTORNEY ERIC LARSON: How do

23 you want to proceed?

24 BOARD MEMBER ADAM BAZELON: I would

25 propose my briefing schedule, but I don't think

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1 there'd be a majority that agree.

2 CHAIR NANCY FILSINGER: Does anyone?

3 BOARD MEMBER ADAM BAZELON: Somebody

4 has to make it on the merits.

5 BOARD MEMBER SCOTT RATKE: I feel like

6 everything's been presented to us at this point.

7 CHAIR NANCY FILSINGER: Yeah. Does

8 anyone --

9 BOARD MEMBER SCOTT RATKE:

10 (indiscernible) clear way.

11 BOARD MEMBER MARK GRADY: We can, but

12 it's not noticed for closed session.

13 CHAIR NANCY FILSINGER: It's what?

14 BOARD MEMBER MARK GRADY: It's not

15 noticed for closed session.

16 CHAIR NANCY FILSINGER: Does anyone --

17 are you ready to make a motion?

18 BOARD MEMBER MARK GRADY: It should

19 always (indiscernible) closed session.

20 BOARD MEMBER ADAM BAZELON: I am.

21 CHAIR NANCY FILSINGER: Okay.

22 BOARD MEMBER MARK GRADY:

23 (indiscernible) I don't know how detailed a

24 motion you want. Fundamentally, my motion would

25 be to deny the appeal for the reasoning and

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1 justification to help our attorney draft a

2 decision. But that's fundamentally the motion.

3 BOARD MEMBER ADAM BAZELON: What's the

4 basis of the denial?

5 BOARD MEMBER MARK GRADY: You get a

6 second person?

7 VILLAGE ATTORNEY ERIC LARSON: Sure.

8 Is there a second?

9 BOARD MEMBER SCOTT RATKE: If you'd

10 repeat it, just one more time.

11 BOARD MEMBER MARK GRADY: It's to deny

12 the appeal. He's appealing their decision.

13 CHAIR NANCY FILSINGER: We're denying -

14 -

15 BOARD MEMBER MARK GRADY: My motion is

16 to deny the appeal and their decision stands.

17 BOARD MEMBER SCOTT RATKE: I'd have to

18 second that. Is that further with the opinion

19 from the attorney?

20 BOARD MEMBER MARK GRADY: Well, yeah,

21 we'll get to it.

22 VILLAGE ATTORNEY ERIC LARSON: So, I'm

23 happy to write something up for you for your

24 consideration to support that decision. And we

25 can go into closed session to talk about it. And

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1 I can tell you that I'm envisioning, based on the

2 discussion, that determination would be that the

3 grading plan of 756-7 is required because under

4 757-E(1)(a)(5), it's required when the Village,

5 in particular cases, determine -- has concerns

6 arising in the application.

7 For nothing -- no other reason, the

8 Village Director of Public Works has said that he

9 has some particular concerns. And so, he wants

10 this plan that's required for the building

11 permit. There are other subsections here that

12 seem to apply, as well. But I don't know that we

13 need to dwell on them because we have this catch-

14 all.

15 BOARD MEMBER MARK GRADY: Well, I agree

16 with what you said. I would say that there are

17 alternate grounds, which is the 756-7(1)(a)(2),

18 which is the land disturbing activity over 4,000

19 square feet. And I would address the applicant's

20 arguments, as best as I understand them, by

21 saying that I believe these requirements of 756

22 are independent of and completely separate from

23 anything contained in 272.

24 I don't see -- or in 285. I see these

25 as, if you will, three separate silos, three

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1 separate requirements and whether a fill permit  
 2 is required or not, has nothing to do with  
 3 whether a drainage permit is required for land  
 4 disturbing activities over 4,000 square feet  
 5 (indiscernible). Whether an erosion permit is  
 6 required for 8,000 square feet of disturbing  
 7 activities is a separate thing from whether a  
 8 drainage permit or a fill permit is required.  
 9 And I see them as separate. I  
 10 understand, on a contractor's perspective, why a  
 11 person might see these as all interrelated and I  
 12 think in the -- out on the piece of property,  
 13 they are, I'll just say, physically interrelated,  
 14 but they are three separate requirements under  
 15 the code, and I see them as separate.  
 16 So, I think you can't take the  
 17 exceptions for driveways and patios and planters,  
 18 et cetera from 272 and put them into 756-  
 19 7(1)(a)(4), or excuse me, (1)(a)(2). So, I just  
 20 see them as separate.  
 21 VILLAGE ATTORNEY ERIC LARSON: Thank  
 22 you.  
 23 RALPH BENCRISSUTO: How could it be  
 24 separate? That's the application for 272  
 25 (indiscernible)

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1 VILLAGE ATTORNEY ERIC LARSON: Your  
 2 time is done. (indiscernible)  
 3 BOARD MEMBER ADAM BAZELON: And I'll  
 4 just say, I understand what you're saying, but  
 5 Section 272 is addressed in that subsection. So,  
 6 what you're saying makes sense to me, but from my  
 7 perspective, it requires more study and more  
 8 analysis and I'm not ready to concede that the  
 9 applicant is wrong because there does seem to  
 10 potentially be some incorporation.  
 11 I'm not saying I'm right, but I'm just  
 12 saying I am not to where you are.  
 13 BOARD MEMBER MARK GRADY: But, and  
 14 just, so where are you seeing the incorporation  
 15 part? Is it subsection --  
 16 BOARD MEMBER ADAM BAZELON: Well, I'm  
 17 not saying I do see the incorporation.  
 18 BOARD MEMBER MARK GRADY: Well, I mean  
 19 --  
 20 BOARD MEMBER ADAM BAZELON: I'm just  
 21 saying, I think --  
 22 BOARD MEMBER MARK GRADY: The  
 23 possibility of incorporation.  
 24 BOARD MEMBER ADAM BAZELON: Right,  
 25 because -- right. Two subsections below, it

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1 references 272. So, to me that shows, if I sat  
 2 down and poured over these statutes, I may come  
 3 to that conclusion that there is some  
 4 incorporation, and one may be the general and  
 5 this is the specific. That may be completely  
 6 wrong.  
 7 I'm just saying, as I sit here tonight,  
 8 I am not prepared to vote to say that the  
 9 applicant is wrong on that. And I'm also not  
 10 prepared to say he's right. I'm just -- I am not  
 11 prepared to make a decision.  
 12 BOARD MEMBER MARK GRADY: So, I would  
 13 just say, in response to that, I agree, obviously  
 14 272 is incorporated in Subsection 4. But I see  
 15 that as completely independent on whether 272 has  
 16 anything to do with Subsection --  
 17 BOARD MEMBER ADAM BAZELON: Right.  
 18 Just so some interrelation between the two  
 19 sections. That's all. And there may be more,  
 20 there may not be.  
 21 VILLAGE ATTORNEY ERIC LARSON: Well,  
 22 given that you're going to ask me to write it  
 23 out, do you want to table your motion until you  
 24 have an opportunity to see it in writing at your  
 25 next meeting, and then make the final decision

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1 then?  
 2 BOARD MEMBER SCOTT RATKE: In two  
 3 months we would do it, as a special meeting?  
 4 VILLAGE ATTORNEY ERIC LARSON: Well,  
 5 you may want to do a special meeting, yeah.  
 6 CHAIR NANCY FILSINGER:  
 7 (indiscernible), so I would say we should add a  
 8 special meeting.  
 9 VILLAGE ATTORNEY ERIC LARSON:  
 10 (indiscernible) two weeks from today though.  
 11 Yeah, I can't do it that day unless we do it  
 12 earlier, if we did it at --  
 13 BOARD MEMBER SCOTT RATKE: What day are  
 14 you looking at?  
 15 VILLAGE ATTORNEY ERIC LARSON: 4  
 16 o'clock. I could do (indiscernible)  
 17 CHAIR NANCY FILSINGER: The 9th?  
 18 VILLAGE ATTORNEY ERIC LARSON: The 9th.  
 19 CHAIR NANCY FILSINGER: Are you talking  
 20 about --  
 21 VILLAGE ATTORNEY ERIC LARSON: On the  
 22 9th. Otherwise, the 10th, I can do 5 o'clock.  
 23 BOARD MEMBER THOMAS DUNST: I cannot do  
 24 it at 6.  
 25 CHAIR NANCY FILSINGER: Can you do the

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1 9th at --

2 BOARD MEMBER THOMAS DUNST:

3 (indiscernible)

4 BOARD MEMBER SCOTT RATKE: I couldn't

5 hear (indiscernible)

6 CHAIR NANCY FILSINGER: The 9th, at 4.

7 Adam?

8 BOARD MEMBER ADAM BAZELON: The 9th at

9 4? Sure. I would also invite post-hearing

10 briefing due within a week.

11 BOARD MEMBER MARK GRADY: I have no

12 objection. I guess the way I would put it is, if

13 the applicant wants to submit something, I

14 wouldn't require that he do.

15 BOARD MEMBER ADAM BAZELON: Yeah.

16 BOARD MEMBER MARK GRADY: If they want

17 to submit something more in writing in the next

18 week, feel free to do it. If you feel like

19 you've submitted everything, either in writing or

20 verbally, if you want a say, then you don't have

21 to. It's up to you.

22 RALPH BENCRISSUTTO: I think we should

23 submit, because it's a legal argument.

24 (indiscernible)

25 BOARD MEMBER MARK GRADY: Yeah. Well,

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1 it's up to you. You have the opportunity if you

2 want to submit something. Within a week. Is

3 that okay with everybody?

4 CHAIR NANCY FILSINGER: It is.

5 (indiscernible)

6 VILLAGE ATTORNEY ERIC LARSON: So,

7 submit it to the Clerk if you care to. It's due

8 a week from today and (indiscernible) distribute

9 it when she gets it.

10 BOARD MEMBER MARK GRADY: And we will -

11 -

12 VILLAGE ATTORNEY ERIC LARSON:

13 (indiscernible)

14 BOARD MEMBER MARK GRADY: I tend to put

15 on the agenda the possibility of a closed

16 session.

17 VILLAGE CLERK TREASURER SARA BRUCKMAN:

18 I just need a new motion to table it, then.

19 BOARD MEMBER MARK GRADY: Oh. Well,

20 I'd move to table --

21 BOARD MEMBER THOMAS DUNST: I'll move

22 to table.

23 VILLAGE CLERK TREASURER SARA BRUCKMAN:

24 Okay.

25 BOARD MEMBER SCOTT RATKE: I'll second

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1 it.

2 VILLAGE ATTORNEY ERIC LARSON: All

3 those in favor?

4 (All respond "aye")

5 VILLAGE ATTORNEY ERIC LARSON: So,

6 October 9th at 4 p.m.

7 VILLAGE CLERK TREASURER SARA BRUCKMAN:

8 October 9th at 4 p.m.

9 BOARD MEMBER THOMAS DUNST: We're

10 admitting (indiscernible)

11 VILLAGE ATTORNEY ERIC LARSON: Yeah.

12 CHAIR NANCY FILSINGER: Motion to

13 adjourn?

14 BOARD MEMBER THOMAS DUNST: Move to

15 adjourn.

16 BOARD MEMBER ADAM BAZELON: I second

17 it.

18 VILLAGE CLERK TREASURER SARA BRUCKMAN:

19 All those in favor?

20 (All respond "Aye")

21 VILLAGE CLERK TREASURER SARA BRUCKMAN:

22 Opposed? We're adjourned at 7:28.

23 BOARD MEMBER ADAM BAZELON: These are

24 your drawings. (indiscernible)

25 (indiscernible)

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1 RALPH BENCRISSUTTO: You can have those

2 (indiscernible)

3 BOARD MEMBER ADAM BAZELON: Oh, okay.

4 BOARD MEMBER MARK GRADY: They're in

5 your packet, too.

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1 CERTIFICATION

2

3 I, Sonya Ledanski Hyde, certify that the  
4 foregoing transcript is a true and accurate  
5 record of the proceedings.

6

7

8

9



10

11 Veritext Legal Solutions

12 330 Old Country Road

13 Suite 300

14 Mineola, NY 11501

15

16 Date: October 30, 2024

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VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
WEDNESDAY, OCTOBER 9, 2024

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, October 9, 2024 at 4:00 p.m. Chair Nancy Filsinger called the meeting to order at 5:00 p.m. The Clerk Treasurer took roll call. Those present included:

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

Staff members also present were Attorney Eric Larson, Director of Public Works Scott Brandmeier, Village Manager Scott Botcher and Clerk Treasurer Sara Bruckman.

Notice of the meeting was provided to the North Shore Now, to all others as required by State open meetings laws, Village ordinances and posted on the official bulletin board and the village website.

**CASE 2024-07: (As Adjourned from September 25, 2024) 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

**Closed Session.** Upon motion made, seconded, and adopted upon roll call vote, the Board of Appeals may adjourn into closed session pursuant to Wisconsin Statutes Section 19.85(1)(a), for deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before the Board of Appeals; and 19.85(1)(g), for conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, more specifically concerning Case 2024-07, 8339 N. Lake Drive.

***Motion by Board Member Bazelon, seconded by Board Member Grady to convene into closed session at 4:07 p.m. pursuant to Wisconsin Statutes Section 19.85(1)(a), for deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before the Board of Appeals; and 19.85(1)(g), for conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, more specifically concerning Case 2024-07, 8339 N. Lake Drive.***

***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.***

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
WEDNESDAY, OCTOBER 9, 2024

**Resumption of Open Session.** Following the closed session, the Board of Appeals will reconvene into open session and may take such action as it deems appropriate concerning the matter discussed in closed session.

***Motion by Board Member Bazelon, seconded by Board Member Ratke to reconvene into open session at 4:21 p.m. .***

***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.***

***Motion by Board Member Grady, seconded by Board Member Bazelon to adopt the findings and facts into law as presented; the appeal of the administrative decision is denied.***

***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**

Without objection and by unanimous consent The Board adjourned at 4:25 p.m.

Respectfully Submitted,

Sara Bruckman  
Clerk Treasurer



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

BOARD OF APPEALS  
APPLICATION

1. Name of Appellant Jeffery Jarozewski Address of Appellant 8533 W. Stuth Ave  
 Phone Number (414) 242-4884 Home Work Cell  
 E-mail Address JefftheFenceguy11c@gmail.com
2. Address of Property 1130 East Dean Road  
 Present Use of Property Home Proposed Use of Property \_\_\_\_\_  
 Owner's Name and Address if Different than Above Steve Fouhal
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]  
Signature of Appellant

12-02-24  
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 12/23/24 Receipt Number for \$200 Filing Fee 22.000058

Case Number \_\_\_\_\_ Hearing Date 1/22/25

Disposition \_\_\_\_\_



## Attachment B

### Variance Authority

The applicant has the burden to prove a sufficient basis for a variance to be granted. The applicable standards have been described in Wisconsin Statutes Section 62.23(7)(e)7., and in decisions of Wisconsin courts, and is summarized as follows:

- I. **Area Variance.** An area variance means a modification to a dimensional, physical or locational requirement, such as setback, frontage, height, bulk, or density.

The applicant bears the burden to prove sufficient cause for a variance. State law imposes the following requirements, with relevant terms highlighted:

*The Board of Appeals shall have the following powers: ... to authorize upon appeal in specific cases such variance from the terms of the ordinance as will **not be contrary to the public interest**, where, **owing to special conditions**, a literal enforcement of the provisions of the ordinance will result in **practical difficulty or unnecessary hardship**, so that **the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.** (62.23(7)(e)7.b., Wisconsin Statutes.)*

State law also provides:

*A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome... **In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.** (62.23(7)(e)7.d., Wisconsin Statutes.)*

These laws require the following (Applicant: Check each box to acknowledge you have read and understand these requirements):

- a) **The hardship must be peculiar to the zoning parcel in question and different from that of other parcels, not one which affects all parcels similarly.** Generally, hardship arises because of some unique property limitation or feature of a parcel, or because the property was created before the passage of the zoning ordinance and will not accommodate a structure of reasonable design for a permitted use, if all area, yard and setback requirements are observed.
- b) **Loss of profit or pecuniary (financial) hardship and/or additional expense incurred to comply with the zoning ordinance is not sufficient grounds for a variance.**
- c) **Self-imposed hardship** is not grounds for a variance. Reductions resulting from the sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, or deed restrictions imposed by the owner's predecessor in title are examples of self-imposed hardships.
- d) **Circumstances of Applicant.** Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances.
- e) **Nearby violations.** Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.
- f) **Previous variance requests.** Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOR.
- g) **The hardship cannot be one that would have existed in the absence of a zoning ordinance.** Some properties may not be buildable because of the physical nature of the property. For example, the entire parcel might consist of steep slopes or wetlands. In such cases, the property would not be suitable for development whether or not there was a zoning ordinance regulating development.
- h) **Protection of the Public Interest.** Granting of a variance must not harm the public interest. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of local opposition does not in itself mean that a variance will not harm the public interest. The spirit of the ordinance must be observed.



# Attachment C

## Standards of Review for Special Exceptions

The Village of Fox Point Village Code allows special exceptions to be granted for certain accessory structures. Applicable provisions include the following:

Structure on Corner/Irregularly Shaped Lot. (Village Code Section 745-7(B)(3)(h)[1]).

*In the event a building is irregularly configured, such as an L- or V-shaped structure, or the building is located upon a corner lot, irregularly shaped lot, or lot which abuts upon more than one public or private road, such that there are or appear to be multiple front, side, or rear sides of the structure, the determination of the front, rear or side areas, as well as the determination of the location of any fencing, shall be referred by the Building Inspector to the Board of Appeals, which shall then review the matter without requirement of any appeal fee. The Board of Appeals shall treat the application as a request for a special exception, which shall specifically not be subject to the requirements applicable to zoning variances, and shall proceed in accordance with Subsection B(3)(j) herein. The Board of Appeals shall consider the least obtrusive alternative, and any other criteria as set forth in the provisions of this chapter which serve to balance the interests of the applicant with the interests of the surrounding property owners.*

Structure Forward of Front Lot Line. (Village Code Section 745-7(B)(3)(h)[2]).

*No new fence, wall, architectural screening device, driveway gate or arbor shall be located beyond the front line of the principal building unless permitted by the Board of Appeals by special exception after a hearing, pursuant to the procedures described in Subsection B(3)(j) below. The Board of Appeals may grant a special exception under this subsection only if it finds that the fence, wall, architectural screening device, arbor or driveway gate is **reasonably necessary to protect the safety of people residing on the property**, in addition to the additional findings and conditions required by Subsection B(3)(j) below. Every special exception granted by the Board of Appeals for a driveway gate shall be conditioned upon the applicant filing with the Village Clerk/Treasurer the written approval of the Village Police Chief in consultation with the Fire Chief for the specific driveway gate and gate location that is proposed; and if such approval is denied, the special exception is thereby denied.*

Special Exceptions Generally. (Village Code Section 745-7(B)(3)(j)).

*A special exception to the height, size, material, design, setback or other physical standards set forth in this subsection or to allow a driveway gate may, upon filing a written application, be considered by the Board of Appeals after a hearing. The application must include an accurate visual rendering of the proposed wall, architectural screening device, driveway gate or arbor, along with a written statement outlining the applicant's need for the same. Notice of hearing shall be given to all property owners within a radius of 500 feet of the property upon which the fence, wall, architectural screening device, driveway gate or arbor is proposed to be constructed and the notice shall include the visual rendering submitted by the applicant. The Board of Appeals may grant the request for a special exception upon **finding that the property owner has shown clear and convincing evidence to believe that the applicant has a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of this section, in addition to such other specific findings as may be required by other subsections of this section**. Every special exception granted by the Board of Appeals shall be conditioned upon the applicant submitting the visual rendering to the Village Building Board and receiving the Building Board's approval of the architectural appearance, design and construction materials for the proposed fence, wall, architectural screening device, arbor or driveway gate, taking into consideration the existing development on the lot and in the surrounding neighborhood, and if the Building Board denies the application, the special exception is thereby denied.*

Applicant to Complete the following: Describe the reasons why you believe your situation qualifies for a special exception, based on these applicable ordinances (attach additional sheets as necessary):

Reason for Request is A Fence on front property line  
Reason (1) The local wildlife has been causing thousands  
in damages to landscaping and trees recently planted  
Reason (2) Safety there are multiple small children in the  
home and Dean Road is a highly trafficked road by  
public / contractors / commercial vehicles  
Reason (3) Religious Reasons (ERUV) Symbolic  
Enclosure under Jewish Law  
To Allow use of entire property on [Sabbath]

# Plat of Survey

**Legal Description:**

**Parcel 1:**

That part of the Northeast 1/4 of Section 9, Township 9 North, Range 22 East, in the Village of Fox Point, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point in the South line of said 1/4 Section, which is 196 feet more or less, East of the Southwest corner of said 1/4 Section, running thence Northerly and parallel to the West line of said 1/4 Section, 217.80 feet to the place of beginning of the land to be described, running thence Northeasterly on a line to a point, said point being 330.00 feet more or less North and 369.00 feet more or less East of the Southwest corner of said 1/4 Section; thence Southerly and parallel to the West line of said 1/4 Section, 112.20 feet more or less to a point; thence Westerly and parallel to the South line of said 1/4 Section, 200.00 feet more or less to the place of beginning.

**Parcel 2:**

Also, a parcel of land in the Northeast 1/4 of Section 9, Township 8 North, Range 22 East, in the Village of Fox Point, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point in the South line of said 1/4 Section, which is 196 feet East of the Southwest corner of said 1/4 Section said point being the point of beginning, running thence Northerly and parallel to the West line of said 1/4 Section, 217.80 feet to a point; thence Easterly and parallel to the South line of said 1/4 Section, 200.00 feet to a point; thence Southerly and parallel to the West line of said 1/4 Section, 217.80 feet to a point in the South line of said 1/4 Section; thence Westerly along the South line of said 1/4 Section, 200.00 feet to the place of beginning, reserving therefrom the South 30.00 feet for street or road purposes.

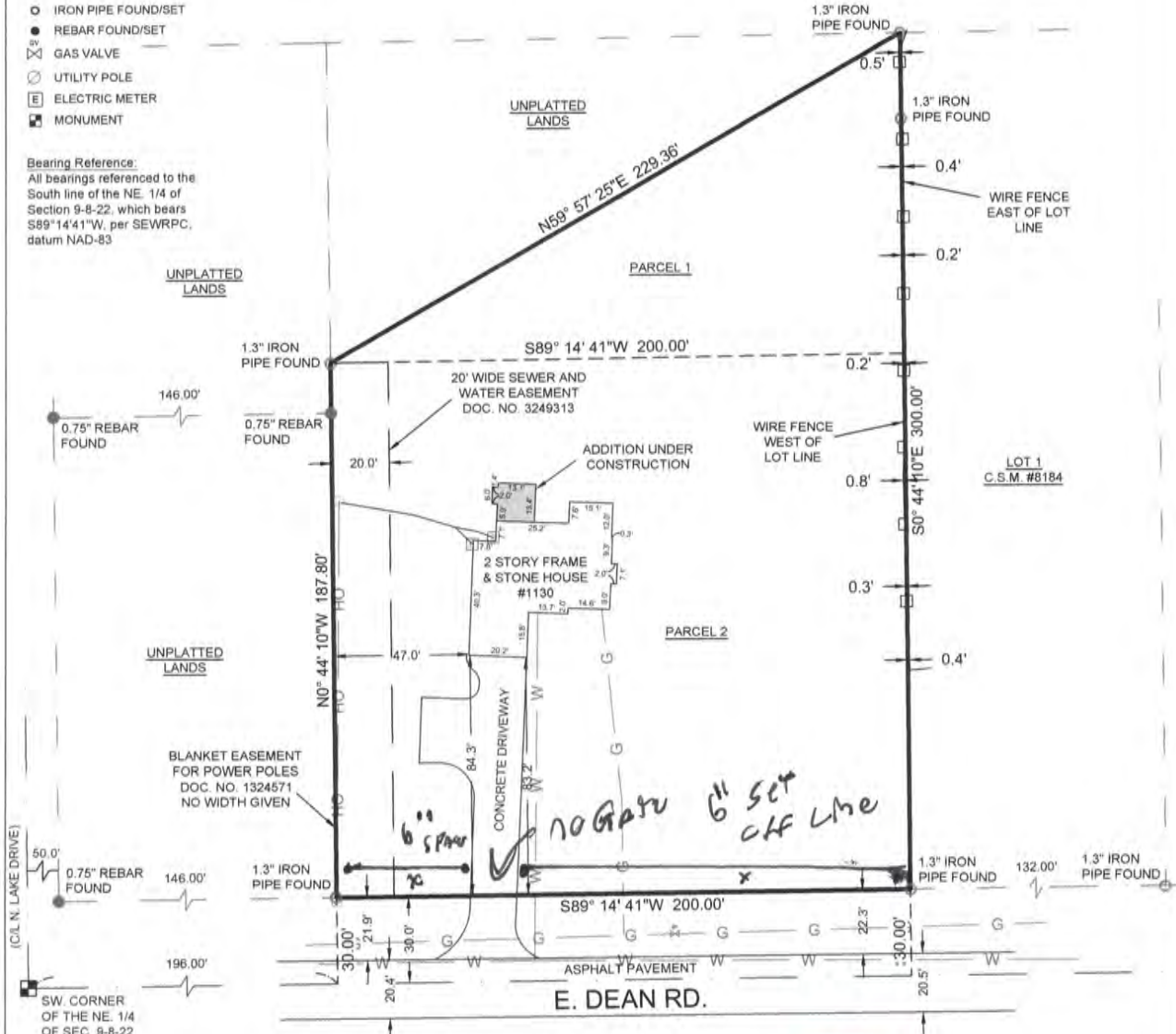
Said Parcels containing 48,780 sq. ft. / 1.12 acres, more or less

**LEGEND**

- IRON PIPE FOUND/SET
- REBAR FOUND/SET
- ⊗ GAS VALVE
- ⊗ UTILITY POLE
- [E] ELECTRIC METER
- MONUMENT

**Bearing Reference:**

All bearings referenced to the South line of the NE 1/4 of Section 9-8-22, which bears S89°14'41"W, per SEWRPC, datum NAD-83



**SURVEY CERTIFICATE**

I have surveyed the above described property and the above map is a true representation thereof and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible structures thereon, boundary fences, apparent easements, roadway, and visible encroachments, if any.

This survey is made for the exclusive use of the present owners of the property, and also those who purchase mortgage, or guarantee the title thereto within one (1) year from date hereof.

Dated at City of Mequon, State of Wisconsin this 24th day of April, 2024.

Recertified \_\_\_\_\_

*James Schneider*  
James Schneider  
S - 2127



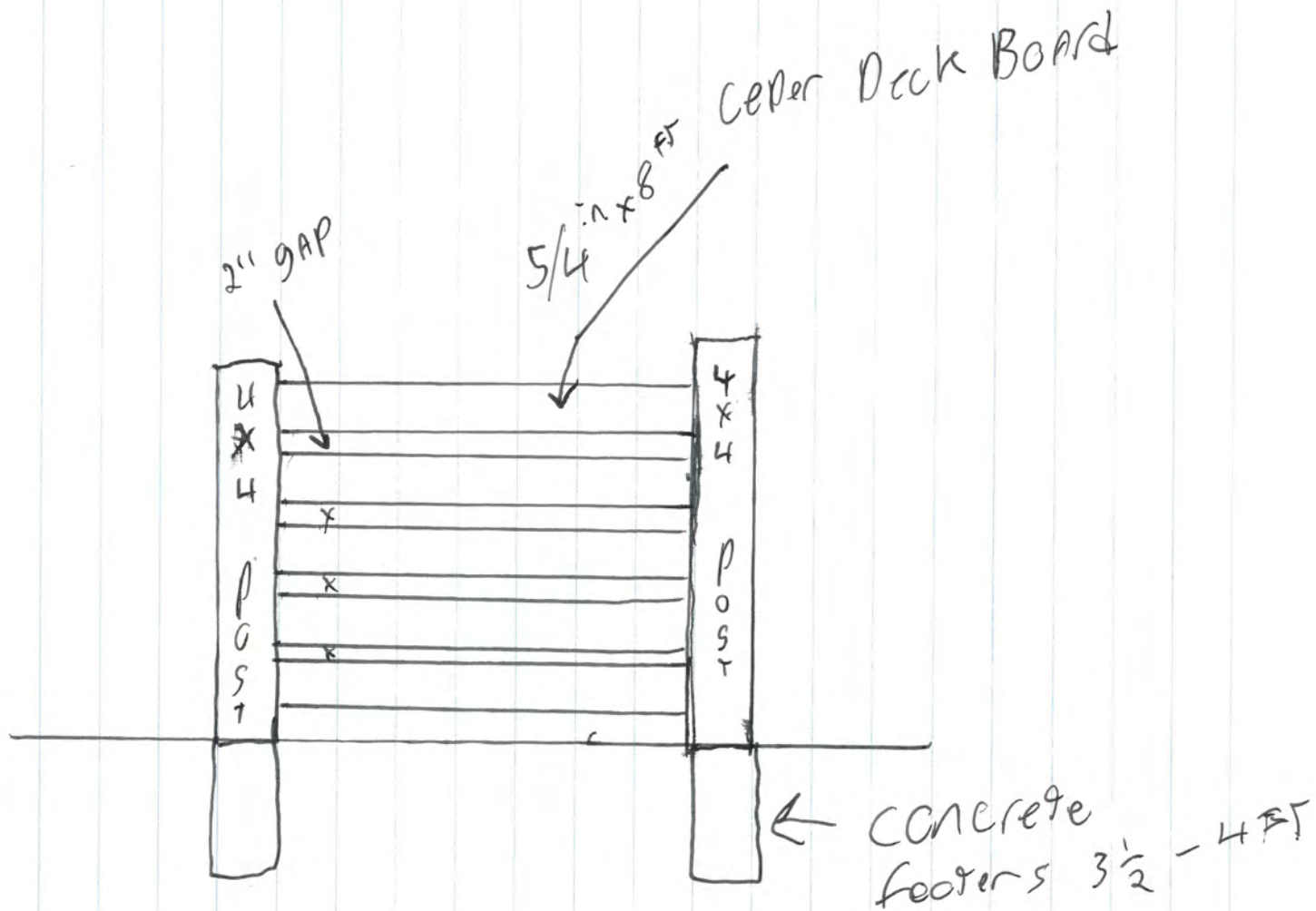
Prepared for:  
Steve Fouhal  
1130 E. Dean Road  
Fox Point, WI, 53217



THIS IS AN ORIGINAL PRINT  
ONLY IF STAMPED IN RED

**Utility Disclaimer:**

The underground utility information shown on this drawing is based on field locations and/or records furnished by municipalities and utility companies. The location and accuracy of which cannot be guaranteed. There may be additional underground utility installations within the project area that are not shown.



Receipt No: 22.000058      Dec 23, 2024

1130 E DEAN RD BOA

Previous Balance:            .00  
LICENSES & PERMITS  
OTHER PERMIT            200.00

Total:                        200.00

=====

ONLINE - CREDIT CARD        200.00

Payor:  
JAROZEWSKI

Total Applied:            200.00

Change Tendered:            .00

=====

12/23/2024 1:07 PM

VILLAGE OF FOX POINT  
7200 N. SANTA MONICA BLVD  
FOX POINT WI 53217      414-351-8900