

11/15/2023 - Beren

INCORPORATED VILLAGE OF LAWRENCE

BOARD OF APPEALS

Lawrence Country Club
101 Causeway
Lawrence, New York

November 15, 2023
7:34 p.m.

APPLICATION: Beren
23 Martin Lane
Lawrence, New York

P R E S E N T:

MR. LLOYD KEILSON
Chairman

MR. EDWARD GOTTLIEB
Member

MR. PHILIP KERSTEIN
Member

MR. DANNY HILLER
Member

MR. ELLIOT MOSKOWITZ
Member

MS. SYMA DIAMOND
Alternate Member

MR. ANDREW K. PRESTON, ESQ.
Village Attorney

MR. GERRY CASTRO
Deputy Village Administrator

MR. DANNY VACCHIO
Building Department

Yaffa Kaplan
Court Reporter

11/15/2023 - Beren

CHAIRMAN KEILSON: Welcome to the
Lawrence Board of Zoning Appeals. Please mute
your phones. Close your phones, no
conversations, please, and proof of posting,
Mr. Vacchio.

MR. VACCHIO: Mr. Chairman, I offer
proof of posting and publication.

CHAIRMAN KEILSON: Okay. Thank you very
much. Very good. We have a request for an
extension. Ezra and Jessica Beren of 23
Martin Lane. The date of expiration is
August 31st. Let's see. "We are working with
our architect to finalize the plans and select
a contractor. We are requesting a variance
extension as we work to finalize the plans to
file for building permit."

Did you have any conversations with them
as to how long they are looking for an
extension?

MR. VACCHIO: They didn't start.

CHAIRMAN KEILSON: So they are nowhere?

MR. VACCHIO: No. They didn't get a
permit yet.

MEMBER GOTTLIEB: What's the time period

11/15/2023 - Beren

in which they have to get a permit?

MR. VACCHIO: That's why we are bringing it.

CHAIRMAN KEILSON: So what are we talking about?

MR. VACCHIO: They are ready. The plans are on my table.

CHAIRMAN KEILSON: So the permit should follow?

MR. VACCHIO: Once they get the demo.

MEMBER GOTTLIEB: Are the permits following the original variance?

MR. VACCHIO: What's holding up right now, they have to go to the Board of Building Design. Everything else is on my desk.

CHAIRMAN KEILSON: So extend it about four months. That should suffice.

MR. VACCHIO: That should be fine.

CHAIRMAN KEILSON: Okay. Okay. Very good.

(Whereupon the hearing concluded at 7:35 p.m.)

Certified that the foregoing is a true and accurate transcript of the original stenographic minutes in this case.

YAFFA KAPLAN
Court Reporter

11/15/2023 - WG Woodmere LLC

INCORPORATED VILLAGE OF LAWRENCE
BOARD OF APPEALS

Lawrence Country Club
101 Causeway
Lawrence, New York

November 15, 2023
7:36 p.m.

APPLICATION: WG Woodmere LLC
99 Meadow Drive
Lawrence, New York

P R E S E N T:

MR. LLOYD KEILSON
Chairman

MR. EDWARD GOTTLIEB
Member

MR. PHILIP KERSTEIN
Member

MR. DANNY HILLER
Member

MR. ELLIOT MOSKOWITZ
Member

MS. SYMA DIAMOND
Alternate Member

MR. ANDREW K. PRESTON, ESQ.
Village Attorney

MR. GERRY CASTRO
Deputy Village Administrator

MR. DANNY VACCHIO
Building Department

Yaffa Kaplan
Court Reporter

11/15/2023 - WG Woodmere LLC

CHAIRMAN KEILSON: First matter will be
-- actually just let's -- the WG Woodmere LLC
has been officially adjourned. Okay. You
have that for the record.

(Whereupon the hearing concluded at 7:36
p.m.)

Certified that the foregoing is a true and accurate
transcript of the original stenographic minutes in
this case.

YAFFA KAPLAN

Court Reporter

11/15/2023 - Hurwitz

INCORPORATED VILLAGE OF LAWRENCE

BOARD OF APPEALS

Lawrence Country Club
101 Causeway
Lawrence, New York

November 15, 2023
7:36 p.m.

APPLICATION: Hurwitz
225 Causeway
Lawrence, New York

P R E S E N T:

MR. LLOYD KEILSON
Chairman

MR. EDWARD GOTTLIEB
Member

MR. PHILIP KERSTEIN
Member

MR. DANNY HILLER
Member

MR. ELLIOT MOSKOWITZ
Member

MS. SYMA DIAMOND
Alternate Member

MR. ANDREW K. PRESTON, ESQ.
Village Attorney

MR. GERRY CASTRO
Deputy Village Administrator

MR. DANNY VACCHIO
Building Department

Yaffa Kaplan
Court Reporter

11/15/2023 - Hurwitz

CHAIRMAN KEILSON: Next matter is
Hurwitz, 225 Causeway. They or their
representative, please step forward.

MR. BRAUN: Good evening. Hi, good
evening. Actually, I had the pleasure of
greeting two of you today on site.

CHAIRMAN KEILSON: Please identify
yourself for the record.

MR. BRAUN: My name is Jonathan Braun.
My wife's name is Miriam Hurwitz and we have
the property over at 225 Causeway and I am
here seeking relief of Section 70-11.B in
regard to the grade and seeking relief to get
a minor change that we could continue to move
forward in beautifying the property and
everything along those lines.

CHAIRMAN KEILSON: Tell us a little bit.
You are under construction, right?

MR. BRAUN: Yes.

CHAIRMAN KEILSON: For how long?

MR. BRAUN: We have been under
construction for approximately five years.
Unfortunately. But we are coming -- we are
nearing its tail end right now and looking

11/15/2023 - Hurwitz

1
2 very much forward to moving in. My wife, my
3 children and --

4 CHAIRMAN KEILSON: When would you expect
5 to move in?

6 MR. BRAUN: I would say February, March
7 we should be moved in. You know, most of the
8 interior is done.

9 CHAIRMAN KEILSON: It's all Mr. Genack's
10 fault.

11 MR. BRAUN: Mr. Genack, he took so long
12 to do everything. No, he has been a pleasure
13 to deal with. Everybody that I personally
14 have spoken to, which is not many people, has
15 always been a pleasure to speak to as well.
16 To date and we hope that we are not bothering
17 anybody in any sort of way at all. That's
18 definitely not our intentions.

19 CHAIRMAN KEILSON: Okay. Let's talk
20 about the variances and how they are affecting
21 your neighbors. And you have a grade change,
22 right?

23 MR. BRAUN: Yes. So we have two
24 neighbors. One is on the -- if I am standing
25 looking out at Reynolds Channel, I have one on

11/15/2023 - Hurwitz

1 the left, one on the right. The one to the
2 right, which is actually where we are seeking
3 the grade change, the neighbor to the right is
4 -- there is an actual -- like my property is
5 two separate lots. So there is a full vacant
6 lot in between my house and the property where
7 we are looking for the grade change and the
8 actual neighbor to the right-hand side.
9

10 So there is a whole lot of -- a whole
11 plot of land, which is -- you can see from
12 here in between myself and the neighbor which
13 also belongs to us, and then there is the
14 neighbor to the left in which we are not
15 making any changes on that side at all. So it
16 definitely wouldn't be affecting anybody to my
17 knowledge. Neither of the neighbors have put
18 in any complaints to anybody throughout this
19 five-year course of time, which is not the
20 most common when it comes to construction.

21 CHAIRMAN KEILSON: Not at all.

22 MR. BRAUN: So I mean, we have made it
23 five years without any complaints all
24 together. I think we have done a good job not
25 affecting anybody in a negative way.

11/15/2023 - Hurwitz

1
2 MEMBER GOTTLIEB: Do you have a letter
3 of support from any of your neighbors?

4 MR. BRAUN: I don't live there. It's
5 not like I lived there before and had access
6 to my neighbors as far as having their e-mails
7 and whatnot. This is the first variance.

8 MEMBER GOTTLIEB: It's on your
9 application form. It suggests that you get
10 letters of support.

11 MEMBER MOSKOWITZ: Or at least talk to
12 them about it.

13 MR. BRAUN: I reached out by text
14 message today. I wanted to get something
15 formal in e-mail from her. I know it was last
16 minute, and I told her look, I am going before
17 the variance committee tonight and she said
18 thank you for letting me know and good luck.
19 She has never -- she doesn't really live there
20 on a regular basis. I think she is there two
21 weeks out of the year.

22 MEMBER GOTTLIEB: That's the house to
23 the right?

24 MR. BRAUN: That's the one to the left.
25 The one to the right is so far down. I

11/15/2023 - Hurwitz

1
2 actually -- I have seen them maybe twice in
3 the last five years. Just a husband and wife
4 and they go walking through the neighborhood.
5 They are very nice. If I happen to have been
6 stopping by to speak to the contractor or any
7 of the sub -- subs that are working, that's
8 the only communication I have with them, but I
9 always told them -- I gave them my information
10 and tell them all the time if something is
11 bothering them or any of the workers is
12 bothering them whatsoever, they are more than
13 happy to let me know, and I will address it
14 right away because we don't do that.

15 CHAIRMAN KEILSON: Okay. Any other
16 questions?

17 MEMBER GOTTLIEB: Is it wetlands?

18 MR. BRAUN: We are -- it's set back from
19 the wetlands. Basically what we are asking to
20 change is the right side of the pool area,
21 which everything is set back far enough from
22 there.

23 MEMBER KERSTEIN: How far back from the
24 pool are you raising?

25 MR. BRAUN: Behind the pool nothing is

11/15/2023 - Hurwitz

1
2 getting raised. Behind the pool, the pool has
3 created its own retaining wall itself. We are
4 not changing the grade behind the pool
5 whatsoever.

6 MEMBER KERSTEIN: So the pool is going
7 to be the retaining wall?

8 MR. BRAUN: I guess they call -- the
9 definition is the infinity pool or zero-edge
10 pool. In this case based on where it's built,
11 there is a lot of engineering and whatnot that
12 went into it. Not just worry about the
13 wetlands itself, but also for the actual table
14 of the pool to make sure the structure doesn't
15 have a crack and everything along those lines
16 and that itself is actually beneficial towards
17 the wetlands and making sure everything is
18 stable and doesn't have anything.

19 So we are not filling in further around
20 the pool. We are not asking for any grade
21 change around the pool. It's more so on the
22 right-hand side to level everything out. I
23 think on the application we are seeking
24 more -- we don't even need that -- 3, 4 feet.
25 On the application I think we were seeking 5

1 11/15/2023 - Hurwitz

2 and change. We don't need 5. We need 3 or 4
3 to be on the safe side is what it looks like
4 what I have been told from everybody.

5 CHAIRMAN KEILSON: Okay. Any questions?
6 No questions. Are you finished, Gottlieb?
7 Anyone from the audience want to comment or
8 question?

9 MR. GENACK: If I may just --

10 CHAIRMAN KEILSON: Please introduce
11 yourself.

12 MR. GENACK: Evan Genack. Builder for
13 Jon Braun.

14 CHAIRMAN KEILSON: You have been working
15 on it for five years?

16 MR. GENACK: No. I actually just wanted
17 to come up here to straighten out that record.
18 I was on the job a year ago, but I will say I
19 did bid the job five years ago and he said he
20 didn't want to hire me because I didn't work
21 in the intermediate days of the holiday and he
22 thought that would perhaps delay the project.

23 MR. BRAUN: I said that non-Jewish
24 contractors don't go away for a holiday.

25 MR. GENACK: He learned his lesson. I

11/15/2023 - Hurwitz

1
2 don't know if Jon articulated -- you did a
3 great job and also thank you for all the
4 members for coming out and hearing the case.
5 I just want to mention, I don't know if anyone
6 has been to the site.

7 CHAIRMAN KEILSON: You told me that he
8 commented that there were two old men on the
9 site.

10 MR. GENACK: Young men. Yes so if you
11 have been -- has anyone been to the site?

12 MEMBER HILLER: We were out there.

13 CHAIRMAN KEILSON: Mr. Genack, are you
14 making a point?

15 MR. GENACK: I am making my point right
16 now. If you are at the site, you will see --
17 I don't think there is any visible neighbors
18 in any close vicinity at all, and this is the
19 very back of the property. The property
20 actually from the front stays as sort of a
21 stable grade all the way coming through up
22 against the house and then it slopes down
23 dramatically. So this is just at the very end
24 of the property. It has really no effect on
25 any neighbors or drainage or anything of that

11/15/2023 - Hurwitz

kind.

There is a pool raised out of the ground and we are going to raise the grade around the pool on the right side of the pool looking at the Reynolds Channel, the left side, which is the closest neighbor, which is not even so close. Very far away. We are not changing the grade there. It's only on the right side, which then has another full acre and a half of property. You can't even see the neighbor to the right, but it only affects going down into the -- I guess the marshland before the Reynolds Channel if that gives any perspective. It's not really affecting anybody.

CHAIRMAN KEILSON: Thank you. Okay. Ready to vote? Taking into consideration the benefit to the applicant as opposed to any detriment to the community, we are going to vote at this point. Mr. Moskowitz?

MEMBER MOSKOWITZ: For.

CHAIRMAN KEILSON: Mr. Gottlieb?

MEMBER GOTTLIEB: For.

CHAIRMAN KEILSON: Mr. Hiller?

11/15/2023 - Hurwitz

MEMBER HILLER: For.

CHAIRMAN KEILSON: Mr. Kerstein?

MEMBER KERSTEIN: For.

CHAIRMAN KEILSON: And I vote for.

MR. BRAUN: I hope to see you guys. You
all are welcome to visit in a few months.

CHAIRMAN KEILSON: Can we give it a time
to when it could be complete?

MEMBER GOTTLIEB: When will it be
complete?

MR. BRAUN: I hope to be complete
February, March, April, the latest.

CHAIRMAN KEILSON: So a year. Good
luck.

MR. BRAUN: Thank you, guys.

CHAIRMAN KEILSON: Very well presented.

(Whereupon the hearing concluded at 7:45
p.m.)

Certified that the foregoing is a true and accurate
transcript of the original stenographic minutes in
this case.

YAFFA KAPLAN
Court Reporter

11/15/2023 - Stern

INCORPORATED VILLAGE OF LAWRENCE
BOARD OF APPEALS

Lawrence Country Club
101 Causeway
Lawrence, New York

November 15, 2023
7:45 p.m.

APPLICATION: Stern
33 Herrick Drive
Lawrence, New York

P R E S E N T:

MR. LLOYD KEILSON
Chairman

MR. EDWARD GOTTLIEB
Member

MR. PHILIP KERSTEIN
Member

MR. DANNY HILLER
Member

MR. ELLIOT MOSKOWITZ
Member

MS. SYMA DIAMOND
Alternate Member

MR. ANDREW K. PRESTON, ESQ.
Village Attorney

MR. GERRY CASTRO
Deputy Village Administrator

MR. DANNY VACCHIO
Building Department

Yaffa Kaplan
Court Reporter

11/15/2023 - Stern

2 CHAIRMAN KEILSON: Next matter is Stern,
3 33 Herrick. They or their representative. No
4 client.

5 MR. PROFESORSKE: No. On the way to
6 Israel. David Profesorske for the applicant,
7 Rabbi Mordechai Stern. First and foremost,
8 thank you to the chairman of the Board. Thank
9 you for taking time out of your weekly
10 schedules to hear the case. Like I mentioned,
11 Rabbi Stern is on his way to Israel. He sent
12 his apologies; also sent his thanks.

13 This is basically the -- there is one
14 variance being requested for no garage. He
15 bought the house I believe about 18 to 20
16 years ago, 15 years ago, and the garage was
17 already converted into an office. Half an
18 office and/or partially an office and
19 partially a storage space.

20 MEMBER GOTTLIEB: Just to confirm, the
21 house was bought eight years ago, 2015.

22 MR. PROFESORSKE: Okay. I'm sorry.
23 Eight years ago. I'm sorry. I think the work
24 was 15 years ago. Like the work when it was
25 converted.

11/15/2023 - Stern

1
2 CHAIRMAN KEILSON: Okay. That's
3 helpful.

4 MR. PROFESORSKE: He does use it -- he
5 does use the space as an office, as a storage
6 space. As maybe some of you might be
7 familiar, he had a fire over the summer
8 affecting really the rear of his house, which
9 then carried through most of the back of the
10 house. So his master bedroom, bathroom,
11 closet, kitchen were destroyed. And using the
12 benefits of the change of the code over the
13 time period since the house was built or
14 modified or renovated, he would like to add a
15 complete attic space which I hesitate to say
16 third floor. It's an attic space. And part
17 of obviously like I mentioned, the kitchen was
18 destroyed, so he is renovating the kitchen and
19 he would definitely benefit from having a
20 larger kitchen with proper meat and dairy
21 sides with eat-in family space.

22 CHAIRMAN KEILSON: You are not here for
23 that. That's all as of right.

24 MR. PROFESORSKE: No. That's all as of
25 right, correct, but part of making the kitchen

11/15/2023 - Stern

1
2 bigger, he would like to take a 2-foot sliver
3 of the garage. The garage space -- currently
4 the storage and office together, total space
5 is 9 foot 2 by 19.11, so as it is that space
6 is nonconforming with the current code. The
7 garage has to be a minimum of 10 by 20. He
8 would like to make it in essence 17.11
9 thereabouts. Either way it hasn't been used
10 as a garage for the past 15 years. That's
11 all.

12 CHAIRMAN KEILSON: Okay. As you know,
13 we are loathe to approve a house without a
14 garage.

15 MR. PROFESORSKE: Yes.

16 CHAIRMAN KEILSON: Gentlemen?

17 MEMBER HILLER: Have you entertained
18 maybe having a carport at least?

19 MR. PROFESORSKE: I mean, I don't know
20 how that would look, meaning there is no space
21 on either side of the house. It would really
22 be in the front of the house and the house is
23 currently not -- oh, one more thing. Letters
24 of support from neighbors. Sorry. I will
25 leave them here. I think they were sent in

11/15/2023 - Stern

1
2 also but -- the carport -- I was just
3 answering Mr. Hiller's question. The carport
4 really would be in the front of the house. I
5 know that BBD is pretty strict on facades. I
6 don't know that they would be okay for them.

7 MEMBER MOSKOWITZ: In terms of
8 appearance, before the fire, how did it appear
9 from someone driving down the block? It
10 looked like there was a garage there, but
11 really behind the scenes it was not a garage?

12 MR. PROFESORSKE: Correct and that would
13 remain as such. Meaning there is a garage
14 door in the exterior of the house. From
15 inside the house it's sheetrocked over.
16 Actually, you see the garage door from inside,
17 the first is the 5-foot storage space, and
18 following that is the office space that's
19 accessible from inside the house.

20 MEMBER GOTTLIEB: How do you access the
21 storage space?

22 MR. PROFESORSKE: From outside.

23 MEMBER GOTTLIEB: So the garage door is
24 not --

25 MR. PROFESORSKE: Correct.

11/15/2023 - Stern

1
2 MEMBER KERSTEIN: That's the one on the
3 right side facing the house?

4 MEMBER HILLER: When your client
5 purchased the house, did he realize it was not
6 up to code?

7 MR. PROFESORSKE: No, he didn't and I
8 asked him if -- I had another client in the
9 past where also the garage was converted
10 before he bought it. I also asked that client
11 -- he had a memo inspection report showing
12 pictures that it was not to code, but neither
13 of these clients the home inspector told them
14 it was not to code. He didn't realize it was
15 a code requirement.

16 MEMBER GOTTLIEB: The existing driveway
17 can hold how many cars? One?

18 MR. PROFESORSKE: I think two -- you
19 know, one in front of the other. It's tight.
20 I mean --

21 MEMBER GOTTLIEB: Looks like it's 24
22 feet.

23 MR. PROFESORSKE: Utilizing the right of
24 way I think.

25 MEMBER GOTTLIEB: And they don't park on

11/15/2023 - Stern

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the street?

MR. PROFESORSKE: Not overnight. I mean, hypothetically there is some -- maybe some space zoning-wise to enlarge that driveway if --

MEMBER KERSTEIN: It's a dead-end street, and it ends in a cul-de-sac.

MEMBER GOTTLIEB: I am assuming they don't want to take the space from the living room that's 22 feet deep?

MR. PROFESORSKE: To do --

MEMBER GOTTLIEB: To move the office to the living room.

MR. PROFESORSKE: I -- it was never discussed.

MEMBER GOTTLIEB: Just saying because it's a nice, large living room.

MR. PROFESORSKE: So the garage was -- like I said, from the past eight years since they purchased it, the garage was never used, and we know it wasn't used seven years before that because that's when they did the renovation and they did the work so in the 15 years since it's been converted, the garage

11/15/2023 - Stern

1
2 has never been used. Like I mentioned, the
3 size that existed is 9 foot 2 by 19.11, which
4 is pretty tight regardless for a minivan. So
5 it's not as if they would use it even if we
6 would require them to.

7 MEMBER MOSKOWITZ: I think you said
8 this; I want to make sure it's clear. When
9 someone is driving by the house, one would
10 never know there is no garage?

11 MR. PROFESORSKE: I didn't.

12 MEMBER MOSKOWITZ: Because of how the
13 exterior looks?

14 MR. PROFESORSKE: Correct. It has the
15 garage door.

16 MEMBER MOSKOWITZ: Sounds like it's been
17 this way -- according to the petition, it's
18 been this way for 18 years.

19 MR. PROFESORSKE: Right. Fifteen to 18
20 years. That's when the last recorded
21 renovation recorded with the village that the
22 previous owner had done was 18 years ago so --

23 MEMBER KERSTEIN: That was probably done
24 after that renovation.

25 MR. PROFESORSKE: I don't think so.

11/15/2023 - Stern

That predates Danny's perceptive nature,
inspections.

CHAIRMAN KEILSON: You hear that?

MR. PROFESORSKE: I do remember that
sitting in this room about a year and a half
ago, we had a meeting with the mayor and
various architects and contractors where -- I
don't think that you were here that night, but
the mayor is on record saying I don't care
what you do behind the garage door. You can
do whatever you want back there.

MEMBER GOTTLIEB: So I think to surmise
it, we are looking to maintain the existing
condition that's been there for 15 years or
so.

MR. PROFESORSKE: Correct.

MEMBER GOTTLIEB: And without any -- it
hasn't been brought to anybody's attention
that it's been like that for the past so many
years.

MR. PROFESORSKE: We brought it to Mr.
Vacchio's attention.

MEMBER GOTTLIEB: No but I mean, no one
else has complained or it has not created a --

11/15/2023 - Stern

CHAIRMAN KEILSON: A stir in the
community.

MR. PROFESORSKE: No.

MEMBER GOTTLIEB: Even less than a stir.

CHAIRMAN KEILSON: I think we should
also note the fact that he is a clergyman who
has congregants coming for private sessions,
and this gives him the ability to have privacy
outside of the existing house.

MEMBER GOTTLIEB: So we have a clergy
exemption?

CHAIRMAN KEILSON: We will talk about
that.

MR. PROFESORSKE: RLUIPA.

MEMBER MOSKOWITZ: I think it goes into
the needs of the applicant prong of the zoning
analysis.

CHAIRMAN KEILSON: Well said, Mr.
Moskowitz.

Any other questions from the Board?
Anybody from the audience want to comment or
question? If not, taking into account the
benefit to the applicant, allow the garage to
continue existing as opposed to a detriment to

11/15/2023 - Stern

the community, we will start with Mr.
Kerstein.

MEMBER KERSTEIN: For.

CHAIRMAN KEILSON: Mr. Hiller?

MEMBER HILLER: For.

CHAIRMAN KEILSON: Mr. Gottlieb?

MEMBER GOTTLIEB: For.

CHAIRMAN KEILSON: Mr. Moskowitz?

MEMBER MOSKOWITZ: For.

CHAIRMAN KEILSON: I vote for as well.

And how long for the variance? Are you doing
the construction?

MR. PROFESORSKE: Unfortunately, yes.

CHAIRMAN KEILSON: By Mr. Genack can do
it also.

MR. PROFESORSKE: I hope to beat his
five-year record.

CHAIRMAN KEILSON: A year and a half?

MR. PROFESORSKE: Yes, that's fine.

CHAIRMAN KEILSON: Okay. Thank you very
much.

(Whereupon the hearing concluded at 7:54
p.m.)

11/15/2023 - Stern

Certified that the foregoing is a true and accurate transcript of the original stenographic minutes in this case.

A handwritten signature in cursive script, appearing to read 'Yaffa Kaplan', is written over a horizontal dashed line.

YAFFA KAPLAN

Court Reporter

11/15/2023 - Sofier

INCORPORATED VILLAGE OF LAWRENCE

BOARD OF APPEALS

Lawrence Country Club
101 Causeway
Lawrence, New York

November 15, 2023
7:54 p.m.

APPLICATION: Sofier
200 Juniper Circle North
Lawrence, New York

P R E S E N T:

MR. LLOYD KEILSON
Chairman

MR. EDWARD GOTTLIEB
Member

MR. PHILIP KERSTEIN
Member

MR. DANNY HILLER
Member

MR. ELLIOT MOSKOWITZ
Member

MS. SYMA DIAMOND
Alternate Member

MR. ANDREW K. PRESTON, ESQ.
Village Attorney

MR. GERRY CASTRO
Deputy Village Administrator

MR. DANNY VACCHIO
Building Department

Yaffa Kaplan
Court Reporter

11/15/2023 - Sofier

CHAIRMAN KEILSON: Okay. Final matter for the evening, Sofier, 200 Juniper Circle North.

MR. McKEVITT: Good evening, Mr. Chairman, members of the Board. For the applicants for Todd and Felice Sofier. Thomas McKevitt, Sahn Ward Braff Koblenz, 333 Earle Ovington Boulevard, Uniondale, New York 11553.

CHAIRMAN KEILSON: Congratulations are in order.

MR. McKEVITT: Survived again. Me and Howard Koppel spent a lot of time together. That's how I look at it. I do have some documents I just want to give members of the Board as well as staff here too. It's pretty much a statement which was designed by my client with some additional documentation at this point.

Obviously this is an unusual application coming before the Board where it's actually not the usual one asking for a variance, but instead it is appealing a determination of the Building Department for issuing a bulkhead.

A permit was issued back in August of

11/15/2023 - Sofier

2023 this past year. Without going too much into the long history of this matter, this was actually a construction started some time ago at 206 Juniper Circle North. The Sofiers lived immediately next door at 200 Juniper Circle North. There has obviously been some tension between the parties for quite some time. Without getting to the detailed history of it, the reason we are here today is that back in May, originally the developer had brought an application for a bulkhead permit. That permit at that time was denied. Then this past August, the Building Department then granted the issuance of bulkhead permit, which in the perspective of our clients seemed like an almost identical application, which had been brought beforehand.

Really the issue has really come down to the fact that my clients are just concerned that there has been a grade change that has been accompanied with the construction of the bulkhead, and what this grade change then does is create a flow of water into their property, which didn't happen beforehand. As a matter

11/15/2023 - Sofier

1 of fact, I was before last week the village
2 Board. I am just going to give copies as well
3 too of an engineering report which my clients
4 obtained, which showed that presently there
5 are issues with that, and actually the
6 engineer then recommends that retaining wall
7 be constructed.
8

9 I do know that it's the position of the
10 Building Department that we are still in the
11 middle of the construction and because that's
12 the case, the grade is going to continue to
13 change as construction still takes place, but
14 again, you know, from my clients' perspective,
15 you know, obviously back in September we had a
16 very severe rainstorm, probably one of the
17 largest in the history of the area, where it
18 did have some runoff at the point.

19 So that's the introduction I want to
20 give you. Mrs. Sofier is going to address the
21 Board as well to indicate that all the
22 photographs were personally taken by her and
23 for our observation. I will turn the floor
24 over to Mrs. Sofier right now, and I will wrap
25 up once she is done with her presentation.

11/15/2023 - Sofier

2 MRS. SOFIER: Thank you for the
3 opportunity to allow me to speak. I have been
4 looking forward to this since August. I am
5 Felice Sofier. This is my husband, Todd. We
6 live at 200 Juniper Circle on a small 1-acre
7 pond that is surrounded by four homes. We
8 have an issue with the builder of 206 Juniper
9 Circle North, which I will refer for the
10 purpose of simplicity as 206.

11 The builder has violated multiple
12 village laws, and the Building Department has
13 neglected to enforce local code. We have
14 appealed dozens of time to the Building
15 Department and appeared twice before the board
16 of trustees. We are represented by our
17 attorney, Legislator Tom McKeivitt, who is an
18 expert on land use and zoning enforcement in
19 New York State.

20 Mayor Edelman in an August 28th e-mail
21 to the board of trustees members referred to
22 this as a Zoning Board issue. That is in
23 appendix 21 if you want to take a look at
24 later, and he also announced the same at last
25 week's board of trustee's meeting from a legal

11/15/2023 - Sofier

standpoint. However, this does fall within the Zoning Board's jurisdiction.

This entire case is about flood damage. Every concern which my husband and I have brought up, whether it deals with change of grade or improper setback of the house or illegal permits, ground coverage, everything all stems from stormwater runoff and hydrologic changes resulting from the violations of multitude of village laws completely and flagrantly disregarded by the builder at 206 along with the Building Department's unwillingness to enforce their own code.

So I will begin with Section 94, which is the chapter of flood damage prevention.

MEMBER MOSKOWITZ: I'm sorry to interrupt your presentation. I just have a question that will help me focus in on things better and you can go right back to your flow. I just want to ask you a question. There is a long history here, and the specific thing that you are asking the Zoning Board to do is what?

MRS. SOFIER: Is to remove the permit

1 11/15/2023 - Sofier

2 and not allow it because first of all, it
3 should have been --

4 MEMBER MOSKOWITZ: The permit with
5 respect to the bulkhead?

6 MRS. SOFIER: The Building Department
7 granted a permit and also no permits were ever
8 issued prior to that for a marked change of
9 grade to the property, which there is multiple
10 things that have occurred which I want to
11 explain. So there is enormous change to the
12 grade done to the property in 2022, which also
13 resulted in flooding onto our property, and
14 due to these violations, everything
15 contributed -- which I am going to bring up
16 step by step -- that contributed to the
17 flooding that we sustained in our property and
18 also a drop in grade and a separation of our
19 land from their land toward the pond.

20 MEMBER GOTTLIEB: So to help me
21 understand what you just said, what you are
22 asking is a reversal of the Building
23 Department's approval?

24 MRS. SOFIER: Correct.

25 MEMBER GOTTLIEB: To put up the bulkhead

1 11/15/2023 - Sofier

2 and vis-à-vis change of grade?

3 MEMBER MOSKOWITZ: It's the bulkhead and
4 the change of grade associated therewith. You
5 would like that to be --

6 MRS. SOFIER: Revoked.

7 MEMBER MOSKOWITZ: -- revoked.

8 CHAIRMAN KEILSON: Can we clarify, has
9 there been approval of change of grade, Mr.
10 Castro?

11 MR. CASTRO: So the bulkhead permit
12 which was issued depicts everything that
13 happened, and the permit was issued. There
14 was no determination of a variance requirement
15 for this Zoning Board.

16 MEMBER MOSKOWITZ: In other words, all
17 that's being permitted right now is the
18 construction of a bulkhead with no change of
19 grade. It may be that they could; is that
20 correct, first of all? In terms of what's
21 allowed?

22 MR. CASTRO: Repeat that one more time.

23 MEMBER MOSKOWITZ: What was permitted
24 right now? Just the construction of the
25 bulkhead but without a grade change; is that

11/15/2023 - Sofier

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

correct?

MR. CASTRO: Without a dramatic grade change. There is fill being placed behind that bulkhead as per the approved permit.

MEMBER MOSKOWITZ: Without a grade change that would require a variance?

MR. CASTRO: Correct.

MRS. SOFIER: If you can just refer to page 22. The May bulkhead was denied because it was a requested grade change of 4.56 feet. And then the August bulkhead on page 25 has the same grade change which is circled. It's actually circled in red, but the copy is copy that I got from the FOIL. In the top it's circled grade change equals 4.56 feet. So the same grade change is actually listed.

MR. PRESTON: Excuse me. I missed the page reference. It's 22 and 25?

MRS. SOFIER: 22 and 25.

MR. McKEVITT: 22 is the letter from the Building Department saying the reason why it was denied the grade change 4.56. On page 25 is the approval of the Building Department with Mr. Vacchio's accident on August 11,

11/15/2023 - Sofier

2023, but as part of the construction of the bulkhead, it indicates in writing on the left-hand corner the grade change equals 4.56. So at the confusion we have is at one point the grade change was for a denial. But then August the same grade change is there and the permit was approved, so that's really the basis of the reason why we are here tonight.

MR. CASTRO: Well, I think the issue was the extent of it. Not so much the height but how much of it would require that particular height. Because the original topographical survey indicates that the majority of the fill would be at the center of the property, not at the edges next to 212 and 200. Once we clarified that those grades would be -- would have minimal impact, at that point we were able to proceed under the condition that it's not a -- it's not a grade change requiring to come before this Board.

CHAIRMAN KEILSON: So the reversal as far as why the building permit was denied now is permitted because of the clarification?

MR. CASTRO: Correct. Exactly. Because

11/15/2023 - Sofier

2 of the quantity and where exactly that 4.5
3 foot at its peak extent would really be
4 because the original picture almost indicates
5 that that -- that that happens across the
6 entire rear yard.

7 MEMBER KERSTEIN: What percentage of the
8 yard would have the roughly --

9 MR. CASTRO: I would say about 33
10 percent. One third. It was the center of the
11 property. Again, it's all taken from the
12 original 2015 topographical survey.

13 MEMBER MOSKOWITZ: I understand why you
14 have a question. I understand why you are
15 raising this because you have a letter that's
16 on page 22, May 31, 2023, which just says
17 flatly that you are not allowed to alter,
18 change, et cetera, which would result in any
19 deviation from the original grade, and then it
20 says requested grade change 4.56 feet and then
21 you are pointing to the permit, which says
22 that the grade change is going to be 4.56 feet
23 and then the question is, well, which is
24 right? Is it right that you are not allowed
25 to do any deviation, and by the way the

11/15/2023 - Sofier

deviation is 4.56 feet, or are you allowed to do a deviation but it just can't be material or it depends on where on the property the grade deviation is going to occur?

I guess I have a legal question for -- maybe it's a counsel question with respect to the interpretation of the village code provision that's at issue. In other words, I want to understand better if this is before us or because it actually is -- let me just stop there. What does the village code say with regard to a grade change of 4.56 feet? In other words, is it as Mr. Castro is explaining that it really requires a contextual evaluation of the property, or is it just a flat rule that says if you change the grade at all, then you are not compliant with Section 70.11.B of the village code and you require a variance?

MR. PRESTON: So 70-11.B provides that it shall be unlawful to alter -- I am quoting. "Unlawful to alter, change, add to, or remove from any site soil or other material which would result in any deviation from the

11/15/2023 - Sofier

original grade of the property". 70-11.C provides that, "It should be unlawful to construct or alter the surface coverage of any property without first filing with the building inspector an application in writing and obtaining a permit therefore."

DR. SOFIER: Let me just put things into perspective. The house we are talking about that's being built, the topography in the back, it's sloped like a smile from west to east. So let's say the sides were 9 feet. It then went into the middle, so when there is a rainstorm, the water would come down. It would slope back from the house 11, 10 feet into the 4 feet. So the water would come down and like a ski slope went into the pond. Now, you just raise this up with a massive amount of soil, and that is completely changing the height and flow of the dynamics.

One thing that is not here, which I think Felice would bring up also just to give you perspective. Part of where the bulkhead is actually extends into the pond into the water. So the pond, the water is 3 feet high,

11/15/2023 - Sofier

1 so the water would flow into that pond. Now
2 they put a bulkhead into the water which
3 Felice would also review later on and that was
4 never even mentioned because now you increase
5 the soil on the water. The water was 3 feet
6 and now you raise it to 9 feet, so I don't see
7 that even mentioned. That's a 6-foot increase
8 of water that's used to absorb the rain and
9 stormwater. That's complete soil. Now you
10 put up a bulkhead. A bulkhead is a retaining
11 wall. By retaining wall, it's soil on both
12 sides. Bulkhead is when you have soil on one
13 side and water on the other, so now you put up
14 this retaining wall so water that used to flow
15 into the pond is now stopped by the retaining
16 wall that's impervious.

17
18 We actually spoke to the manufacturer of
19 the vinyl that's on there. The water cannot
20 go into the pond plus you have raised 4.6 feet
21 plus all the water, the 3 foot of water is now
22 filled up with soil 9 feet high.

23 MEMBER MOSKOWITZ: I am trying to
24 understand. Maybe my point is more local in
25 nature. I am just trying to understand

11/15/2023 - Sofier

whether we are sitting in judgment of a judgment that the Building Department made and is empowered to make and is consistent with a village code and just a matter of whether we think differently about that or are we -- is what was done something that actually is not consistent with the code and actually a variance was required with respect to the work that was done. If you just look at the May 31st letter, you might conclude that a variance is required and if you look at the -- I think the ultimate approval would suggest that a variance is not required and what's being done is as of right.

DR. SOFIER: We had a meeting with the builder about six weeks ago and he came and said --

CHAIRMAN KEILSON: I think let's stay with this question.

DR. SOFIER: But this is --

CHAIRMAN KEILSON: We are going to get --

DR. SOFIER: Two seconds. We asked him about this. You raised the grade. He goes I

11/15/2023 - Sofier

1 spoke to the Building Department. He goes I
2 still need a divot. It's like going to the
3 golf course and hitting a golf ball.
4

5 MEMBER MOSKOWITZ: This is part 2. I
6 want to stick with part 1 for a second, so we
7 can get the legal framework correctly.

8 MRS. SOFIER: If I can explain and
9 just --

10 MR. PRESTON: I would like to continue
11 my response to Mr. Moskowitz's question.

12 CHAIRMAN KEILSON: Good. Thank you.

13 MR. PRESTON: So we are talking about
14 specifically about Section 70-11, which is
15 entitled "Building permits required". 70.11.A
16 provides that "It's unlawful to commence
17 construction, removal, or demolition without
18 filing an application and obtaining a permit
19 therefore". Section B of that provides that
20 "It's unlawful to change site or soil or grade
21 from the original grade of the property". And
22 then -- and subsection C provides "It's
23 unlawful to construct or alter the surface
24 coverage of any property without first filing
25 with the building inspector an application in

11/15/2023 - Sofier

writing and obtaining a permit therefore.

MEMBER MOSKOWITZ: It seems like A and C are not particularly relevant for this discussion.

MR. PRESTON: From my read of these three together, I think the Building Department must require applications for any change in grade, and the Building Department may determine that application as it sees fit. My understanding is that the practice of the Building Department is that when there is a site-wide change in grade, those matters are referred to this Board and that the initial referral denial was mistakenly issued on the assumption that it was a site-wide change in grade and upon later clarification it was determined by the Building Department that it did not trigger a referral to this Board.

MEMBER MOSKOWITZ: And that site-wide versus nonsite-wide distinction that you are making, is -- from reading 70-11.B in context of A and C?

MR. PRESTON: That goes to the practices of the Building Department, which I think the

11/15/2023 - Sofier

Building Department should comment on.

CHAIRMAN KEILSON: Mr. Castro?

MR. CASTRO: That's been customary.

That's the way the Building Department handles the change of grade situations.

MEMBER MOSKOWITZ: Because just in terms of practice, so if I have a 1-acre property and I am changing the grade on 1 foot of that property, that's not going to require a variance application notwithstanding what one might say about this provision; is that right?

MR. CASTRO: That's correct.

MR. McKEVITT: The only thing I will mention in response to that, I think the code under 70-11, subsection B is clear that it's unlawful to alter, change, add to or remove any site soil which results in any deviation from the original grade of the property. That's how the code is written. It may not be how it's practiced, but to me it's clear that if there's any deviation and there's a 4.56, that under the code no permit could have been issued. That's our position.

CHAIRMAN KEILSON: But the practice has

1 11/15/2023 - Sofier

2 not been that way for the 20 years I have been
3 on the Board.

4 MR. McKEVITT: I am not saying whether
5 it's right or wrong. I am saying it's what
6 the code said.

7 CHAIRMAN KEILSON: Your client is saying
8 that's wrong.

9 MR. McKEVITT: We are taking the
10 position that because the code is clear, there
11 should not be deviation, that to issue it with
12 a deviation is incorrect.

13 CHAIRMAN KEILSON: She has raised that
14 many a times, and the Building Department has
15 responded each time.

16 MR. McKEVITT: Which is why we are here.

17 MRS. SOFIER: They have not responded,
18 which is the problem.

19 CHAIRMAN KEILSON: I have a record that
20 they have responded. There is a copious
21 record on this.

22 MR. McKEVITT: The reason is my client
23 one time wrote a correspondence to the BZA
24 which was interpreted as an appeal, which is
25 why we are here tonight.

1 11/15/2023 - Sofier

2 MRS. SOFIER: May I please continue?

3 CHAIRMAN KEILSON: Sure.

4 MRS. SOFIER: Thank you. Immediately
5 after the house was demolished in April of
6 2022, the building levelled the rear yard, as
7 shown in figure 1. Chapter 70 as was just
8 read by the attorney states that it's unlawful
9 to alter or change or add or remove any site
10 soil that would deviate from the original
11 grade. As you can see, the back of the house
12 with the -- whatever that type of heavy
13 equipment is on is completely level. Okay.

14 There is rocks and large man-made
15 rectangular boulders from the excavation site,
16 a retaining wall has been placed there using
17 these large boulders, and the entire backyard
18 which used to be sloped and terraced is now
19 level and elevated to a height of about 10
20 feet. Okay.

21 No permit was ever applied for back
22 then. When I spoke to the Building
23 Department, I was told by Danny Vacchio that
24 this builder needed a level surface for his
25 heavy equipment, and this would be temporary.

11/15/2023 - Sofier

1 The grade would be restored after this
2 equipment was removed. No change ever took
3 place to lower it to its original grade,
4 although dozens of requests were made to the
5 Building Department.
6

7 Allowing non-permitted work to continue,
8 to increase over a year violates code 70.23.
9 This 10-foot height increase across the
10 property put our home this entire time at risk
11 for flood damage. Now I am going to ask
12 everybody to just refer to these two pictures
13 and I will explain. It's on a different page
14 than mine is. The original topography of what
15 206 looked like prior to demolition.

16 MEMBER GOTTLIEB: Where do I find those?

17 MEMBER MOSKOWITZ: Looks like you are
18 looking at page 4 of what we have.

19 MRS. SOFIER: Thank you. If you turn to
20 that page the top image was provided. I took
21 it from the report obtained from the village
22 of Lawrence, which was provided to our
23 attorney last week at the board of trustees
24 meeting. It's an aerial image of the original
25 house before it was demolished.

11/15/2023 - Sofier

2 The property and the property line is
3 outlined in blue, and it was done by the
4 consulting firm appointed by the village. To
5 orient you, the street is on the right, and
6 you can see the circular driveway on the right
7 and the front of the house. The pond is on
8 the left side. You can see a little paddle
9 boat in the upper right-hand corner, and then
10 if you go down, there is a a little L-shaped
11 dock, and if you continue down, there is a
12 large cantilevered deck over the pond. And
13 you will follow the outline, you will notice
14 part of the property is underwater. There is
15 a blue straight line, and you can see the
16 green pond and part of the property line goes
17 over the water. Okay.

18 Now I am going to tell you and then I
19 will refer to the numbers at the bottom. Not
20 expecting anybody to read, but I am very
21 familiar with this because I spent so much
22 time looking at it that the backyard was
23 terraced and sloped down. So when you are
24 looking at it, there were two very large decks
25 that spanned the entire length of the back of

11/15/2023 - Sofier

1 the house, and they started at 12 feet. The
2 backyard when the house ended was 12 feet and
3 high, and those are the markings that are on
4 the survey. Then when you move down at the
5 part of the house, there was a terrace that
6 stepped down. That was about 11 feet and
7 that's that funky white trapezoid that is sort
8 of parallel to where the paddle boat is and
9 the dock.
10

11 When you move down past where the trees
12 were, there was a walkway that continued to
13 step down. Beyond the terrace in the middle,
14 there was a retaining wall which was that very
15 straight line. That dropped down to about 9
16 feet, so if you now look where the survey is
17 in the backyard, when you start from the house
18 it says --

19 CHAIRMAN KEILSON: How did you know all
20 these dimensions in terms of the height?

21 MRS. SOFIER: First of all, Beverly and
22 Stanley who lived there many years ago, may
23 they rest in peace, were like parents to us
24 and my daughter and their daughter were very
25 close friends and were pregnant at the same

11/15/2023 - Sofier

1
2 time and my kids and her grandchildren played
3 together and spent a lot of time in each
4 other's backyards, and because their backyard
5 was so level, when they wanted to play
6 baseball, they played in our yard and my girls
7 played in their yard. So we have a lot of
8 time that was spent in each other's yards.

9 CHAIRMAN KEILSON: These are your
10 observations?

11 MRS. SOFIER: Yes but I think if you
12 want to document it --

13 DR. SOFIER: Do you mean the numbers?
14 The numbers are here.

15 MRS. SOFIER: The numbers of the height
16 -- this is a topographical survey, which is
17 why I keep referring to it because Danny
18 Vacchio, when I was very concerned about the
19 height change at the beginning of this when
20 this happened back in 2020 -- 2022, I'm sorry,
21 explained to me that I shouldn't have to worry
22 because this was proof of what the original
23 backyard looked like and that it would be
24 restored back to normal because it was illegal
25 to change the grade. And all I had to do was

11/15/2023 - Sofier

look at the Xs and that said -- explained what the height was.

So when you go ahead, there is a number circled, for example, in the area right where I pointed out that terrace deck in the middle, that funky looking trapezoid. It says, for example, X.891 that's circled. That's 9 feet. If you move down, it says 9.05. Okay. Nine feet. If you look behind it, it says 11.32 the height. I told it's a couple of steps down. It's blocked by that tree. If you move over a little bit down, 11.17, so that terrace is about 11 feet. If you go ahead and read the numbers along the back of the house, 11.99, 12.2, 12.15, all in front of the house it was 12, 12.2. This all sloped down and it was terraced, and if you move down closer to where the rocks are, 7.51, 8.93, 6.45.

As you move down, it was a hill. It went from 8 feet to 7 feet. You get to the water line 4.35, 4.43, 4.51. Right near as the water ran it was 4.45, so what I am showing you in this picture is the original backyard was terraced. It was sloped. It

11/15/2023 - Sofier

1 started out at 12 feet. It went down all the
2 way down to 4 and a half feet or under. We
3 are talking about an 8-foot difference. Now
4 what the builder is trying to tell you is that
5 this bulkhead --

6
7 CHAIRMAN KEILSON: Well, the builder is
8 not telling us.

9 MRS. SOFIER: The permit, whatever.
10 They are now saying what has been created in
11 this backyard is that it's starting at 9 and a
12 half feet and going down to 9 feet 1 inch. So
13 now we have -- instead of an 8-foot
14 differential, we are now down to 6 inches. So
15 you cannot tell me that water is going to
16 behave the same way when it used to drain and
17 flow naturally over a rocky surface and
18 filtrate down over 6 inches that that's not
19 going to have the same effect.

20 CHAIRMAN KEILSON: Mr. Castro, can you
21 comment?

22 MR. CASTRO: Yes. I just want to point
23 out -- I don't know if we already looked at it
24 on page 24 of this document, that's part of
25 the bulkhead permit that was issued. If you

11/15/2023 - Sofier

1 look, there is 6 elevation points, proposed
2 elevation points that are indicated. Five of
3 them match the elevations of the existing
4 survey that we were just discussing.
5 Specifically, the four along the edges --
6 actually one of them drops dramatically
7 because if you look at the old survey, it's a
8 little hard to understand it because of the --
9 because the house and where it stopped, but
10 roughly where he is indicating that there is a
11 -- it's going to have a 9.73 height, it's at
12 the very rear of the house. On the old survey
13 there was approximately 11 feet. At that
14 roughly at that same point, so he is dropping
15 the grade in that particular area and that's
16 why we deem this that the majority of the site
17 is going to -- is going to remain the same.
18 We have yet to receive a time survey to show
19 us what is there currently. It very well may
20 be that it's not -- it has to be adjusted
21 further.
22

23 MEMBER KERSTEIN: I still -- I hear the
24 points that were made and going from let's
25 even assume 9 feet. There is no place where

11/15/2023 - Sofier

the water has an area to drain into the pond
if I am looking at this correctly. The water
is going to be retained.

DR. SOFIER: There is also no more
slope. There is a --

MEMBER MOSKOWITZ: I want to ask you to
comment on this, Gerry. What they are saying
in lay terms, it used to be there was a slope
and the water would go into the pond. Now I
think for part of the -- partially because of
what you are pointing out that actually right
next to the house is no longer a much higher
elevation. It's like 9.73, and if you look a
little bit further, as you go towards the
water, you are at 9.18. That's not much of a
slope, and so the question is what's the
Building Department's perspective on that.

MR. CASTRO: There is going to be
approximately a 1-foot slope because you don't
see the elevations at the edge of the bulkhead
except for a -- let me just see if it's -- I
think it's on the previous page 20 -- 23. No.
Sorry.

MEMBER MOSKOWITZ: So let's say there is

11/15/2023 - Sofier

1 going to be a 1-foot slope. I think from
2 their point partially there was a much more
3 dramatic slope previously.
4

5 MR. CASTRO: Right. Well, the problem
6 is with dramatic slopes, you get sediment
7 erosion over the course of time. That's why
8 there is probably a lot of deposit in that
9 pond from these homes. As anything, when
10 water travels too fast, it will take
11 sedimentation with it and then deposit it.
12 That's just a known fact. Sewer pipes, water
13 pipes, they have projected slopes that can --
14 the term "more is better" in this particular
15 case isn't -- isn't true.

16 MEMBER KERSTEIN: But we are dealing
17 with the requirement that you can't change the
18 slope, and this is changing at least to me,
19 the slope significantly going from a drop --
20 just for argument's sake, stay with 9 feet.
21 From 9 feet down to 4 feet. You have got a
22 slope of 5 feet; you are raising it up by 4
23 feet, give or take 3 feet, and I just don't
24 see that that is not a significant change and
25 in terms of the water --

11/15/2023 - Sofier

2 DR. SOFIER: What about the retaining
3 wall?

4 CHAIRMAN KEILSON: Hold it. We will get
5 to it.

6 MR. CASTRO: What I haven't heard though
7 is that this difference, where was the
8 majority of the difference, and that was in
9 the very last portion of the backyard. Again,
10 according -- according to the documentation --
11 so again, just to clarify for the record, this
12 8-foot drop was not a linear slope down, but
13 rather a gradual and then an exponential slope
14 at the very end.

15 MEMBER MOSKOWITZ: But those may all be
16 reasons why -- including your sediment
17 complaint, why it would make sense for the BZA
18 to approve a variance with respect to these
19 changes, but I am starting I think from an
20 earlier point which is a variance -- and we
21 can have that discussion but is -- is a
22 variance required here or is this such a de
23 minimis change in grade that this is something
24 that's within the Building Department's
25 discretion to approve and it sounds like there

11/15/2023 - Sofier

1 is plenty of grade change that's going on here
2 except it may -- maybe it's a good idea and
3 maybe it's fine ultimately, but the question
4 to me again is the starting point is is this
5 consistent with the code or is this not
6 consistent with the code and a variance is
7 required and then the question is should we
8 grant the variance or not. Counsel, you want
9 to say something?
10

11 MR. PRESTON: Yes. I think sort of a
12 broader concept is what is the role of the
13 Board here and that we should clarify what
14 brings us here today because as was said
15 earlier, this is not -- this is not your
16 normal area of variance application. So there
17 are a number of sections of code, Lawrence
18 code as well as state law that gives this
19 Board jurisdiction to hearings over
20 determinations and I think the most applicable
21 one is really under New York State Village Law
22 7-712.B.1 which provides -- and I am quoting
23 it with ellipses to save time -- "the Board of
24 Appeals may reverse or affirm wholly or partly
25 or may modify the order, requirement,

11/15/2023 - Sofier

1
2 decision, interpretation appealed from and
3 shall make such order, requirement, decision,
4 interpretation, or determination as in its
5 opinion ought to have been made in the matter
6 by the administrative official charged with
7 the enforcement of such local law."

8 So my point to -- in reciting this is an
9 appellant has raised an issue before this
10 Board and this Board has the power to hear it
11 and adjudicate it without -- if you would like
12 to reverse that determination, if it's the
13 Board's druthers to reverse the determination
14 and require a separate variance application,
15 you may do that but you may also modify that
16 decision as you see fit.

17 MEMBER MOSKOWITZ: First of all, that's
18 helpful and I understand that the matter it
19 sounds like it's properly before us. I am
20 still not sure whether and maybe -- and I
21 don't even know if it makes a difference, but
22 I am still not sure whether the right pathway
23 for this to be before us is, you know, is a
24 question of should the Building Department --
25 is this within the Building Department's

11/15/2023 - Sofier

1
2 mandate to approve in the first place, and
3 then we can override that because we think
4 they shouldn't have approved it or is this
5 something that the Building Department doesn't
6 have the mandate to approve because of the
7 language of the code. A variance application
8 should have been made and then we can preside
9 over it as the Board of Zoning Appeals does
10 when a variance application is made.

11 I am not sure what the right answer to
12 that is at the moment, but I -- at least the
13 way it was explained at the very beginning of
14 this discussion is that you look at the whole
15 thing in context -- and I am paraphrasing.
16 You look at the whole thing in context, and if
17 there is not much of a grade change going on
18 with respect to the majority of the site, then
19 notwithstanding the language of the code, it's
20 pattern and practice of the Building
21 Department to approve such application or it's
22 at least within its discretion to do so and I
23 think the question that we are just honing in
24 on right now is it sounds like there is a lot
25 of grade change going on and it may be that

11/15/2023 - Sofier

1 that's totally fine because there is still a
2 slope that's maintained and concerns that are
3 being -- and in fact, there may be other
4 concerns when you have a very dramatic slope
5 because you could lead to the erosion that you
6 talked about before but I still -- at least I
7 am sitting here right now not 100 percent sure
8 about whether because there is a lot of grade
9 change that's going on, whether it is
10 something that the Building Department has the
11 ability to approve looking at past pattern and
12 practice or if there's something that's
13 supposed to come before us through a variance.
14 I just don't know the answer.

16 MR. PRESTON: I would suggest that the
17 answer doesn't matter since we are here now.
18 My understanding is that I -- I don't feel
19 comfortable giving an opinion on that because
20 I -- this is -- I am being presented with this
21 at the hearing and I am reading the code along
22 with you. I did -- Mr. McKeivitt was kind
23 enough to speak with me earlier, and we
24 discussed the -- the procedural difficulties
25 of this application insofar as it was

11/15/2023 - Sofier

1
2 commenced by an applicant without an attorney
3 or does not have a petition before it or a
4 request for relief and that's part of why the
5 Board has been clarifying what exactly the
6 applicant is seeking.

7 MEMBER KERSTEIN: Can I just ask one
8 more question? How high is the bulkhead?

9 MR. CASTRO: You want to know the top
10 elevation of the top of the bulkhead?

11 MEMBER KERSTEIN: Compared to the
12 elevation of the soil in front of the
13 bulkhead.

14 MR. CASTRO: Or behind it.

15 MEMBER KERSTEIN: About 9.8 if I am
16 reading it correctly.

17 MR. CASTRO: Supposed to be about a
18 6-inch drop according to the plan.

19 MEMBER KERSTEIN: So it's higher than --
20 so effectively if there is rainwater coming
21 down, the bulkhead will stop the water from
22 going into the pond. If it's more than 6
23 inches, it will go over.

24 MR. CASTRO: Obviously yes if it's
25 considered a solid impermeable barrier.

1 11/15/2023 - Sofier

2 MRS. SOFIER: It is impermeable.

3 MR. CASTRO: Then you can argue yes, it
4 will stop there. It has nowhere to go.

5 MEMBER KERSTEIN: Which means it has to
6 go over to one side or the other. The pond or
7 the backyard.

8 MEMBER HILLER: I want to bring up
9 something else. There was a point in which
10 the Sofiers and the builder were talking. And
11 there was hopes of a compromise. Is that
12 still a viable alternative?

13 DR. SOFIER: Just so you know, Felice,
14 how did we come to speak to the builder? It's
15 not like we had multiple conversations. We
16 called because we had a lot of different
17 headaches. There is a lot of different
18 issues. One of them we noticed is there is a
19 few things he has done that we are not sure.
20 Felice will present some other things.

21 He started building a circular driveway,
22 and we noticed he shouldn't have been doing
23 that so we weren't sure. The village was
24 called and obviously they weren't. They were
25 making new curb cuts. They didn't have a

11/15/2023 - Sofier

1 permit for it. So they had to go back. So
2 they had to go, and they were very upset about
3 it. They called another neighbor they were
4 friendly with and we decided to meet that
5 night, and we asked -- we just don't want to
6 get your water. And how do you do this? And
7 that's when he explained to us, he said it's a
8 little divot filling. And it's not a divot.
9 We said okay but we don't want to get the
10 water. We will let the engineers come up with
11 the idea. He actually met one of the
12 engineers who has been before the Board before
13 I think Danny and Gerry were with him about
14 two weeks ago, and he suggested if you want to
15 have a compromise, you want to leave it, put
16 up a retaining wall before the frost line and
17 put a drainage. He said -- I think Andrew
18 told us he asked Felice for her credit card
19 during the meeting.
20

21 MRS. SOFIER: He presented a number of
22 solutions, and when he was presented with it,
23 he said where is her credit card.

24 DR. SOFIER: So Gerry called Felice that
25 night to explain they had a meeting and I said

11/15/2023 - Sofier

1 that's very nice. But then Gerry said, you
2 know what, he is going to be working on the
3 bulkhead. Even though this is a stop order
4 there, he is going to be working in the
5 backyard. He just wanted to let you know. I
6 said Felice, Gerry is not telling you what a
7 great meeting it was. He is calling you to
8 tell you he is letting him work. That tells
9 me there is no compromise. He has no
10 interest. This was put before him, so we have
11 to proceed now. So he had one meeting when he
12 was upset about going forward with the
13 driveway, but we really didn't have much of a
14 conversation.

15
16 MEMBER HILLER: Is there a solution in
17 your minds where a compromise is possible?

18 DR. SOFIER: If according to the
19 engineers, two of them, if he wants to keep
20 the bulkhead and the property at that level is
21 to put a retaining wall behind the frost line
22 and a drainage pipe in front.

23 MRS. SOFIER: And lower the grade.

24 DR. SOFIER: If we have a retaining
25 wall, we will be okay. The main issue is the

11/15/2023 - Sofier

retaining wall.

MEMBER HILLER: Wait. I think it's time to speak --

MRS. SOFIER: The engineer's report said three things. He said there were three things. He has to bring down the grade somewhat that he had to put a retaining wall in with drains, and he said something about check valves and jet valves.

MEMBER HILLER: But if those things were done, you might be satisfied?

MRS. SOFIER: I won't be delighted.

MEMBER HILLER: Nobody has agreed --

MRS. SOFIER: Yes. We would be willing to compromise.

MEMBER HILLER: Would you like to address this?

MR. PROFESORSKE: If there is more of a presentation --

MEMBER HILLER: Here is an opportunity to not to hear the rest of the presentation.

MR. PROFESORSKE: I will refer to my counsel.

MEMBER HILLER: One thing I will ask

11/15/2023 - Sofier

1
2 you, don't make a presentation based on the
3 fact that you were given the go-ahead because
4 as we see that is very up in the air.

5 CHAIRMAN KEILSON: I don't think that's
6 a proper caution.

7 MEMBER HILLER: All right. I apologize.

8 CHAIRMAN KEILSON: You asked him to come
9 in and address the question.

10 MEMBER HILLER: My main course is to see
11 if based on what the applicant said, if there
12 is room for a compromise based on their needs.

13 MR. NEWMAN: First of all, good evening.
14 My name is Evan Newman. I represent the
15 permit holder and property owner, Ski
16 Development 16. I believe this is now my
17 first time addressing the Board. I don't know
18 if you give out a certificate for your first
19 time like a baseball game, but it's my
20 pleasure. I saw the big K for Mr. Kielson on
21 the bell. I don't know if it's a personal
22 bell.

23 I guess at the end of Dr. Sofier's
24 presentation, I will be able to give my own
25 presentation on everything else, but in terms

11/15/2023 - Sofier

1 of this idea that there is a compromise
2 because of an engineering report, I think as a
3 lawyer I have to state that that engineering
4 report, although it has the name of an
5 engineer on the first page, it actually
6 doesn't say anything that Dr. Sofier is saying
7 that it says. It actually just repeats things
8 that Dr. Sofier told her. He did no testing,
9 he made no conclusions, he had no hypothesis.
10 In a court of law the document is completely
11 worthless.
12

13 There is absolutely no determination by
14 the engineer that the water movement in any
15 way or water caused anything. He actually
16 didn't observe any flooding. He certainly
17 didn't do any water testing, any slope
18 testing, any opinions, any determination about
19 the slope and the grade or the permeability of
20 the bulkhead, which I know has come in
21 question and Mr. Castro said if it is
22 permissible, it would not even be an issue.
23 So it's very hard to talk and take serious
24 suggestions by something that was really just
25 -- I don't know if it's an -- it's not an

11/15/2023 - Sofier

1 opinion. It's just like suggestions. Well,
2 Dr. Sofier told me this and if that really
3 happened, I guess you could do that. He did
4 absolutely no testing, so it's very hard to --
5 the answer is really no. I think we need the
6 Board to really put this to bed because
7 basically every single meeting has become
8 another hearing and another 30-page submission
9 about this project.
10

11 So we -- I think Mr. Moskowitz is
12 correct that before we start talking all night
13 about wetlands and freshwater and flood plains
14 and everything else that's in the submission,
15 we really have a determination what is the
16 Board doing here and what is the jurisdiction
17 of the Board.

18 Because your attorney mentioned 7-712.B,
19 which is actually a permissive statute but the
20 power of the Board actually starts from
21 7-712.A of the village law which talks about
22 how an appeal is taken and what has to be
23 submitted and something has to be submitted
24 within 60 days of a determination of the Board
25 and the Board of Zoning Appeals is really

11/15/2023 - Sofier

connected to the zoning laws.

So the submission from Dr. Sofier that was within the permit time is actually insufficient under the zoning laws and actually refers to -- I think it just refers to the issue that this is a wetland, which has actually been determined by the village's own expert it's not a wetland. So before we really start going down into the weeds, I think the Board has to make a determination that they have jurisdiction and have a ruling so that there is a record of that ruling that the Board has jurisdiction and exactly what the Board's jurisdiction is and what they are determining tonight before we spend all night going through every single statute in the code.

MR. PRESTON: Can I speak to that? So as I mentioned earlier, there are additional sections of law that give this Board power to hear this, including Village of Lawrence Code, Chapter 6, Section 4, which provides in addition to the powers granted to the Board of Appeals by a village law, the Board has

11/15/2023 - Sofier

1 additional discretionary powers. Specifically
2 6-4.J to take jurisdiction and grant relief
3 not inconsistent with Chapter 12, Building
4 Design, Board of, or Chapter 212, Zoning,
5 "Anything providing deed or restrictive
6 covenant executed relating to the use of land
7 or the construction of any street within the
8 village", which is then again another
9 allegation contained in the August 30th letter
10 from Ms. Sofier which gave this Board
11 jurisdiction.
12

13 MR. NEWMAN: To address that, I don't
14 believe there is any allegation about a deed
15 or restrictive covenant in the letter that Dr.
16 Sofier presented. This is limited to
17 determinations relating to restrictive
18 covenants or easements. There is nothing
19 about that in the submission.

20 MR. PRESTON: I believe there was
21 actually in the original submission there were
22 references to restrictive covenants and the
23 deeds regarding the treatment of the pond.

24 MR. NEWMAN: That had to do with the
25 pond corporation. That would be a different

11/15/2023 - Sofier

1
2 piece of land under -- I don't believe that is
3 before the Board. I believe it had to do with
4 the electricity. I don't think it has
5 anything to do with the bulkhead.

6 MR. PRESTON: So it's your position that
7 the permit was issued and this Board does not
8 have jurisdiction to hear the appeal before
9 it?

10 MR. NEWMAN: Correct and for the reasons
11 stated in the actual submission or petition
12 before the Board.

13 MR. PRESTON: What is your citation for
14 that?

15 MR. NEWMAN: 7-712.B, 7-712 A. Section
16 70-23 of the village code that gives the
17 building inspector the power to revoke or
18 revoke permits based on an incorrection or
19 misstatement in a permit, Section 6.4 and 12.8
20 of the village code ruling relating to the
21 powers of the BZA.

22 MR. PRESTON: With respect to your
23 argument on 7-712.A, I am reading that and
24 assuming that you are referring to 7-712.A,
25 sub 5.B.

1 11/15/2023 - Sofier

2 MR. NEWMAN: Yes.

3 MR. PRESTON: Which reads, "An appeal
4 shall be taken within 60 days of the filing of
5 any order, requirement, decision,
6 interpretation, or determination of
7 administrative official by filing with such
8 administrative official and with the Board of
9 Appeals a Notice of Appeal specifying the
10 grounds thereof and the relief sought. The
11 administrative official from whom the appeal
12 is taken shall forthwith transmit to the Board
13 of Appeals all the papers constituting the
14 record upon which the action appealed from was
15 taken."

16 That's the section that you are saying?

17 MR. NEWMAN: Correct and the submission
18 to the Zoning Board was on August 30th, an
19 e-mail from Dr. Sofier to Chairman Keilson
20 which she addressed to the chairman of the
21 Board of Zoning Appeals and all members and
22 begins, "We live on a privately owned pond".

23 MR. PRESTON: The denial letter dated
24 May 31, 2023 was eventually clarified as
25 discussed earlier by the Building Department

1 11/15/2023 - Sofier

2 resulting in a determination on August 11th of
3 2023.

4 MEMBER MOSKOWITZ: Right. The May 31st
5 letter is of no moment I think with regard to
6 this debate. Because they are very happy with
7 the May 31st denial.

8 MR. PRESTON: We have an August 11th
9 grant followed by an August 30th letter.

10 MR. NEWMAN: Correct.

11 MR. PRESTON: The Building Department
12 deemed an appeal and forwarded to this Board.

13 MR. NEWMAN: Correct. And that appeal
14 and like any appeal, it requires the statement
15 of the reasons for the appeal.

16 MEMBER MOSKOWITZ: Is that document
17 available before us?

18 MR. NEWMAN: I mean, I printed out a
19 copy.

20 MR. PRESTON: To elaborate on your
21 point, you think that -- there is no question
22 that that document was submitted within 60
23 days?

24 MR. NEWMAN: It's not a statute of
25 limitations.

11/15/2023 - Sofier

MEMBER MOSKOWITZ: The thing that they
are complaining about --

MR. NEWMAN: My argument is not a
statute of limitations argument. It's simply
to clarify the powers of this Board and what
the Board is determining. I know that the
Board was struggling in the beginning of this
hearing with exactly what they are doing and
is it about grading, is it about, you know,
redetermining but the issue really here is
that you are required under village law to
have had an appeal taken to you with the
reasons stating the reasons for the appeal,
and reading this letter, to the extent it has
any reason in it, it talks about, you know,
that he subsequently raised the grade without
any permits for 60 months, right? Then he
goes on and talks about the bulkhead was
rejected because of grade changes. In August
the builder again applied for a permit without
appealing to the village board, was granted
permission without making any changes. He is
building an extension into pond property that
stands over 91 feet in length, 10 feet in

11/15/2023 - Sofier

1 width, and an eventual height of 9.5 feet. I
2 was told by the village that the bulkhead
3 regulations did not apply to freshwater. I
4 contacted the DEC, Bureau of Freshwater
5 Wetlands. ECO Smith investigated the property
6 on May the 28th and informed me the builder
7 was in complete violation of DEC rules.
8 However, the pond is currently not under DEC
9 jurisdiction.
10

11 MEMBER MOSKOWITZ: Right but it sounds
12 like the gravamen of their complaint, they are
13 upset with the grade and they are upset with
14 the bulkhead. These are lay people. They are
15 not expected to I think present something as
16 an attorney would.

17 MR. NEWMAN: They have been pretty adept
18 with presenting things to this Board and the
19 board of trustees.

20 MEMBER KERSTEIN: They have not given
21 this level of detail. They have been very
22 careful in what they put together here. I see
23 it but they are still lay people.

24 MR. NEWMAN: They presented similar
25 things --

11/15/2023 - Sofier

1
2 MEMBER KERSTEIN: I don't think Dr.
3 Sofier went to law school. If he had, we
4 would really be in trouble but I am really
5 serious.

6 MR. NEWMAN: I appreciate it. I have to
7 make the application on the record so that
8 it's clear and the Board rules clearly what
9 exactly their jurisdiction is and what exactly
10 they are determining tonight because if you
11 look at the submission -- because I know it's
12 the first time such a fancy submission has
13 been submitted to this Board, but similar
14 submissions have been previously submitted to
15 the board of trustees, so I have seen most of
16 this before. You are going to see things
17 about wetlands, freshwater, flood plains, and
18 stormwater and all these things and we could
19 sit here all day long. If there is a
20 determination or clarification from the Board
21 exactly what this hearing is about, it would
22 be helpful, which is precisely why the rules
23 require a statement of what the appeal is
24 about.

25 CHAIRMAN KEILSON: My personal

11/15/2023 - Sofier

1 inclination is to perhaps address these issues
2 tonight, so otherwise it's going to go on and
3 on and on and on. And I think all the parties
4 want to move on with their lives albeit --

5 MR. NEWMAN: That's fine. That's fine.
6 We could talk about them. So my understanding
7 is that everything tonight is open season on
8 all issues.

9 CHAIRMAN KEILSON: It appears that way.

10 MEMBER MOSKOWITZ: Well, yes and no. As
11 I understand --

12 CHAIRMAN KEILSON: Not no. All kinds of
13 assertions are being made by the appellant I
14 guess that have no basis in fact and just
15 accept it on the record which I find
16 offensive, okay, and anybody can throw out
17 anything and there is no rules of evidence
18 here or the like. We have all kinds of
19 paperwork, piles of paperwork, so let's stay
20 till dawn.

21 MEMBER MOSKOWITZ: I was trying to help
22 the process along, but I think -- and
23 everybody because I think the gravamen of the
24 complaint is they are not happy with the
25

11/15/2023 - Sofier

1 bulkhead, they are not happy with the grade
2 change, they worry it leads to flooding.
3 That's basically -- and there is a textual
4 argument I think that's being made from the
5 code provision which on its face one could
6 argue requires a variance with respect to any
7 change to the grade.
8

9 In response to that, you have many, many
10 years of pattern and practice. You also have
11 logic because it doesn't make sense that a
12 1-foot change to the grade on a 1-acre
13 property would require a variance, and you
14 also have the fact that it shouldn't make a
15 difference anyways because whether it's a
16 determination of the Building Department that
17 we have jurisdiction to override, or whether
18 it's a determination whether it's a variance
19 application that we have the ability to
20 preside over and sit in judgment on, at the
21 end of the day, it's before us. So I don't
22 know that this is much broader than that.

23 Again, it's true, Mr. Keilson, it's true
24 it's not helpful I think to the process or our
25 ability to consider the issues if there is a

11/15/2023 - Sofier

1 million things that are being presented and
2 papers that are being dropped on us, but I am
3 trying to get to the heart of the matter which
4 is -- and you should assume we don't credit
5 every single thing that's been alleged. I
6 think what they are saying fundamentally is
7 the property sloped a lot in the past, it's
8 going to slope very little now, plus there is
9 -- plus they have major issues with the
10 retaining wall. The net effect of which is
11 that where in yesteryear before there was any
12 construction water flowed into the pond,
13 rainwater flowed into the pond and now the
14 concern is that's not going to happen and
15 instead it's going to go sideways into their
16 property. That's basically what's happening
17 here.

18
19 So I know that we interrupted her
20 presentation and we asked you a specific set
21 of questions about a compromise, but I think I
22 am just trying to make it so we are not here
23 till dawn. What's the response to the essence
24 of the complaint?

25 MR. NEWMAN: Sure. And I am going to

11/15/2023 - Sofier

2 give you a few of the legal responses and kind
3 of frame the issue and my client will clarify
4 some of the technical aspects of this, but to
5 answer your questions -- and I agree with what
6 you are saying is that is the essence of this.
7 A few things. First of all, before you on the
8 record is an expert -- is an expert submission
9 that does not prove or state anything about
10 the flow of water or actually observe anything
11 about the flow of the water. On the other
12 hand, my client has submitted a report from R
13 & M Engineering, another reputable engineering
14 firm, that actually does render expert
15 opinions about the flow of water and states
16 very clearly multiple times that the change in
17 grade and the way the property slopes does not
18 affect or change anything with the neighboring
19 property. Both because in the end of the day,
20 what hasn't been clarified is that the
21 boundary line between the two properties was
22 always a higher grade between my clients and
23 Dr. Sofier's property. The part that's being
24 changed has no net effect at all on the
25 neighboring properties.

11/15/2023 - Sofier

Number 2 -- so that's Number 1. Number 2 is although I am not a legislator --

MEMBER MOSKOWITZ: Can I pause you on that? I want to make sure I understand it. Is your point because even -- regardless of the slope, with respect to the body of the property, if what we are talking about is a concern that rainwater is going to go onto the Sofiers' property, if that's the concern that we are seeking to address here, if the property line that divides the two properties is elevated, such that it could act as a barrier effectively between the two properties, is that we shouldn't be as concerned about the rainwater flow? I am just trying to understand your point.

MR. NEWMAN: I think it's that the change in grade that my client is accomplishing through the bulkhead has no effect on the current situation between the two properties. In other words, 206 Juniper was always higher than 200 Juniper on the boundary line, and to the extent that a higher property causes any type of flow of water into

11/15/2023 - Sofier

1 a lower property, that condition has always
2 existed and that's the original grade as you
3 can see on the surveys. The issue with the
4 far rear middle portion of the north boundary
5 line along the pond changing, according to our
6 expert, has no effect on whether or not water
7 has moved and where water moves.
8

9 MEMBER HILLER: You know what the
10 unfortunate thing is? And this happens not
11 only in this case but in many cases.
12 Everybody brings their own expert who
13 validates what they believe so --

14 CHAIRMAN KEILSON: Did you read both
15 reports and see the difference?

16 MR. NEWMAN: There is only one expert
17 report.

18 MEMBER HILLER: We all have our own --

19 CHAIRMAN KEILSON: No, no. Read the
20 report precisely.

21 MR. NEWMAN: There is absolutely no
22 second expert report.

23 MEMBER HILLER: I myself am more
24 solution, I hope, oriented and it pains me to
25 see this is turning into a legal battle

11/15/2023 - Sofier

1 instead of a way to which I think benefits
2 ultimately both sides to make a compromise
3 that can make both sides happy and get up in
4 the morning and continue instead of paying
5 legal fees ad infinitum and challenging the
6 validity of this Board's vote or not vote. So
7 what I would strongly urge, even though it may
8 not please everybody, is that we make a
9 compromise based on the -- I don't think -- I
10 don't think -- whether they are right or
11 wrong, I don't think it was a crazy or
12 outlandish offer for those three items or two
13 items that somehow instead of paying it to
14 your attorneys, paying it to get something
15 done and moving on. That's just my feeling.

16
17 MEMBER GOTTLIEB: I would like to see a
18 practical proposition as well versus a legal
19 drawn-out battle.

20 MR. PROFESORSKE: Good evening, again.
21 Thank you again for -- I think more than an
22 hour passed the last time I was up here, so
23 thank you again for coming out, members of the
24 Board, chairman, village attorney, members of
25 the Building Department. So I am not going to

1 11/15/2023 - Sofier

2 respond to each one of the Sofiers and their
3 counsel's points I believe --

4 CHAIRMAN KEILSON: I think they are not
5 asking you to respond to the points. Is there
6 a basis for compromise or isn't there?

7 MR. PROFESORSKE: When that conversation
8 of compromise started, it was based off of an
9 October 26th meeting between myself and
10 village officials as well as an engineer,
11 Andrew Braum. So initially that meeting was
12 requested by Mr. Castro about a week and a
13 half earlier. He called me up. It was on a
14 Friday. I think the 26th was a Thursday. He
15 said David, can we meet, let's go over what's
16 going on and see if we could come to some sort
17 of solution that would make everybody happy.
18 I said Gerry, I am all ears, I am in, let's do
19 it. When? We will be in touch next week and
20 I pushed and followed up -- Mr. Castro can
21 confirm -- at least two or three times the
22 next week asking when, when, when, and finally
23 he said okay. Let me see later in the week.
24 Okay.

25 Thursday afternoon at 4:30 we met in

11/15/2023 - Sofier

Village Hall, and earlier that day, about two hours prior to the meeting, Mr. Castro had called me and asked me would it be okay if this Mr. Braum attends the meeting. I said I really don't know who he is but sure. Who is he? He is an engineer. He is doing some work for the village, some other work, and he apparently just found out that day that he was doing some work for the Sofiers, so he said okay and he is a professional, he is an engineer. Maybe he can have some ideas what could be done to rectify this. Great.

We walked into the meeting which immediately Mr. Braum started and said I am duly authorized by my client the Sofiers to negotiate on their behalf. I didn't have counsel present. The village counsel is not present. That sounds like a legal argument to me. So I didn't walk out. We spent an hour, hour and a half there. And he started with here is my list of demands of my client. Starting with A, between the two properties there should be a retaining wall. He called it a retaining wall. A bulkhead-style

11/15/2023 - Sofier

retaining wall were the words he used.
Bulkhead-style retaining wall is what we have
in the back. No problem. How far down in the
ground? Three feet in the ground, nothing
above ground. I just said let me stop you
right there. What is that going to
accomplish? If we are concerned about water
flowing above the ground, it should stick up.
If we have concerns about water flowing below,
3 feet is nothing. Doesn't make a difference.
The response doesn't make a difference.
That's what my client wants.

Drainage. Drainage channel along the
inside of that new retaining wall, drainage
channel along the newly installed bulkhead
along the back. The retaining wall should
span from the rear of the property 10 foot
past the front of the house. So my new house
is about 40 feet in depth. Another 40 feet to
the rear property line. Ten feet in front of
the house, 90 feet total from the rear
property line spanning 90 feet forward to the
forward point of the property.

Furthermore, these devices, they are

11/15/2023 - Sofier

1 called jet filters, which I happen to be
2 familiar with, should be installed in the
3 newly installed retaining wall. I questioned
4 how many. He said he doesn't know. We will
5 work on that. I happen to know those devices
6 are about \$400 each and the manufacturer
7 recommends them every 6 feet. Ninety divided
8 by 6. I am not good with the math, but it's a
9 substantial sum of money. As I am sitting
10 there listening to this -- oh, and the
11 retaining -- sorry. I apologize. The newly
12 installed retaining wall should be installed
13 on my property and wholly on my property and
14 nothing -- not on the shared property line.
15 Wholly on my side of it.

17 As soon as we got to the weeping holes,
18 I did comment I said does she want to put that
19 on credit card. A matter of humor. Some
20 people didn't find it humorous. Most of the
21 attendees at the meeting found it humorous. I
22 never said that everything she requested
23 should be on credit card, so that was a
24 misrepresentation of what I said. Now, moving
25 forward then okay, the weeping holes, more

11/15/2023 - Sofier

1 gravel and more drainage inside the newly
2 installed retaining wall and then \$40,000 to
3 be paid by me to the Sofiers for what? To
4 cover the fees of their professionals that
5 they hired. I mean, I pay my attorney, I paid
6 my professionals. It's a lot of money, but
7 it's not \$40,000.
8

9 At that point -- and then I said to him,
10 I said, let me ask you. All these things that
11 they are recommending, do they make sense? He
12 says I don't know. I said aren't you an
13 engineer? He said I am not here as an
14 engineer. I am here as an authorized party to
15 negotiate on behalf of the Sofiers. That was
16 exactly what happened at that meeting.

17 CHAIRMAN KEILSON: Notwithstanding that,
18 is there something you want to put on the
19 table?

20 MR. PROFESORSKE: I am getting to that.

21 CHAIRMAN KEILSON: Let's get to it.

22 MR. PROFESORSKE: I apologize. I
23 promise I will try to be quicker than my
24 attorney.

25 CHAIRMAN KEILSON: Let's get to the

11/15/2023 - Sofier

point.

MR. PROFESORSKE: So the point of the matter is I asked this engineer I said do you think that -- it's not the point. I said don't you think all these things you are recommending could be solved with a simple gravel bed along the property line, along the adjoining property line spanning the backyard because the side of the house is not relevant. Spanning the 40 feet of the rear yard a simple gravel bed with a perforated pipe inside. Drill the perforated pipe through the bulkhead problem, solve whatever problem could be -- which none of this I am saying here is saying I agree there is a problem because I surely don't, but whatever problem could occur would be solved simply by doing that.

So instead of spending, I mean, \$40,000 shakedown that's irrelevant but the remaining items, the remaining items are surely in excess of 40 to \$50,000 in cost. Could be solved by a \$5,000, even a lot, gravel bed. He said that doesn't make a difference because my client won't agree to it. Her

11/15/2023 - Sofier

professionals are telling her that all these things need to be done. I said where are the reports? That will come when we sue you. Mr. Castro, Mr. Vacchio were present at the meeting. Did I say anything that wasn't said by the meeting?

MR. PRESTON: Address the chair.

MR. PROFESORSKE: Can we request of Mr. Vacchio or Castro to opine if anything I said was inconsistent at the meeting?

MEMBER MOSKOWITZ: I don't think that's necessary. So what you have put on the table is without conceding there needs to be anything, but you put on the table a solution, proposed solution that would in lay terms be a gravel bed across the entire property line, correct?

MR. PROFESORSKE: Spanning the rear yard not from side to side. From front to back so my 40-foot rear yard.

MEMBER MOSKOWITZ: The boundary between the property that's potentially being impacted by this and your property and a pipe that goes through it with holes in the pipe and then

11/15/2023 - Sofier

1 ultimately it spills out. It would even go
2 through the wall -- the bulkhead, excuse me,
3 into the pond, and the thesis that's being
4 proposed is that to the extent that there is
5 now additional water runoff -- that's a point
6 that you don't concede, but to the extent
7 there is additional water runoff that's
8 presented by whatever changes are being made
9 to the grade and all other alterations on the
10 property, they are going to be more than
11 addressed by this solution on the boundary.
12

13 MR. PROFESORSKE: Correct.

14 MEMBER MOSKOWITZ: So that's what you
15 are proposing. Is there anything you propose?

16 MR. PROFESORSKE: Before I step down,
17 just one more point. There are some
18 contingencies. Now, that offer was made I
19 believe in May or June to the Building
20 Department because I heard the concerns of
21 Sofiers, and I made that offer at no charge,
22 no fee. I would cover the cost of it in June.
23 At this meeting of October 26th, when I
24 brought it up again, I said that's what I
25 offered initially and I was about to say and I

11/15/2023 - Sofier

1 would continue to offer but based on the
2 characteristic of how that meeting was going,
3 I said I will reserve the right to say if I
4 will offer it at no charge again, but there
5 are some other contingencies that I would like
6 to address. Not at this moment obviously. We
7 will hear from the other side, but there are
8 some contingencies for that offer to still
9 ring true today.

11 MEMBER MOSKOWITZ: Well, you are
12 offering it though at your expense, not at
13 their expense?

14 MR. PROFESORSKE: Correct. Assuming my
15 contingencies are fulfilled.

16 CHAIRMAN KEILSON: I would like to hear
17 from the Building Department what the impact
18 of those proposed solutions presenting the
19 runoff of water.

20 MR. CASTRO: I mean, I think there are
21 two types of water to consider. One is a
22 runoff. And the other one is subsurface. I
23 believe this would certainly address
24 subsurface water that's flowing one way or the
25 other or pooling in that one area, and then if

11/15/2023 - Sofier

1 I understand correctly, they want to -- they
2 want to get rid of the water through the
3 bulkhead through some pipe ultimately. That's
4 what I heard.
5

6 MEMBER MOSKOWITZ: That's where it would
7 drain.

8 MR. CASTRO: It would collect
9 underground in this gravel bed and then drain
10 out. You probably heard the term French
11 drain. I think that's exactly what the whole
12 purpose of a French drain is to collect it and
13 push it somewhere. If there is a concern
14 about surface runoff, then there may have to
15 be some additional barrier or something.

16 MEMBER MOSKOWITZ: Because this is all
17 happening underground. So what's your
18 response to that?

19 MR. PROFESORSKE: So I mean, typically
20 as laid out in the R & M Engineering letter,
21 he addresses that. Being that the filling of
22 the grade in the middle of the property has
23 really no bearing on the water reaching the
24 ends of the property. In addition to that, he
25 does lay out that whatever minimum runoff

11/15/2023 - Sofier

1 would make it there would soak into the ground
2 before it ever gets there, and if it does get
3 there, it would pool at the property line
4 because the Sofiers have a positive pitch away
5 from their house to the property line. So
6 there is some sort of -- to use the village
7 term -- divot there.

8
9 MR. CASTRO: Valley.

10 MR. PROFESORSKE: Valley that exists
11 there and when it exists there, it will soak
12 into the ground. When it exists at that low
13 point, when the water would pool at that low
14 point, it would percolate into the ground,
15 reach this subsurface gravel bed, and then get
16 drained out to the pond. This subsurface
17 drainage bed could hypothetically be exposed
18 to the grade as well if we wanted it to.

19 MEMBER MOSKOWITZ: You are going
20 somewhere where I wanted to go because I think
21 their concern -- maybe their concern is with
22 water of all types, but they are certainly
23 concerned about rainwater and so if it's the
24 case that this is really only for subsurface
25 water, then it's not a complete answer if

11/15/2023 - Sofier

2 there is a problem. No one is admitting but
3 if there is a problem, it wouldn't be a
4 complete answer to the problem and if the
5 response is don't worry about it because our
6 engineer disagrees there is a problem, that's
7 certainly a response. Is there any additional
8 measure that could be taken to improve the
9 condition if there is one at all? So one
10 thing you mentioned is raising it.

11 MR. PROFESORSKE: Exposing it to the
12 grade. The only downside doing so is then the
13 sediment as brought up earlier by Mr. Castro
14 can get into that gravel bed and over time
15 render it that it would need to be maintained.
16 Maintaining would be removing it and put fresh
17 gravel. How often that has to happen depends
18 on how often it's used. This is not an
19 engineering opinion. This is a practical
20 opinion just by being involved in building and
21 whatnot.

22 MEMBER KERSTEIN: Can I ask one
23 question? I know the Sofiers have a concern
24 about water. How long have you lived in your
25 house?

1 11/15/2023 - Sofier

2 DR. SOFIER: Almost 30 years.

3 MEMBER KERSTEIN: Have you had water
4 from rainwater coming into your house at any
5 point during that 30 years?

6 DR. SOFIER: Twenty, 25 years ago we had
7 extended the house. We had a drop of water,
8 something sealed. That's it. With no
9 hurricanes, storms.

10 MEMBER KERSTEIN: Since the grade has
11 now been raised --

12 DR. SOFIER: Since it started last
13 spring, our adjacent property has been
14 saturated after regular rains. We had stakes
15 and trees that we had for several years, never
16 an issue. Our gardener had to restake it
17 multiple times, and this past storm completely
18 flooded. Completely flooded. Never had
19 anything like that before.

20 MEMBER MOSKOWITZ: Well, the past storm
21 was quite extraordinary.

22 DR. SOFIER: But our property has been
23 saturated where it has never been before.
24 Where we had our stakes had to be restaked by
25 the gardener.

11/15/2023 - Sofier

1
2 MEMBER MOSKOWITZ: So what's your
3 response to that?

4 MR. PROFESORSKE: So that's -- perhaps
5 that's the rough grading of construction. Up
6 until a week, about two weeks ago, up until
7 about two weeks ago, when I was finally
8 allowed to properly grade the property, my
9 property was higher than it exists today and
10 as required meaning for final grade. So up
11 until two weeks ago, I was higher than I was
12 supposed to be. The grade was higher than it
13 was supposed to be.

14 MEMBER KERSTEIN: But you are still
15 higher than their property?

16 MR. PROFESORSKE: As I always have been.

17 MEMBER KERSTEIN: So the valley is no
18 longer there and their property --

19 CHAIRMAN KEILSON: Do you want to
20 resolve it?

21 MEMBER KERSTEIN: I am trying to
22 understand what the implications --

23 CHAIRMAN KEILSON: We are trying to come
24 to a resolution.

25 MEMBER KERSTEIN: I want to understand

11/15/2023 - Sofier

whether we are dealing with a rainwater issue.

MR. PROFESORSKE: I was one of the few
-- I shouldn't say that. I was present during
that historical rainfall. I was working at
the site that morning up until about 1:00
p.m., 12:30 p.m., and then I went home and my
whole street flooded. I live in the village
of Lawrence and a few of my clients'
residences flooded. Mr. Kerstein is familiar
with at least one of them. So point being
that there was no pools of water above grade.
Zero and we are talking 8.65-inch rainfall
which hasn't -- I think the record is 1966,
1967. So if there was no pooling of rain in
that rainfall, when could it above the
surface?

MEMBER DIAMOND: Can I ask one question?
Is your property in a flood zone? Is it
labelled in a flood zone?

MR. McKEVITT: AE-10. It's labelled in
the AE-10 zone which is quite interesting
actually because of where the map is. Their
property is split zone. Part of it is X and
part is AE-10. Where the house is more the X

11/15/2023 - Sofier

1
2 and more toward the pond is AE-10. Half of
3 their outside is AE-10, half is in X. If I
4 can show the map, it's really weird how the
5 zone goes toward these houses. Just look at
6 the maps. I cannot make this up. Literally
7 goes through the house.

8 MR. CASTRO: Mr. McKevitt, when you said
9 half of the house, you are talking about
10 Sofiers' house?

11 MR. McKEVITT: Looks like half the
12 Sofiers' house is in the X and more toward the
13 west is in AE-10, and Mr. Profesorske's
14 property, I would say the entire house is in
15 the X and get more -- AE-10 gets closer to the
16 pond. So it's a very unusual situation.

17 MEMBER MOSKOWITZ: Can you -- so just
18 there was a proposal that was made and I want
19 to get your reaction to it and if the answer
20 is that it's not adequate then tell us why and
21 then tell us what more would be satisfactory
22 to your clients. And do not feel the need to
23 go back in time to the meetings because we
24 don't need -- we understand it's not relevant
25 to what's -- we are here now.

11/15/2023 - Sofier

1
2 MR. McKEVITT: I agree we don't want to
3 go in the past. My clients want to
4 compromise. We don't want anger issues. We
5 want this resolved now. We don't want the new
6 owners of the property to be fighting over
7 there for five or ten years. You may find
8 another engineer to go and look at --
9 certainly I would request actually from the
10 applicant if he wants to put exactly in
11 writing what he is looking to do, we will run
12 it by someone else, and if it works, we will
13 agree to it or maybe there may be some
14 modification, but we want to come to a
15 resolution. We just don't want any water
16 coming down the property. That's the call.

17 MR. CASTRO: I heard Mr. Profesorske use
18 the term "final grade" and I don't want
19 anybody to be misled. He may be accurate and
20 it is his final grade, but that determination
21 really isn't made until a final survey comes
22 out and looks at the numbers. Second thing I
23 want to point out he is venturing down a path
24 I am very interested in because I heard the
25 Sofiers indicate there is saturation along

11/15/2023 - Sofier

1 this -- along the property line or somewhere
2 close to it and he indicated that it could be
3 a solution where you have a gravel bed, you
4 extended it up, and it just sounds very
5 intriguing because it sounds like you can
6 capture that saturation and then dispel it at
7 some point any way you want. So it sounds --
8 I mean, the idea I think is worth pursuing.

10 DR. SOFIER: I don't know if you want to
11 let Felice to continue. She has other things
12 to present. We are lay people. We are
13 studying this. This is not our field. This
14 is not what we want to do. We typically help
15 people in the community. We don't do this.
16 It's a beautiful house. We want them to enjoy
17 it. We have no issue with anything. We just
18 don't want their water.

19 We have been there for 30 years,
20 excellent members of the community, and we are
21 having issues. We noticed this before we met
22 with him. Before the storm we noticed there
23 were stuff going on, and we never had that
24 before and our concern is the bulkhead is a
25 retaining wall.

11/15/2023 - Sofier

1 The water has to go somewhere. It can
2 either run off or be saturated like a sponge.
3 Squeeze on the sponge and the water comes to
4 the side. We have had multiple people tell us
5 we need a retaining wall. We had Barry
6 Pomerantz, the chairman of Design tell us
7 that. The prior owner of the house Neil
8 Ostrov said I don't know how he raised the
9 property. You are not supposed to do that.
10 You need a retaining wall.

11
12 CHAIRMAN KEILSON: Why don't we ask
13 professionals rather than opinions of Barry
14 Pomerantz?

15 DR. SOFIER: He is a chairman of the
16 Design --

17 CHAIRMAN KEILSON: Of what? We have a
18 Building Department that has done this for how
19 long, Mr. Castro?

20 MR. CASTRO: Twenty years. Obviously
21 it's been ongoing prior to that.

22 CHAIRMAN KEILSON: Why aren't we asking
23 them as to a suggestion?

24 DR. SOFIER: The people we have spoken
25 to have been multiple including one or two

11/15/2023 - Sofier

1 other engineers. Andrew Braum, we were not at
2 that meeting. He is an engineer. He told us
3 he also recommended a retaining wall. I don't
4 know how he presented it to you. We didn't
5 tell him these things. He is an engineer. We
6 had another engineer, Anthony. Do we have his
7 letter? He recommended -- he said actually
8 take the bulkhead down and put up a retaining
9 wall and gravel. So we have had our own
10 experts who have said retaining wall with a
11 gravel bed.
12

13 MEMBER MOSKOWITZ: There is actually a
14 better answer to Mr. Keilson's question that
15 is to be precise the Building Department is
16 actually guiding us that there is really not a
17 real problem here, but we are nonetheless
18 crediting your testimony and your experience
19 that although we are being told that there is
20 not a problem here and that there won't be a
21 problem once the grade is ultimately settled,
22 that you are nonetheless experiencing water
23 issues that you have never had before and so
24 we are trying to come up with a solution that
25 that --

11/15/2023 - Sofier

1 DR. SOFIER: I appreciate that. I
2 appreciate you listening. I just want to give
3 you as much information.
4

5 MEMBER HILLER: One of the problems is
6 people, when you have issues with a neighbor,
7 you have issues and they go on for a long
8 period of time, so feelings and animosities
9 are prolonged and they continue and continue
10 and people tend to get stubborn and anchored
11 to their opinion. I think there is some
12 movement here. I think there is a possibility
13 for compromise here. You offered something
14 and you said you have other ideas as well
15 that --

16 MR. PROFESORSKE: No. I have
17 contingencies on that offer.

18 MEMBER MOSKOWITZ: We should hear those.

19 MEMBER HILLER: I really think rather
20 than turning this into a legal argument and
21 listen to another four hours of testimony,
22 which we will, of course, take into
23 consideration but will lead to nothing except
24 more legal problems, I think there is room
25 here to sit down and work something out. I

11/15/2023 - Sofier

1
2 offer myself to sit in with you. I can -- I
3 am available afternoons. If that's what you
4 want, you should all have your own --

5 CHAIRMAN KEILSON: Mr. Hiller, I don't
6 think that's the route to go.

7 MEMBER HILLER: That's what I feel.

8 CHAIRMAN KEILSON: Let's take a recess.

9 (Recess taken.)

10 MR. McKEVITT: I think what probably
11 best is that counsel, I think for the sake of
12 the record, let him read into the record, make
13 sure we are clear on that and hopefully come
14 to an agreement.

15 MR. PRESTON: Sure. During our recess,
16 I had conversations with both counsels, and I
17 believe that there is a mutually agreeable
18 resolution to this matter which would
19 incorporate cutouts being placed in the
20 bulkhead at grade level which cutouts are
21 large enough to allow normal debris through
22 being spaced at 6-foot intervals for the
23 entirety. Second, the installation of a
24 gravel bed along the common line of the
25 properties starting from the bulkhead and

11/15/2023 - Sofier

proceeding to the back line of the houses.

That gravel bed would be 36 inches deep, 24 inches in width, made with 1-inch stone.

Inside that gravel bed would be a perforated pipe for the length of it, minimum diameter of 6 inches and the dirt in the gravel bed must be separated from gravel filter fabric. It is also my understanding that that will -- that portion of the gravel bed will be paid for by Ski Development. However, an additional extension to that bed of length unknown to me but will be specified by counsel, will be paid for by appellant. Is that in line with your understanding?

MR. McKEVITT: I believe you just had one question about the slope.

MRS. SOFIER: I just have actually two questions. I just want to clarify that the gravel bed runs the full length of the property all the way to the 40-foot rear backyard of the property because you said bulkhead. The bulkhead does wrap around part of it to 10 feet. I think it needs to stop the full 40 feet. You are saying it starts at

11/15/2023 - Sofier

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the rear yard?

MR. PRESTON: I would defer to the Building Department on that.

MR. McKEVITT: Let Mr. Castro respond.

MR. CASTRO: My suggestion is to run the full 40 feet at the point it stays on the inside of the bulkhead and the pipe has to go out the bulkhead so it must run through that length.

MRS. SOFIER: It must run through the bulkhead and egress to the pond? Can that be specified too?

MEMBER HILLER: That's specified.

MR. PRESTON: That's the agreement.

DR. SOFIER: What's the slope of the --

MR. CASTRO: Of the pipe? We have to check what the standard is. There is a standard of stormwater runoff on a pipe. Even the drain and pipes in the street it's the same.

MR. McKEVITT: Would that be state code or generally accepted engineering standard?

MR. CASTRO: It might be New York State DOT standard.

1 11/15/2023 - Sofier

2 MR. McKEVITT: If that's governmental
3 standard, that would be fine with us.

4 MRS. SOFIER: And the last what's the
5 actual final grade determination from the rear
6 lien of the house to the end of the property
7 where the pond is because we haven't been
8 clear on what the determination of that was
9 with the grading.

10 MR. CASTRO: As approved on the permit
11 right through, now there are numbers there.
12 We don't know if what's existing there right
13 now --

14 MRS. SOFIER: So it's supposed to be
15 from this 9.73 to the 9.1. Mere 6 inches.

16 MR. CASTRO: Approximately. Average.

17 MR. McKEVITT: You are going to require
18 before a C of O is issued a topographical
19 survey to make sure that's the case?

20 DR. SOFIER: Just a few more questions
21 on the permit applied there for this gravel
22 bed at the end adjacent to the bulkhead to
23 help with the drain and at the area I don't
24 think there is any gravel there.

25 MR. CASTRO: I don't know if it's

11/15/2023 - Sofier

1
2 allowed. I mean, I don't know if the
3 manufacturer would warranty or --

4 DR. SOFIER: I am referring to on the
5 bulk of the permit there is gravel, there is a
6 slant of gravel. When I bumped into the mayor
7 one day, he says we have gravel that helps
8 with runoff but I don't think -- there is no
9 gravel. If you look at the permit, there is
10 no gravel whatsoever back there to help with
11 the drainage down toward the bulkhead.

12 MR. VACCHIO: I don't think it's
13 supposed to be exposed.

14 MR. CASTRO: It's certainly not exposed.

15 MRS. SOFIER: It wasn't used.

16 DR. SOFIER: If you look at the bulkhead
17 permit application, there is a "then" in
18 there.

19 MR. CASTRO: Clean filled.

20 MRS. SOFIER: Underneath it says
21 "Written wrap". Based on the permit.

22 MR. CASTRO: I see "Remove existing
23 written wrap and then backfill with clean
24 fill". It may be -- may be misleading but the
25 words "remove" are there.

1 11/15/2023 - Sofier

2 MR. McKEVITT: That's good.

3 DR. SOFIER: The valves that you are
4 going to put, no valves. It's just holes.

5 MR. CASTRO: Holes for surface runoff.

6 DR. SOFIER: What type of holes?

7 MEMBER HILLER: The pipes are
8 perforated.

9 MR. PROFESORSKE: He is asking the holes
10 through the bulkhead.

11 MR. CASTRO: It's got to be large enough
12 so it's not going to be a maintenance
13 nightmare. This is going to be a new
14 homeowner. He may not know what they are and
15 not pay attention to them, so we have to be
16 sure there are large enough.

17 DR. SOFIER: Well, they make filters for
18 these things.

19 MR. PRESTON: Not filters. Holes.

20 CHAIRMAN KEILSON: I think these
21 inquiries can be made to the Building
22 Department on their own time.

23 MR. PROFESORSKE: Can I have 30 seconds
24 of the Building Department's time if possible?

25 (Discussion off the record.)

11/15/2023 - Sofier

1
2 MR. PRESTON: Before we finish, I think
3 it makes sense for us all to rehash the
4 agreement between the parties that has taken
5 some time. And then second, off the record
6 Mr. Profesorske raised a question with Mr.
7 Castro about the method for establishing grade
8 and how this will be examined in the future
9 and I believe he is asking for a -- Mr.
10 Profesorske is asking for a clarification to
11 the record previously made, which I will let
12 him do so that we can figure out what
13 clarification if any is necessary.

14 MR. PROFESORSKE: Sure. So the 9.73 and
15 9.18 which we are all discussing is basically
16 -- you look at the backyard along the house.
17 Along the rear yard the property is 40 by 91.
18 Now, Mr. Castro and Mr. Vacchio requested that
19 I add those -- add elevation points to the
20 bulkhead application, and that's what you see
21 on the bulkhead application page, something of
22 the bulkhead where it has 9.73 along property
23 line, middle, and then along the back is 9.18,
24 middle right, and left. I asked my engineer
25 to add them. We filed it and that's it. We

11/15/2023 - Sofier

1
2 are pulling as -- immediately when we started
3 working on it, we started pulling elevations
4 and were like it doesn't make sense. The set
5 along the side of the house we are at 12. So
6 how are we going to maintain 9.73 on the
7 property line? We are going to have a
8 transition from 12 to 9.73, which is about 2
9 and a half feet which is substantial.

10 So I met with Mr. Vacchio and Mr.
11 Castro, and Mr. Vacchio actually brought a
12 transit and transited from the street to
13 confirm the benchmark and he is like you are
14 right. The existing grade here is much higher
15 than 9.37. It has to be consistent with the
16 existing grade.

17 So for the record, Mr. Vacchio stated
18 that the elevations will be as per the
19 bulkhead application. It is impossible to
20 maintain the 9.73 on the two outer sides
21 because the neighboring properties are well
22 higher. Forget about mine which is already,
23 so that's why I asked clarification to state
24 instead that it's consistent with the existing
25 grades of the 2015 survey.

11/15/2023 - Sofier

1
2 MR. CASTRO: I will restate that in a
3 few words. What Mr. Profesorske is asking for
4 is to maintain along the rear of the house the
5 topographical values that were indicated on
6 the original survey --

7 MR. PRESTON: In 2015.

8 MR. CASTRO: --in 2015, which is
9 existing now because it will require him to
10 remove further fill that's there making it,
11 decreasing the slope.

12 MR. PRESTON: But those numbers are not
13 necessarily going to be in line with the
14 numbers on page 10 of this packet that we are
15 looking at on the building permit application.

16 MR. CASTRO: Correct.

17 (Discussion off the record.)

18 MR. PRESTON: I believe we have now
19 clarified the issue with the grading and to
20 re-recite the agreement between the parties,
21 cutouts in the bulkhead large enough to allow
22 normal debris through at 6-foot intervals,
23 installation of a gravel bed along the common
24 line of the property starting from the rear of
25 the property at the bulkhead to the back of

11/15/2023 - Sofier

1 the house. Thirty-six inches deep, 24 inches
2 wide, made of 1-inch stone. Inside that
3 gravel bed shall be perforated pipe for the
4 length of the gravel bed with a minimum of
5 6-inch diameter. Dirt must be separated from
6 the gravel by filter fabric. The parties have
7 also agreed that if an additional length of
8 that gravel bed is to be installed, it would
9 be paid for by the Sofiers.
10

11 MEMBER HILLER: You didn't put in that
12 it would go through the bulkhead.

13 MR. PRESTON: It will go to the bulkhead
14 and through it.

15 Mr. Profesorske, agreeable?

16 MR. PROFESORSKE: Yes. One
17 clarification. The depth of said -- do we
18 want soil on top? What was the determination
19 of that? No? So filter fabric on three
20 sides?

21 MR. CASTRO: Three sides. Correct.

22 MR. NEWMAN: One other thing for the
23 record which I talked with counsel. This
24 settlement is contingent on the Sofiers
25 settling all their claims about the property

11/15/2023 - Sofier

2 to both Mr. Profesorske and the successor
3 owner and that they file a letter with the
4 board of trustees and with the village
5 indicating that it's settled and all their
6 claims and complaints have been withdrawn.

7 MR. McKEVITT: I am not -- I am just
8 saying we are coming to this, we are starting
9 at this point. I tell my clients please don't
10 say more letters. You talk to me and I will
11 resolve it to the best of our ability.

12 MEMBER MOSKOWITZ: Isn't the settlement
13 a settlement of the issues that have been
14 presented to date? In other words, the issues
15 that have been presented to date are the stuff
16 relating to the flooding, the bulkhead issue
17 and the grading issue. The bulkhead issue and
18 the grading issue are settled tonight. If an
19 electrical fire happens in the house and burns
20 down the Sofiers's house, that's not settled
21 tonight.

22 MR. NEWMAN: Correct. What I am saying
23 is that only part --

24 MEMBER MOSKOWITZ: It's not a general
25 release.

11/15/2023 - Sofier

1
2 MR. NEWMAN: No, of course not but only
3 part of the issues had been brought up today
4 in front of this Board. There has also been
5 multiple issues brought up in front of the
6 board of trustees of wetlands and other
7 things. It needs to be clear this is not a
8 determination on a Building Department and a
9 contingency on a permit, but an actual
10 settlement of all the claims that have been
11 raised by the Sofiers in any division of the
12 village up until this date.

13 MR. PRESTON: This can only be a
14 settlement of the appeal that's before this
15 Board.

16 MR. NEWMAN: It could be a settlement of
17 anything. This is a contingency -- I told
18 this to counsel. We are not agreeing to
19 anything if we are just going to be at the
20 next board of trustees hearing complaining
21 about wetlands because there is a word in
22 Section 98 of the code that the board of
23 trustees can make determinations about
24 wetlands. We are laughing. This was
25 literally submitted. If I don't know that,

11/15/2023 - Sofier

then this is really just silly.

MR. PRESTON: Is there a presentation on the truce that will accompany this resolution?

MR. McKEVITT: Let me just say as far as the wetlands, a determination was made by the village. I think that issue has been finished. We are not contesting it anymore.

MR. NEWMAN: I don't want any thinking. It needs to be on the record because your client has written 26-page letters to every single official in this village. It's either clear on the record that we have settled everything that's happened until now or it's not.

CHAIRMAN KEILSON: I think certainly the matters that have been brought before the board of trustees and ourselves I think should be viewed as settled tonight.

MR. McKEVITT: I agree with that too. Because those issues or even before the board last week they said you are going to see the Board of Zoning Appeals next week to deal with these issues so --

MR. NEWMAN: So let's agree.

1 11/15/2023 - Sofier

2 MR. McKEVITT: Fine.

3 MR. NEWMAN: Everything has been
4 withdrawn and settled.

5 MR. McKEVITT: Fine.

6 CHAIRMAN KEILSON: Thank you. Having
7 said that, what are we summarizing? Are we
8 supporting the decision of the --

9 MR. PRESTON: That I think that based
10 upon the stipulation, the application is
11 withdrawn and the Board can take a vote to
12 close the hearing.

13 CHAIRMAN KEILSON: Okay. Mr. Moskowitz?

14 MEMBER MOSKOWITZ: For.

15 CHAIRMAN KEILSON: Mr. Gottlieb?

16 MEMBER GOTTLIEB: For.

17 CHAIRMAN KEILSON: Mr. Hiller?

18 MEMBER HILLER: I want to keep you in
19 suspense. For.

20 CHAIRMAN KEILSON: We can easily go to
21 the alternate.

22 MEMBER HILLER: For. I was rechosen
23 last month for another three years.

24 CHAIRMAN KEILSON: Mr. Kerstein?

25 MEMBER KERSTEIN: For.

11/15/2023 - Sofier

CHAIRMAN KEILSON: And I vote for as
well. Thank you everybody for your
cooperation.

(Whereupon the hearing concluded at
10:15 p.m.)

Certified that the foregoing is a true and accurate
transcript of the original stenographic minutes in
this case.

-----
YAFFA KAPLAN

Court Reporter