

VILLAGE OF SOLDIERS GROVE

ZONING BOARD OF APPEALS

PUBLIC HEARING – APPEAL OF NOTICE OF VIOLATION AND ORDER TO COMPLY

September 2, 2026 – 6:00 p.m.

Village Community Building

CALL TO ORDER

Prior to the start of the hearing, Village Clerk/Treasurer and Zoning Administrator Kaitlynn Ott advised those present that the hearing was being audio recorded for the purpose of assisting in the preparation of accurate minutes.

Village President Chapman called the meeting of the Village of Soldiers Grove Zoning Board of Appeals to order at 6:00 p.m.

Village President Chapman stated that the public hearing was being held for the appeal filed by Phillip A. Carey and Kathleen A. Day-Carey concerning the Notice of Violation and Order to Comply issued July 2, 2026, regarding the property located at 225 Pine Street. He stated that the Board's role was to determine whether the Zoning Administrator erred in issuing the Notice of Violation.

PUBLIC NOTICE AND PROCEDURAL MATTERS

Village Clerk/Treasurer and Zoning Administrator Kaitlynn Ott stated that public notice of the hearing was published in the *Crawford County Independent* on August 20, 2026.

Written notice was delivered to all abutting and opposite property owners of record prior to August 20, 2026. The open meeting notice and agenda were posted at least 24 hours in advance pursuant to Wis. Stat. § 19.84.

Ott further stated that the Village had referred the appeal to the Wisconsin Department of Natural Resources, Bureau of Water Regulations, as required by Village Code § 225-78, and that the DNR had provided a recommendation regarding the matter.

ROLL CALL

Roll call was conducted by Kaitlynn Ott. A quorum was present.

Members present: Village President Shayne Chapman; Board Members Vicki Campbell, Sarah Kemp, Marla Walsh, and Jill Quandahl.

PURPOSE AND PROCEDURE OF HEARING

Village President Chapman explained that the purpose of the hearing was to receive testimony and evidence concerning the appeal. He stated that testimony would be heard first from the Zoning Administrator, followed by the appellant, and then members of the public.

Village President Chapman stated that all persons providing testimony would be sworn in before testifying. He requested that comments remain relevant to the appeal and explained that the Board would listen to testimony and could ask clarifying questions but would not debate with speakers during the testimony portion of the hearing.

ZONING ADMINISTRATOR TESTIMONY

Village President Chapman administered the oath to Kaitlynn Ott.

Ott stated that she serves as the Village Clerk/Treasurer and Zoning Administrator for the Village of Soldiers Grove. She stated that she would be referring to her notes and Village records to ensure the accuracy of her testimony.

Ott identified the subject property as 225 Pine Street, Soldiers Grove, Wisconsin, consisting of two parcels: Lot 1, Block 10, School Addition to the Village of Soldiers Grove, and Outlot 41 of Assessor's Plat of the Village of Soldiers Grove. The property is owned by Phillip A. Carey and Kathleen A. Day-Carey.

Ott stated that the property is located within the Village's mapped floodplain overlay district and is designated as the Flood Fringe District based on the Village's Official Floodplain Zoning Map and the FEMA-approved Flood Insurance Study for Baker Creek and its tributaries.

Ott stated that at the Village Board meeting on June 8, 2026, Mr. Carey appeared during the public comment period and, among other things, stated that he intended to install an approximately 200-foot drainage culvert along the levee at the rear of his property.

Ott stated that construction of the culvert began on June 16, 2026. According to Village records, the installed culvert is approximately 200 feet in length and runs along the Baker Creek Levee behind properties at 201, 219, and 221 Pine Street, with water discharging in the direction of 117 Pine Street and neighboring parcels.

Ott stated that no zoning permit had been applied for or issued by the Village in connection with the installation. No floodplain development permit had been applied for or issued, and no hydraulic or hydrologic study had been submitted to the Village. No building permit

had been applied for or issued under Village Code Chapter 80. Ott stated that the Careys subsequently submitted a permit application on August 6, 2026.

Ott stated that, after reviewing the situation and consulting with the Village Attorney, she issued a Notice of Violation and Order to Comply on July 2, 2026. The Notice identified violations of Village Code §§ 225-10 and 225-11, which require a zoning permit for structures and development; §§ 225-31 and 225-33, which govern development within the floodplain overlay districts; and § 225-14, which restricts the use of land unsuitable due to flooding and concentrated runoff.

Ott stated that the Notice of Violation was personally served on Mr. Carey at 225 Pine Street by a Crawford County Sheriff's Deputy on July 2, 2026. The Notice required removal of the culvert and restoration of the property within 30 days, with a compliance deadline of August 1, 2026.

Ott stated that Mr. Carey sent correspondence to the Village on July 8, 2026, indicating his intent to appeal. The initial filing was incomplete under Village Code § 225-79. On July 13, 2026, Mr. Carey submitted an amended Request for Appeal by email. Following review, the Village determined that the amended filing was substantially complete and accepted it as filed as of July 13, 2026.

Ott stated that the Village's correspondence to Mr. Carey identified certain property owner information that had been omitted from the appeal filing and advised him that the Village would ensure that all parties entitled to notice received notice of the proceeding.

Ott stated that, as of September 2, 2026, the culvert had not been removed and the property had not been restored to its pre-installation condition. She further stated that Mr. Carey had submitted a permit application to the Village on August 6, 2026, after the Notice of Violation was issued and after the compliance deadline had passed. The application remained pending and had not been approved as of the hearing.

Ott stated that the Village provided notice of the hearing to all abutting and opposite property owners of record. Notice was delivered to neighboring properties prior to August 20, 2026, and public notice was published in the newspaper on August 20, 2026.

Ott stated that, as required by Village Code § 225-78, the Village referred the appeal to the Wisconsin Department of Natural Resources, Bureau of Water Regulations. The referral was sent on July 2, 2026, and the DNR subsequently responded.

Ott summarized the DNR's response, which stated that the culvert and fill appeared to have been installed north of the Baker Creek levee, extending from parcel 181-0085-0000,

identified as Mr. Carey's property, to approximately three feet inside parcel 181-0064-0000, identified as Mr. Sheldon's property.

Ott stated that the DNR's response further indicated that, based on the information provided, the culvert and fill were located within the Zone AE flood fringe and that the applicable flood fringe development standards did not require an H&H study for fill placed within the flood fringe. The DNR indicated that Mr. Carey should submit a floodplain development permit application in order to maintain compliance with the Village floodplain ordinance.

Ott stated that she had the complete appeal record available for the Board's review, including the Notice of Violation, Mr. Carey's appeal filing, the survey and plat submitted with the appeal, correspondence between the Village and Mr. Carey, correspondence from FEMA and the DNR, the permit application dated August 6, and the parcel map identifying abutting and opposite property owners. Ott stated that these documents were available to the Board and constituted part of the appeal record.

No Board members had questions or comments regarding the Zoning Administrator's testimony.

APPELLANT TESTIMONY

Village President Chapman administered the oath to Phillip A. Carey.

Mr. Carey requested the Board's consideration regarding the timing of the hearing in light of his recent surgery. Mr. Carey acknowledged that the culvert had been installed without the required permits and stated that he was not disputing that fact. He stated that he was appearing before the Board to provide evidence and explain the circumstances surrounding the installation.

Mr. Carey stated that he had contacted FEMA and the DNR regarding the situation and had provided them with information concerning the property and the drainage issue.

Mr. Carey discussed the Fortney apartments and stated that fill had been placed on that property when the apartments were constructed in approximately 1983. He stated that the flooding experienced in June 2024 brought attention to what he believed to be ongoing drainage issues.

Mr. Carey stated that, in 2024, the Baker Creek levee breached and that he believed the breach was related to deadfall in Baker Creek and a willow thicket, which caused water to move onto the dry side of the levee. He stated that Steve George and others removed deadfall from the creek and that he cleared the willow thicket, which he believed allowed water to remain within the floodplain.

Mr. Carey stated that he believed the primary problem was related to approximately three feet of fill placed behind the apartments, which he believed created a dam and prevented water from draining properly.

Mr. Carey stated that there are two existing drainage tubes through the levee that provide drainage from the dry side. He referred to the culvert he installed as an "emergency relief culvert."

Mr. Carey stated that water draining from Highway 61, Third Street, and surrounding homes flows toward the dry side of the levee. He stated that, in his view, the water would have to rise approximately four feet before overtopping the levee rather than draining through the existing drainage system.

Mr. Carey stated that he could have installed the culvert approximately four feet lower but did not do so because of a neighboring garden and fence. He stated that he preferred to have approximately one foot of water on his property rather than approximately four feet.

Mr. Carey presented a video to the Board. He stated that after the water drained through the culvert and through the existing tube in the levee, no residual water remained on the property at 117 Pine Street. He stated that the water flowed in the manner he believed it was originally intended to flow as a result of the culvert installation.

Mr. Carey stated that the contractor who installed the culvert told him that a permit was not required for work conducted on his own property. He stated that his intent was to address the flooding issue based on long-range concerns following the 2024 flooding and that he did not intend to circumvent the Village's permit process.

Mr. Carey reiterated his position that the flooding problem was caused by fill placed behind the apartments.

PUBLIC TESTIMONY

Village President Chapman opened the floor for public testimony.

Village President Chapman administered the oath to Ed Thoftne, Steven Fortney, Jerry Moran, Marty Herbst, Randy Swiggum, Diedra Larson, and Karen Thoftne.

Ed Thoftne

Mr. Thoftne asked Mr. Carey whether the culvert had solved the flooding problem on his property. Mr. Carey stated that the culvert had resolved most of the problem and that approximately 12 inches of water remained on his property. Mr. Carey stated that had the culvert been installed approximately four feet lower, there would have been no remaining

water, but he did not want to remove Mr. Gander's garden fence. Mr. Carey stated that he believed the culvert was an effective solution to the ongoing flooding problem.

Mr. Carey stated that he did not believe the severity of the problem had previously been fully understood and that the culvert had performed as intended.

Mr. Thoftne asked about the location of the existing tubes through the levee. Mr. Carey stated that one tube is located behind his property and has a flapper valve, while another is located behind the Thoftne property and has a rebar grate. Mr. Carey stated that the existing tubes were installed by the U.S. Army Corps of Engineers.

Steven Fortney

Mr. Fortney stated that when Mr. Carey originally discussed the culvert with him, Mr. Fortney understood that his property extended to the levee. Mr. Carey subsequently had the property resurveyed.

Mr. Fortney stated that Mr. Carey had told him he was installing a four-foot tube along the portion of the levee adjacent to his property. Mr. Fortney stated that he stopped at the site while the work was being performed and observed that the installed tube was larger than he had understood. Mr. Carey identified the installed culvert as an 18-inch steel, double-walled tube.

Mr. Fortney stated that drainage tubes do not run completely full and that approximately one-third or more of the tube needs to remain available for water flow. He stated that, based on his observations, the installed tube appeared to be approximately two feet below grade.

Mr. Fortney stated that he did not recall the area having previously been filled in the manner described. He stated that there had been fill in the area in the 1940s when the school owned the property and vehicles needed access to the shop.

Mr. Fortney stated that the apartments were originally constructed by Inese Larson using funds received in connection with flood relocation in the 1970s. He stated that the work had been conducted under the oversight of the U.S. Army Corps of Engineers regarding how the property should be raised to remove it from the floodplain. He stated that, to his understanding, the Corps of Engineers had oversight regarding fill placed on the property.

Mr. Fortney also stated that he believed Mr. Gander's property had experienced flooding related to a shed Mr. Carey placed on his property because water was not able to drain properly.

Mr. Fortney expressed concern that downstream homes could be flooded as a result of the culvert installation. He stated that he believed the manner in which the project was undertaken was inappropriate.

Mr. Fortney stated that he had obtained an elevation survey of his property showing that it was outside the flood zone. He also expressed concern that Mr. Carey had proceeded with the work without consulting neighboring property owners.

Jerry Moran

Mr. Moran stated that he had not observed the flooding described by Mr. Carey and expressed concern that the culvert could result in flooding of properties downstream.

Mr. Moran stated that he believed the culvert could negatively affect water flow. He referenced flooding in 2007, when water entered his basement, and stated that when Baker Creek reaches a high velocity during flooding, there is little that can be done to stop the water. He expressed concern for neighboring properties downstream.

Additional Discussion

Mr. Fortney asked why a tube could not instead be installed beneath the levee rather than directing water toward downstream properties.

Mr. Carey responded that water could not flow through the levee if water was already present on the opposite side because water could not be pushed into a floodway that was already full.

Mr. Carey discussed the flooding experienced in 2024 and his communications with the Village and Delta 3 Engineering. He stated that he was willing to allow water onto his property and had previously offered to provide the Village with an easement to install a culvert through his property, but that he subsequently believed that was not the appropriate solution.

Mr. Carey stated that when the culvert was excavated, the material encountered was sand that he believed had been imported rather than river sand.

Mr. Carey also stated that no permits were found for the construction of the apartments.

Marty Herbst

Mr. Herbst asked Mr. Carey whether he had permission to excavate on property belonging to another person.

Mr. Carey stated that he was not present when the tube was installed and acknowledged that he did not have permission to excavate on another person's property.

Mr. Herbst stated that, if the culvert were allowed to remain, the end of the tube would need to be addressed.

Ed Thoftne

Mr. Thoftne stated that he did not believe the culvert would solve the overall flooding problem. He acknowledged that a drainage problem exists but stated that he believed the solution should be engineered and designed appropriately.

Mr. Carey stated that he believed removing the fill that had been placed behind the apartments would resolve the problem.

Randy Swiggum

Mr. Swiggum stated that major flooding events cannot be prevented and that there is little that can be done when significant floods occur.

Mr. Swiggum stated that he believed the culvert relieved some of the pressure during smaller flooding events and that, based on his observations, the culvert was draining properly. He questioned whether relieving the pressure was the goal.

Mr. Swiggum stated that he believed Mr. Carey was attempting to protect his own property and that he did not believe the culvert was harming neighboring property. He stated that he believed the fill placed on the Fortney apartment property was the underlying problem.

Mr. Thoftne stated that the existing culverts through the levee were installed to drain floodwaters from the dry side of the levee so that water could drain from properties toward the floodway.

Mr. Carey stated that he believed the existing culverts were installed for stormwater drainage rather than floodwater drainage. He again stated that he was willing to provide the Village with an easement for any necessary work.

Mr. Thoftne asked whether engineers could be consulted regarding the situation.

Mr. Carey stated that Delta 3 Engineering had examined the situation in 2024 but that no relief work was completed because the Village did not hold easements on the levee.

Diedra Larson

Ms. Larson asked Mr. Carey why he purchased the property knowing that it was subject to flooding and stated that purchasing property not prone to flooding may have avoided the issue.

Karen Thoftne

Ms. Thoftne stated that she was appearing on behalf of Sandy Mason, who was unable to attend the hearing.

Ms. Thoftne asked Mr. Carey whether he had asked Ms. Mason for permission before installing the culvert. Mr. Carey stated that he had, and that Ms. Mason had told him she did not want the culvert installed.

Ms. Thoftne stated that Ms. Mason's yard was important to her, just as Mr. Carey's property was important to him. She stated that she hoped the situation would demonstrate the importance of working with neighboring property owners and reaching mutually acceptable solutions.

Mr. Fortney asked whether he would be permitted to construct a berm around his property if the culvert failed.

Mr. Swiggum stated that he believed the culvert would help protect properties from flooding.

CLOSING OF PUBLIC HEARING

Village President Chapman stated that the public hearing was closed and that no further public testimony would be received.

BOARD DISCUSSION

Board member Quandahl asked whether the fill that Mr. Carey described as having been placed behind the Fortney apartments could have consisted of sand from sandbags used during previous flooding events rather than imported fill.

Board member Walsh stated that everyone had been given an opportunity to present their position.

Board member Campbell stated that a permit was required for the work and that Chapter 225 does not provide an emergency self-help exception to the permit requirement.

Campbell asked about the possibility of granting a variance and was directed to the information contained in the hearing packet concerning why a variance was not recommended.

Campbell also asked about the DNR referral. The Board discussed the DNR's determination that an H&H study was not required for the fill located in the flood fringe.

Campbell summarized the issue before the Board as requiring a determination regarding whether to grant a variance or require removal of the culvert.

Board member Quandahl stated that there was no proof that the culvert would provide a long-term solution to the flooding issue.

Campbell asked what the potential consequences would be if a variance were granted and homes downstream subsequently flooded. Campbell questioned whether responsibility could fall upon the Village because a variance had been granted for the culvert.

Campbell requested that the Board postpone making a final decision and obtain correspondence from the Village Attorney regarding the matter.

CONTINUATION OF HEARING

The Board discussed possible dates for continuing the hearing.

Mr. Carey stated that September 9 would not work for him because he would be out of town. He stated that he would return on September 10 and would then have surgery the following Monday, after which he expected to be unavailable for approximately two weeks. He stated that this would result in the hearing being postponed until the week of September 24.

Kaitlynn Ott asked whether Mr. Carey would be able to participate by telephone on September 9. Mr. Carey stated that he would be able to participate by telephone.

A motion was made by Campbell, seconded by Kemp, to continue the hearing to September 9, 2026, at 6:00 p.m. at the Village Community Building.

Roll Call Vote: All present voted aye.

Motion carried.

ADJOURNMENT

A motion was made by Kemp, seconded by Walsh, to adjourn the meeting at 7:06 p.m.

All present voted aye, motion carried. Roll call.