

BOARD OF ADJUSTMENT MINUTES

Administration Building
508 New York Avenue
Sheboygan, WI

Wednesday, May 20, 2026

Called to Order: 1:00 P.M.

Adjourned: 2:14 P.M.

MEMBERS PRESENT Ed Harvey, Pete Scheuerman, Sarah DeZwarte, Kenneth Sonntag, BJ Reenders, Marjean Pountain, Charles Born

MEMBERS ABSENT None

ALSO PRESENT Attorney Kelly Del Ponte, Attorney Douglas Rose, Aaron Brault (Planning & Conservation), Tyler Betry (Planning & Conservation) Megan Nasgovitz (Planning & Conservation), Sharon Harvey (BOA Recording Secretary), Paul Boochee, Mary Boochee

Chairperson Harvey called the meeting to order and called the roll.

Ms. Harvey reported the meeting notice was posted on May 13th, 2026 at 8:30 A.M. in compliance with the open meeting law.

There were no public comments regarding non-agenda items.

Mr. Sonntag made a motion to approve the minutes of the April 15, 2026 hearing. Motion was seconded by Mr. Scheuerman and was approved.

Mr. Harvey opened the hearing for Korry Ardell (Case No. R-24-01-E) on remand from Sheboygan County Circuit Court Case No. 24 CV 550: whether the Sheboygan County Planning and Conservation Department may require Korry Ardell to obtain an Erosion Control and Stormwater Management Permit under Sheboygan County Code Sections 75.07(1)(c) and 75.17(1)(c) for his limestone parking area for storage of vehicles, equipment, trailers, and other items on his property located at W2002 Garton Road, Town of Mosel.

Mr. Harvey started by addressing the letter sent by Attorney Rose on May 11, 2026. Mr. Harvey stated that the letter stated that Attorney Rose objected to the Board of Adjustment proceeding with a hearing for the purpose of making that decision. Attorney Rose reasoned that the department cannot establish an opinion in the matter, without allowing further evidence and arguments to defend Mr. Ardell's position, that the hearing is for the purpose of establishing such a position. Mr. Harvey stated that the Board of Adjustment met on the 15th of April and discussed this issue, however, no hearing was scheduled then. He added that Attorney Rose then complained in a letter dated April 13th that the Board of Adjustments could not address the applicability question of these sections, Section 75.17(1)(c) without additional testimony and evidence related to the matter, and because, Attorney Rose had also been in attendance, and had verbalized a similar complaint, the Board of Adjustments decided to hold a hearing on May 20th at 1:00 p.m. He stated that since the applicability of the new section requires certain conditions to exist that aren't required by the other two sections that were overruled, the board didn't feel that a decision could reasonably be made without new evidence and testimony. He stated that Attorney Rose was present on Mr. Ardell's behalf, had adequate notice to collect and

prepare evidence for the hearing as they were present on April 15th, and the hearing was scheduled. He concluded that his objections were noted, but we will hold the subject hearing as currently posted.

Mr. Harvey stated that he had some questions for Attorney Del Ponte. He stated that the description as it appears in the minutes and the description of what happened as it appeared in Attorney Rose's April 17th letter, seem not to be the same. He asked if it was ever reduced to writing. He added that in Attorney Rose's letter, he indicates that the remand is verbal.

Attorney Del Ponte questioned if he was referring to the courts.

Mr. Harvey replied yes.

Attorney Del Ponte replied that yes, the court did issue an oral ruling and asked Mr. Ardell's attorney to prepare an order, but the order that was prepared is very general. She stated that it simply said "For the reason stated on the record", which is the court's oral ruling. She went on to add "I am reversing the decision of the Board of Adjustment and remanding this case back to the Board of Appeals for purposes of deciding these sections. "

Mr. Harvey asked for confirmation that it was the two sections under which the application was made, the court has reversed.

Attorney Del Ponte responded and confirmed that was correct and added 75.07. She also added that she apologized, that she should have included the court's signed ruling or order into the packet materials. She added that it is very general, that it just states "for reasons stated on the record".

Mr. Harvey stated that they then have the decision about one of two things they can do; one is to reverse the decision of the Planning and Conservation Department as provided in the letter dated May 23, 2024. He questioned if the court already did that.

Attorney Del Ponte clarified the situation. She stated that in the beginning the department issued Mr. Ardell this letter stating that he needs to get a permit in May of 2024. Mr. Ardell disputed that, and that came before the Board in 2024. Mr. Ardell appealed the Board's decision and that then went to Circuit Court. The Circuit Court reversed the Board's decision that Mr. Ardell was to obtain a permit as provided in that May 2024 letter. She added that what the court reversed was the board's original decision on Mr. Ardell's appeal. She asked the Board if that made sense.

Mr. Scheuerman asked Attorney Del Ponte to elaborate on why it appeared that the Board inappropriately denied Mr. Ardell's appeal. He questioned if it was because of the acreage.

Attorney Del Ponte replied that she did not recall the specifics of the reason for denial, but that for today that was not relevant. She added that the court denied it under those sub- (a) sections. She reiterated that the court has asked the board to decide where or not Mr. Ardell is required to obtain a permit under the sub- (c) sections. That is what the Board should be focusing on today. She added that if the Board has questions on sub- (c) they could discuss that during the deliberations and discussions after the public hearing starts.

Mr. Harvey said to clarify what is written on the agenda, the board's two choices are: to agree with the judge wholly and say the Planning & Conservation Department cannot require this permit, or say that the Planning Department can require a permit based on those two sections.

Attorney Del Ponte said yes, that is correct. She stated that if the board decides he does not need a permit under those two new sub- (c) sections, then the board's first option would be reversing the decision of the Planning and Conservation Department as provided in its May 2024 letter. She added that if the board decides that he does need a permit under these sub- (c) sections, you would have that second option in the agenda essentially.

Mr. Harvey asked if everyone understood.

The board members said yes.

Attorney Del Ponte stated that the next item on the procedure list is to report on the site inspection.

Mr. Harvey responded that there was no site inspection.

Mr. Sonntag reported that he has drove by the site.

Attorney Del Ponte asked if Mr. Sonntag had any observations to report about this specific parcel.

Mr. Sonntag stated that he did not observe anything new. He added that it still exists the way it was when the Board made their last decision, from what he can tell.

Attorney Del Ponte then said that they could move onto the next item on the procedure list which is disclosure of any ex parte communications from the board members.

Mr. Harvey stated that they have already discussed that.

Attorney Del Ponte responded that they could then move onto the next item on the procedure list, which is any statement from the petitioner, or appellant applicant.

Mr. Harvey then asked Attorney Rose to come forward and speak on Mr. Ardell's behalf.

Attorney Rose stated that it's a beautiful day, and it was a nice drive up. He apologized that they were all having to do this again and that he can, he thought, that the law makes it difficult for everyone. He added that hopefully he might be able to provide some further guidance that helps them. He stated that he believed the goal, he added it's complicated and there's not much way around it. He stated that as the counsel just stated, our judge, Rebecca Persick did issue an oral decision. He stated that he does have the transcript of that and there was something that he thinks if they dive a little further, is very relevant, at least from his position. He added that the judge states that in her decision "In addition, as the plaintiff", which is Mr. Ardell, "points in their brief" which is a legal brief submitted to the judge, " the boards interpretation of the law would require a person to get a permit in 2024-2025 for construction activity that occurred in 2019 when the land was owned by someone else. He added that such an interpretation does seem unreasonable. In the court's own very limited experience, permits are pulled in anticipation of work, not years after the fact."

Attorney Rose stated that in his opinion, that the key point here, and he stated that he thought it was difficult for everybody, because the way they worded the ordinance here with 75.17 sub- (1) sub- (a), then sub- (c), and then 75.07 sub- (c), it starts out if you're going to do work, if you're starting work under sub (a) then you might need to get a permit. He added that what the judge is saying is that the first hearing was under sub- (a), and this was in 2019, and Mr. Ardell did not own the property at that time. He stated that they basically said that Mr. Ardell can't force someone to get a permit for work that was done before Mr. Ardell owned the property, years- years earlier. He stated that if he were to buy a property and somebody says three or four years earlier something was done and a permit wasn't issued, that the department can't hold the person who

bought it years later responsible for what somebody earlier who owned it did wrong. He added that there are exceptions, environmental laws and things like that, if it's contaminated with oil or something, that there are federal regulations that move the responsibilities to the next owner, but not for something like this. He added that the circumstances here are unfortunate, in his opinion, that for Mr. Ardell, that he owned the property a long time ago, sold it a long time ago, a different owner owned it in the time frame within which all this work was done, and then he bought it more recently, about a year before the request for the permit.

Attorney Rose stated that their procedural objection that remains is the sub (a) requires you to get the permit when you start work. He stated that that doesn't apply here as the judge indicated in the oral ruling. He added that sub- (c) stated that when you're substantially done with the work, then they look at it to see if it is okay and to see if there's any further drainage, he clarified that this was under sub- (1) sub (c). He added that that doesn't really apply here because that happened before Mr. Ardell owned it. He stated that 75.07 sub (c) says that there can be a general stormwater runoff consideration, but nothing has been noticed up under sub- (c) appropriately for that to be truly evaluated. He stated that they are continuing to look at this under sub (a), and did he take out a permit. He added that this puts him in a very unfortunate situation, in his opinion, where he doesn't envy the board, because he truly believes there is a need for a change in the ordinance so that it can be applied in a situation which is unique like this, where something happened prior to the ownership, and then you buy it, and then it's determined that it wasn't done right, and now you try to figure it out. He stated that the way that these three ordinances are set up, under this scenario, can't really be figured out very well.

He concluded that in his opinion, either they say they're going to let this one go, candidly, which they all might not seem comfortable with because they said before that Mr. Ardell should have gotten a permit, but he didn't own it at the time, and then there is the circuit court judge who said you can't do it retroactively, or you wait until the municipality determines a better procedural way, puts forth another provision so that this type of situation can be appropriately addressed. He added that it's hard to explain, and he hoped that he explained it the best that he could. He stated that he understood what Mr. Scheuerman said when he said "I think I understand", and I think even the attorneys and even the judges realize this was put before a judge with a lot of discussion and a lot of briefing about these issues, and he believed she struggled with it as well. He added that the judges oral decision, that's exactly what she said, and then it came back to the board. He stated that the judge said "in the court's own very limited experience, permits are pulled in anticipation of work, not years after the fact." He added that that was simple logic that he agrees with. He stated that that was their position and he was happy to discuss further and answer any questions.

Mr. Harvey asked Attorney Rose if Mr. Ardell owned the property at the time the work was done and if he knew who physically performed the work.

Attorney Rose replied that he did not know.

Mr. Sonntag replied that at the last hearing it was determined that all of the fill was completed by Mr. Ardell, from what he could remember from what our minutes said. He added that is was done in pieces, it wasn't done all at one time. He stated that maybe going back to the original date that's true but questioned what about the times it was filled after that.

Mr. Harvey asked if during the period of time that the work was done, did Mr. Ardell have a lesser than fee interest in the property.

Attorney Rose replied that he had no other ownership interest in the property at the time the work was done. He added that there was no doubt about that. Addressing Mr. Sonntag's question, he added that it was possible that he may have had some involvement doing the work out there, as

someone that was hired to do some work, that it was very possible. He added that he took a further interest in the property after he'd been involved with it, and at some point bought it.

He went on to say that that kind of raises the question procedurally how do we present the evidence, and if that matters. He asked that if Mr. Ardell knew about the situation as a laborer, out there working on the property, is he then tasked with knowing whether or not to pull a permit, even though he's not the property owner. He added that that issue really hasn't been developed. He added that he can't say there's a prior case where that happened, and here's what should happen under those circumstances, that doesn't exist.

He added that this was frustrating to everyone including his client. He stated that in his opinion, the rules they are operating under did not anticipate this type of scenario. And therefore, his client can't be held to task for trying to get a permit for property he didn't own. He owned it later, he owned it a way long time ago, then for a long time he didn't own it.

Mr. Harvey asked if Mr. Ardell was not operating his business at this location during the period of years that he did not own it.

Attorney Rose replied he didn't know, all he knew was that he did not own the property. He said he couldn't tell them as to the extent that he may have operated some of his business there. He added that the law does not say the operator, the ordinance says owner of the property. He stated that if it is required, the owner of the property is responsible for drainage from the property, not somebody who's doing work there, or a renter.

Mr. Sonntag asked if they knew for a fact that he did not own this property at any point that the fill was put in over the course of these years.

Attorney Rose replied yes, he was not the owner of the property.

Mr. Sonntag stated because he owned it, he sold it, and he bought it. He added it was three or four different times that it was filled.

Attorney Rose replied that the period that Mr. Ardell did not own the property was pretty significant, that it was a lengthy period of time. He added that the judge said that if he doesn't own it, she can't require somebody to get a permit if they don't own the land.

Mr. Sonntag stated that the rule of permitting is anticipated, it's not logical. He added that people do things without asking, because their friends told them they didn't need a permit, and those are excuses we have to deal with, which are not fair for anybody, either.

Attorney Rose stated that he thought there was a difference with a building permit, because the builder can take out the permit, even though they are not necessarily the property owner. He added that this was a unique situation where we have an ordinance that's talking about drainage runoff from the property, the framework didn't anticipate this.

Mr. Sonntag asked if Mr. Ardell rented the property at the time the fill was brought in.

Attorney Rose replied that he did not know.

Mr. Sonntag asked if Mr. Ardell was using it from beginning to end. He added that from what he understands, he used it from the first time he was on there when they filled a little corner of it, all the way through to present whether he owned it or not. He added that if that was the case, he asked if he paid rent on the property. He also asked if that by filling the property, the work of filing

it and paying for the residual property being raised with materials, was that offset by not paying rent?

Attorney Rose replied that this hearing was not noticed up for the decision with the, understanding that, the county would be bringing evidence, about that point, or he would respond to evidence regarding that very point, so he could find out factually what happened. He added that he was not set up to make that factual determination. He stated that there is nothing in these three provisions that talk about somebody renting or operating, they only talk about the owner. He added that they should talk about an operator. He questioned that if an operator causes a problem that causes drainage to another party, is it the owner responsible, or the operator. He stated that right now it says the owner.

Attorney Rose went on to say that the nearby farmer has done his planting within the last week, that there is planting going on. He added that Mr. Ardell thinks the drainage is taken care of. He reminded the board that what is in front of them now is the question if a permit should have been taken out when Mr. Ardell did not own the property, and should he be responsible for that as someone who did not own the property. He stated that his position is that the law says no, and the judge said if he didn't own it, they can't require somebody to get a permit if they don't own the land.

Mr. Scheuerman stated that it says in the ordinance 75.09, under "Performance Standards", it states that responsible party can be the landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain construction site BMPs.

Attorney Rose replied that that fact has not been developed. He added that they haven't determined that one way or the other. He stated that he personally does not know if Mr. Ardell, back in that time frame, may have been a contractor who had a contract, similar to a builder. He stated that if that was the case it might be a different scenario. He stated that he would have to ask Mr. Ardell, and they would want to respond, but that there was nothing in front of them that supports that is the case. He added that there is some belief that maybe he was operating on the land, but the circuit court judge isn't going to say that is enough, in his opinion.

Mr. Harvey stated that it is the board's job to affirm but modify the decision of the Conservation Department if they choose to, as provided in the letter dated May 23, 2024 from the Department to Korry Ardell to require Mr. Ardell to obtain the permit after the fact.

Attorney Rose stated that the Circuit Court Judge stated that the department can't require somebody to get a permit if he didn't own the land at the time so in his opinion, they should not affirm that. He added that if there is a situation in the future where he does some work on the property they have every right to say that he needs to get a permit.

Mr. Sonntag noted that they can't because it is full all of the way now. He stated that the borders are fenced and it is filled all of the way, that the entire property is filled.

Attorney Rose replied that he has the right to look to see if there is any drainage coming out or any issues there. He added that what the department found was an issue that there should have been an permit issued a long time ago when Mr. Ardell didn't own it. He stated that they are disputing that they have the wrong person for that. He added that Mr. Ardell does now own it, and if there is work done or anything that is a problem it can be resurrected, but don't make him responsible for something when he wasn't the owner.

Mr. Harvey then invited Mr. Brault to come forward and speak on behalf of the Planning and Conservation Department. He noted to Mr. Brault that he was present to hear Attorney Rose's

testimony to the effect that the circuit court has decided that only the owner is liable for the permit. He added that there are other issues that he didn't believe are here for the board to decide. He asked for clarification on the after-the-fact permit process. He preceded to say that in this case we had an individual that filled the entire parcel in without a permit, and typically the permit process includes the person applying for a permit in advance to present plans for the construction. If all of the conditions are met the person is then given the "okay" to go ahead and start with the construction. He questioned what happens in cases where a person starts construction without a permit, is this something that occasionally happens in the department.

Mr. Brault explained that they do have issues that come up and, in those instances, they are not unique in this, they typically issue what is known as an after-the-fact permit. He added that they are still responsible for everything in the code, and they typically charge double permit fee. He stated that in this instance they even waved the double permit fee, that they just wanted compliance with the code.

Mr. Brault noted that Mr. Ardell admitted on record that he did all the work. He added that he also admitted that he did work while he owned it. He stated that in 2019 is when he started filling and he kept on filling over time, he didn't fill all four acres all at one time. He added that he has continued to expand the site per current air photos. He stated that in the current air photos the board can see that he continues to expand eastward. Mr. Brault continued to say that he did not come prepared to discuss ownership because he came prepared to discuss ordinance 75.17 (c). He stated that the past ownership does not matter to the department. He added that Mr. Ardell stated on record that he did work after he re-bought the property. He stated that our ordinance says that whether it is one acre at a time, or a total based on phases, they need an erosion control and stormwater permit. He added that he would admit that ordinance 75.07 (c) does not apply at this point because you are supposed to do that before you put a shovel in the ground. He stated that the 75.17 (c), the stormwater part, definitely applies.

Mr. Brault explained that if you look at the air photos included in the agenda packet, there is particulate matter running into the wetlands, whether or not the farmer can still farm the land that doesn't matter, he is discharging a milky white substance into the DNR designated wetland. He added that there is now a milky white substance running east. He then presented the drone photos to the board members of the property and surrounding property that were included in the agenda packet. He explained the dates on the photos and the run-off that was present and the channel erosion. He added that in 2019 is when they first started to see disturbance, and that was a little pad, that would not have required a permit at that time. He stated that the photos from 2018 show no disturbance, no channeling, no milky white substance. He noted that from 2019 on, whether he owned it or not, he continued to fill the site. He stated that Mr. Ardell admitted on record that he did the work in 2019 and continued to do the work when he re-bought it.

Mr. Brault explained that this ordinance is based on a state-model ordinance and it is similar, if not the same, as most counties have that have a stormwater and erosion control permit. He added that this is the language provided by the state. He concluded that at the end of the day they just want compliance.

Mr. Harvey then asked for public comments and there were none.

Mr. Harvey then asked Attorney Rose to come forward with his rebuttal.

Attorney Rose stated that he is not being critical of the department or the state as far as drafting of the ordinance but questioned what should be done when you have a unique fact situation. He stated that Mr. Brault's statements would not be considered evidence to a circuit court judge. He added that they cannot hold Mr. Ardell responsible given the lack of evidence. He concluded by

saying his position was that he didn't believe it was right for a decision based on the record in front of them.

Mr. Sonntag made a motion to close the public hearing. Mr. Scheuerman seconded the motion. Motion carried.

Mr. Harvey stated that they were going to begin deliberations and asked Attorney Del Ponte on direction for the process of voting for this type of appeal.

Attorney Del Ponte explained that this is an appeal, not a variance, it is just one question. She stated that in October of 2025 the judge reversed their original determination in this case and remanded it back to the board to consider the issues under sub (1)(c) sections. She then read ordinance 75.17 (1)(c). She reiterated that the court remanded it back to the board for consideration of this section. She stated that the question at hand is whether Mr. Ardell is required to obtain a permit under this subsection that they are considering. She proceeded to say that the language is either to reverse the decision of the department as provided in the letter dated May 23rd, 2024 from the department to Mr. Ardell, or the alternative is to affirm but modify the decision of the planning and conservation department as provided in the letter dated May 23,2024 from the department to Mr. Ardell to require Mr. Ardell to obtain an after-the-fact erosion control and storm water management permit pursuant to those subsections. She added that she chose this subsection because Mr. Brault stated that he believed that this is the one that applies now, post-construction.

Mr. Scheuerman questioned the ownership, the work done on the parcel, and the post-construction aspect of mitigating the run-off.

Mr. Reenders stated that in his mind this is still construction ongoing based on the photos provided. He added that he owns the land to the east and is now expanding it onto the other land. He stated that he doesn't see any silt fence, and he is assuming he doesn't have a permit for that fill because it's probably under an acre but it's obviously an expansion of his other 4 acres.

Mr. Harvey asked for clarification if he believed that the planning department can require a permit under this subsection.

Mr. Reenders explained that he thinks they can because he is actively expanding his operation.

Mr. Sonntag stated that if you look in the photos provided from summer of 2024, or the picture after spring of 2025, as Mr. Reenders just said, he has expanded and is continuing to expand it and there is not a permit issued. He added that Mr. Ardell knows from our discussion previously that a permit would be needed. He stated that Mr. Ardell owns it now, although the ownership thing in the past is another question, and today the project is ongoing, and he is still not getting a permit. He stated that he can't understand why there wouldn't be a permit now, and if nothing else why can't the county shut the site down. He stated that he is not happy about the ownership, that he didn't understand that part, but the fill part, and no silt fence, the excess water running off, the milky substances, they are all present, and he is still operating on it.

Mr. Scheuerman stated that the definitions under number 36, land-disturbing construction activity means any man-made alteration of the land surface resulting in a change of topography or existing vegetative or nonvegetative and it goes on. But then it concludes with examples of land-disturbing construction activities include but are not limited to clearing, grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities. He added that both the 7 and 17 sections are referred to as land-disturbing construction activities.

Ms. DeZwarte stated that she is trying to separate the ownership from the changes that were made when he potentially owned it. She added that it would be nice to see a timeline of everything regarding ownership and what changes were made in that year.

Mr. Harvey stated that he wasn't sure that the ownership issue is something for the committee to be dealing with. He added that it wasn't brought here until today, and he didn't believe that this case was brought back to the board in order to consider that in the final outcome. He preceded to say that Mr. Ardell was well aware that there were things going on at the property, we know that according to his testimony at the previous hearing, he had actually performed the work. He questioned seriously whether a property owner can liquidate any damages that have been done contrary to a county ordinance by when a property changes hands. He added that that gives people an opportunity to deliberately play musical owners, and he didn't believe that was correct.

Mr. Harvey stated that in Mr. Brault's testimony he stated that after-the-fact permits were a regular procedure for the department, that it wasn't something unusual, not just in the county but across the state. He questioned that if there was a flaw in the statues that would allow changes of ownership to avoid getting a permit, why would anyone ever get a permit. He concluded that the question sent to the board by the court is whether or not the department can issue a permit. He then questioned Attorney Del Ponte if the ownership was something the board needed to address or not.

Attorney Del Ponte responded that the case was remanded back to the board to consider the issue under the two subsections of 75.17 (1)(c) and 75.07 (1)(c).

Mr. Harvey added that he didn't see the word "owner" in there anywhere.

Attorney Del Ponte replied the subsections in question, and pointed out that the first sentence says "Not withstanding the applicability requirements of subsection A", that was what the last hearing was about. She added that when they are considering subsection C, that they are not to consider the requirements under subsection A.

Mr. Harvey asked if the judge's decision took subsection A out of the picture.

Attorney Del Ponte replied that that was correct. She stated that the judge reversed the board's decision under subsection A, and she determined that Mr. Ardell was not required to obtain a permit under that section. She added that now she has asked you to consider whether or not he needs a permit under subsection C.

Mr. Scheuerman stated that in 07 subsection (c) it says, "applies to the construction site of any size that in the opinion of the department...". He questioned if they could stop right there, because if the department feels like there is a violation here, then they have the authority.

Attorney Del Ponte encouraged the board to continue reading that sentence that says, "in the opinion of the department are likely to result in run-off that exceeds the safe capacity of existing drainage facilities or receiving body of water". She continued to say that that portion of the sentence after "in the opinion of the department" that is describing what the departments opinion should be in order to require a permit under this section.

Mr. Scheuerman recited from the ordinance, "or receiving body of water that causes undue channel erosion", that Mr. Brault talked about, "that increases water pollution by scouring", he recalled that there was a discolored discharge from the 4" tile, "or the transportation of particulate matter or that endangers property or public safety". He added that if he can't see through it there is something in there and if it's not native to the neighborhood it was brought it. He stated that he found in interesting that this case was brought back to the board and department staff.

Attorney Del Ponte stated that in the event the board decides Mr. Ardell needs to obtain a permit, the department may then require him to get a permit, however Mr. Ardell may appeal the decision, and it may go back to the circuit court. She said regardless, that they were here to make a decision on the two subsections as stated in the agenda.

Mr. Sonntag asked what the basis was when the county first informed Mr. Ardell he needed a permit; was it on the basis of the fill operation or was it on the basis of the milky white substance or a combination of both.

Mr. Harvey asked if that made a difference to his opinion of whether or not a permit should be issued.

Mr. Sonntag replied that either one of the two would require a permit. He replied that the same permit would be issued and would be a solution for both problems.

Mr. Scheuerman stated that the question of ownership was tough because that was more attorney work, civil litigation. He went to the question that what if the original owner put something there that is creating the white milky discharge, and then Mr. Ardell bought it and got caught with it and then the county came in and told him he needed to do something about it. He reiterated that it seemed to be a civil issue, and the process behind the sale and repurchase of the property was questionable.

Mr. Reenders stated that he didn't believe that they have to address ownership, based on the current evidence he still doing the work right now.

Mr. Scheuerman added that yes, he is currently owning it and filling it.

Mr. Sonntag asked Attorney Del Ponte how a proper motion is made in this situation. He asked if they are addressing the ownership issue or just the substance leaving the site.

Attorney Del Ponte replied that the court is asking you to consider (1)(C) subsection and whether or not he is required to obtain a permit under those subsections. She continued to say that they should be looking at the language in that section and to consider the evidence that was presented today. She stated that the question that they need to answer is in the language on the agenda; the first option is he doesn't need a permit under these subsections, and the second option is yes, he would require a permit under these subsections. She reiterated that the language is either to reverse the decision of the Planning and Conservation Department as provided in the letter dated May 23, 2024 from the department to Mr. Ardell, or the alternative is to affirm but modify the decision of the Planning and Conservation Department as provided in a letter dated May 23, 2024 from the department to Korry Ardell to require Mr. Ardell to obtain an after-the-fact erosion control and stormwater management permit pursuant to these subsections.

Mr. Harvey reiterated that ownership is not something for the board to decide, that they are here to decide whether or not the department can require a permit or not. Mr. Harvey questioned that if Mr. Ardell was not liable for anything that happened there before he owned it, somebody owned it, and that shouldn't change their decision. He stated that the department would still be entitled to some sort of satisfaction with the damage being done. He questioned if they would be able to make the previous property owner liable. He added that another consideration is if Mr. Ardell was fully knowledgeable of the condition of the property and what was going on when he purchased it, and if he was, that knowledge may have influenced the purchase price of the property. He concluded that he did not believe that all of that matters to the board, that all that matters is whether or not the department has the right to require a permit.

Attorney Del Ponte stated that the court has asked the board to make a determination whether or not Mr. Ardell is required to obtain a permit as required by the department under these subsections as mentioned previously. She added that she would like to note that the court is asking for your consideration based on his activities on this parcel.

Mr. Harvey asked for confirmation that this was just dealing with Mr. Ardell, not the owner at the time that the damage took place, in that case the ownership is something that they have to consider.

Attorney Del Ponte replied that that is something for the board to decide. She reiterated that the court has asked you to consider whether or not he needs a permit under these subsections. She added that she would point them to the language of the (1)(c) and what the requirements are for obtaining a permit under those subsections.

Mr. Reenders stated that he thinks that section C is there so that the county can make enforcement on a parcel of any size, doesn't have to be an acre, and he is expanding now.

Mr. Harvey asked if he would like to make a motion to affirm but modify the decision of the Planning and Conservation Department as provided in the letter dated May 23, 2024 from the department to Mr. Ardell to obtain an after-the-fact erosion control and stormwater management permit pursuant to Sheboygan County Code Section 75.07(1)(c) and 75.17 (1)(c).

Mr. Reenders replied yes, he would like to make that motion and added that in light of current evidence presented today of his expansion. Mr. Sonntag seconded the motion.

Mr. Harvey proceeded to complete a roll-call vote:

Mr. Reenders: Aye
Mr. Sonntag: Aye
Mr. Harvey: Aye
Mr. Scheuerman: Aye
Ms. DeZwarte: Aye

Mr. Harvey announced that the motion passed.

Mr. Sonntag motioned to adjourn the meeting, and Ms. DeZwarte seconded the motion. Motion carried with no opposition.

Kenneth Sonntag, Secretary

Sharon Harvey, Recording Secretary