

**Emmet County  
Sanitary Code Board of Appeals Meeting  
July 7, 2010**

---

Present: Jack Jones, Chair; Tom Gallagher, Vice-Chair; Eric Kaiser; Rick Rossi; Roger Moore, Wawatam Township Supervisor.

Staff: Vickie Carpentier, Recording Secretary.

Absent: None.

Guests: Mike Jones, Dan Begnoche and Scott Kendzierski, Northwest Michigan Community Health Agency (NWMCHA); Aaron Nordman and Jim Malewitz, Performance Engineers, Inc. for appellant Rose Acceptance, Inc.

---

Site Visit(s) Scheduled Appeal Hearing(s):

Appeal 2010-01 and 2010-02:

On July 7, 2010, Board Members Jones, Gallagher, Rossi, Kaiser, and Wawatam Township Supervisor Roger Moore, NWMCHA representative Dan Begnoche, Mike Jones and Scott Kendzierski, and Appellant's representatives Aaron Nordman and Jim Malewitz, Performance Engineers, Inc., met at the subject property located at Wilderness Park Drive, Wawatam Township, to perform a site evaluation to determine soil conditions.

Mr. Kaiser took notes on the site observation as follows:

Prior to the scheduled site visit the adjacent property owner gave Jones permission for the Sanitary Code Board to cross his property to get access to the site. The day of the site visit the adjacent property owner resisted entry of the group. Mike Barber [adjacent property owner] then said, okay.

Hole in center of proposed drainage field #5 - deepened to 30 inches, clay at 30 inches  
21 3/4 inch hole Piezometer #1: water, 6 inches on each of last two weeks per Dan [Begnoche, NWMCHA]  
Last two visits water on entry two track at 8 inches. Piezometer #2: 37 inches loamy clay (above is sandy gravel), 26 inches water.

Applicant position on pond - not regulated. Pond is 50-56 feet to Piezometer #2. From edge of drain field to pond is 48 feet. Pond flows to stream that peters out to Lake Michigan through ditch/culvert.

## Hearing on Appeals 2010-01 and 2010-02

### Board of Commissioners Room

#### Call to Order:

The Hearing was called to order in the Board of Commissioners Room by Chairman Jones at 11:20 a.m.

#### Roll Call:

Present: Jack Jones, Chair; Tom Gallagher, Vice-Chair; Eric Kaiser; Rick Rossi; Roger Moore, Wawatam Township Supervisor.

Absent: None.

Staff: Vickie Carpentier, Recording Secretary

Guests: Mike Jones, Dan Begnoche and Scott Kendzierski, Northwest Michigan Community Heath Agency (NWMCHA); Aaron Nordman and Jim Malewitz, Performance Engineers, Inc. for appellant Rose Acceptance, Inc.

#### Approval of Agenda:

Accepted as presented.

#### Approval of previous meeting minutes:

Minutes of the September 11, 2009 Sanitary Code Board of Appeals Hearing were presented and reviewed.

**Motion** by Gallagher to approve the September 11, 2009 minutes as presented. Supported by Kaiser.

Motion carried in a unanimous voice vote.

#### Communications:

None.

#### Scheduled Hearing(s) 2010-01 and 2010-02:

Following the site visit the Hearing was held in the Board of Commissioners Room of the Emmet County Building. Chairperson Jones noted the order in which information and comments would be received in regard to the appeal being presented. He also noted that the Sanitary Board of Appeals had the option to approve, deny, or postpone the case if the Board so desired. Chairman Jones stated for the Hearing process the Applicant would present their case, then the Health Department would present rebuttal, then any interested person would be given an opportunity to make a statement, then an opportunity would be given for rebuttals and debate, and then the Board would either make a motion to approve or deny the appeal.

Jim Malewitz, Performance Engineers, stated his firm was hired by the Appellant to represent this property that was formerly owned by Jeff Greaves. He advised that a wetlands consultant was hired to delineate the overall piece of property. They also hired a surveyor so they would know where they were on the property and where the wetlands are in relationship to the property line and that sort of thing. With the wetland consultants information they then identified areas that were not considered to be

wetlands, they were considered to be uplands. After that Performance Engineers then went out to the site and dug holes in the upland areas to see if those areas met Emmet County Code. What they found was there was a back area that Ken Greenhoe [NWMCHA] did approve in approximately 2008. He stated that he and Ken Greenhoe walked that site approximately eight to ten years ago, and it was his opinion that the approval letter was based on what they found, way back in a back swamp area. He stated that there is an upland dune kind of an area back there that did meet the Code, and he didn't think that it required a mound system.

Dan Begnoche, NWMCHA, read of a portion of NWMCHA employee Ken Greenhoe's letter of 2008 to Mr. Greaves and it indicated that it would require a "professional engineer to design the septic system including the ATS unit." It was designed for a two-bedroom system because there are base limitations due to the size of the approval area.

Jim Malewitz, Performance Engineers, stated that what they did after the wetlands delineation was done, was to dig holes on the areas of the property that they felt they could actually get a permitted drive to, and those areas were up front. He stated they dug some holes, looked at test holes one and two, and referred to a drawing dated March 4, 2010 called Conceptual Site Plan that everyone had during the walk through. Malewitz stated that on the plan you could see some heavy dark lines. In between those lines there is a line called G1 to G9 and I1 to I9, and in between those areas that is considered to be upland. Then also further south on the property between the line F1 to F11 and the line E1 to E9. Those are the two boundaries that define the upland between those two lines further back on the property. Malewitz said that the area they were concentrating on is between those two lines, the Es and the Fs. They dug many holes in there and they are requesting approval of two septic fields in that area. He stated that it was their belief that those two fields meet the Health Department requirements in every respect. He went on to say that there was a difference of opinion of setback to lake and stream which the Code defines. In the table there's a 100-foot setback requirement from lake or stream. There is what people have been calling a beaver pond within 50 or so feet of what Performance Engineers is presenting today, but he stated it was their feeling that according to the Sanitary Board's definition it doesn't meet - it's not considered to be a man-made pond - it's not a lake and it's not a stream. Malewitz said that as far as the soils, the soils meet the Health Department requirements. He stated that they felt the water table was deeper than 12 inches at those two septic field locations that they are asking for a variance. He said, so, he guessed the variance that they were really applying for is, we're kind of like a difference of opinion between - because he didn't think the Health Department was in disagreement on soil type or water elevation or depth of water at those two septic fields. The one septic field they did have problems with - Malewitz said they were not presenting that as part of the appeals process. So, he stated he guessed. . . He didn't know if Aaron had any more to add.

Aaron Nordman, Performance Engineers, stated that he thought that in addition to Jim's comment he just wanted to say that there are two separate parcels there with two tax id numbers and that is another reason why they backed down to just the two fields. As far as the location of the old approval that was done before any survey back there and it is questionable, in his mind anyway, whether or not something would actually fit there the way it is described in the letter. In addition to that the logistics of getting back there would create so much more environmental impact versus getting to the location of the proposal that they have. So, in that regard, they think it is much less impact than the original approval, and then also they would share the access into those. Even though there are two parcels there would be just one access point back there which would minimize the impact.

Jim Malewitz, Performance Engineers, stated they had met with the wetlands consultant who indicated to them that they had a very good chance of getting a drive to access these septic field locations that they have shown based on the nature of the wetland. It's not considered to be a primo wetland. He stated he was not an expert on all that, but the consultant is and she felt they had a very good case to get that. He went on to say they do need access to the septic fields for future maintenance and that

kind of thing. Malewitz stated that's why that back field just doesn't lend itself very well - it's like Aaron said, Ken Greenhoe he didn't think, had any flagging out there as far where the - or if he did, I don't know as far as where the property lines were in that back triangular piece that he did approve. Malewitz stated that he felt personally that he considered this property from the prior ordinance and not the latest ordinance. When he walked and found that property in the back with him, he might have hired some consultants after he [Malewitz] got involved. But, when we found that piece in the back, that was during the old code when it was 24 inches to water table and now it's 12 inches. Malewitz stated that he did not think that Greenhoe spent the time that they did on this property to find the pieces that they found.

Kaiser stated, just so he was clear on the request, Performance Engineers was not proposing an ATS system, you're proposing a standard mound system?

Jim Malewitz, Performance Engineers, responded that no, they're proposing ATS.

Kaiser stated, you are?

Jim Malewitz, Performance Engineers, responded yes.

Jones stated, just to clarify it on the map that Performance Engineers just handed out, Field B would be the one you want in the center, is the one that's on there?

Aaron Nordman, Performance Engineers, stated the field centered on Piezometer number 1 is the one that's eliminated.

Jones then stated, ok. Pz#1 that also says Field "A."

Aaron Nordman, Performance Engineers, responded yes, Field "A" is eliminated so they are requesting "B" and "C."

Jones stated that he just wanted to make sure they, the Board, knows there are two fields that are up there.

Kaiser asked the applicants what specifically, what are the variances you are requesting?

Aaron Nordman, Performance Engineers stated they do not feel that they need a variance, because they feel that it meets the 12 inches to ground water requirement, it meets the soil requirement, and they felt that the beaver impoundment is not regulated as a lake, river or stream setback.

Jim Malewitz, Performance Engineers, stated that the Code specifically says lake, river or stream and it is their feeling that doesn't meet that definition.

Several started talking at the same time. The Chair called for order.

Jim Malewitz, Performance Engineers, stated that there is a surface water definition in the Code, but if you look at the table in the Health Department regulations it says 100 feet from lake or stream. It doesn't say 100 feet setback from surface water anywhere - that he could find in the Code. He said, but there is a surface water definition which includes lakes, streams, and man-made ponds with no liner, but he didn't see a connection. There is nothing stating a 100-foot setback that he could find anyway, from surface water.

Jones asked for the Health Department's response.

Dan Begnoche, NWMCHA, stated and showed Mr. Malewitz the 100-foot distance, a chart basically for setbacks and isolation distances, and then the definition of some of those in the Code.

Kaiser requested Mr. Begnoche to explain for the record what he gave Mr. Malewitz.

Dan Begnoche, NWMCHA, responded that he gave Mr. Malewitz the Sanitary Code (page 26) just to show him the setback requirements referred to.

Jim Malewitz, Performance Engineers, responded that it says lake or stream.

Dan Begnoche, NWMCHA, stated that he was saying that was a stream and the debate is whether or not there is a stream there.

Jim Malewitz, Performance Engineers, responded that he didn't, the Health Department said that it was a stream.

Dan Begnoche, NWMCHA, responded so what you're saying that you don't have a 100-foot setback from surface water from unlined ponds.

Jim Malewitz, Performance Engineers, responded that they were saying it is not a stream.

Dan Begnoche, NWMCHA, stated he did a site visit, one (1) land evaluation last July for one site and could not find it. Performance Engineers advised him they may have to get a surveyor as they didn't know where the property was. He told them to call him when that happened. They then went back and spent probably six or seven hours out there chipping holes all across the site, but none of those sites were looked at today. Begnoche stated they ended up where the best locations were that day. He said the site was approved in a letter October 22, 2008 by Ken Greenhoe for an ATS with the mention that it was the only approval site and was limited to two (2) bedrooms. That is what he had in the Health Department file was that in previous visits they couldn't find anything else. He stated to Mr. Malewitz that whoever hired them might not have looked everywhere else, he couldn't say. He just saw the line, only approval site on entire lot. He went on to state that it is a very dynamic site. For most of the time when he was there he was unsure where he was at. After it was staked out, a lot later, which was fine as he'd asked them to stake it out as the Board was looking at various holes. Begnoche said that he had been to the site a number of times when the water hadn't been in the test well up to 12 inches, and he would grant that. In the holes around the test wells in the lower elevations there has been standing water. He didn't know how big an area they were looking at for meeting the requirement for isolation to the high seasonal water table, but based on the dynamic nature and those visits he had to come up with the idea that this was less than 12 inches. He stated that if you look where the test wells are, he thought that it was on the highest elevation of both of those rectangles that were flagged out and there were some low spots. Begnoche stated that it was a tough one for him to call. If you're looking at 3 inches or whatever and there's a spot that's 6 inches or 8 inches lower - he didn't go dig them all up, but he has been out to that site when there has been water running across it. It doesn't really percolate and it runs across it kind of like a parking lot. Begnoche stated, so there is a lot going on out there and based on Ken [Greenhoe] turning them down, him going out there and seeing all the things he's seen, the beaver dam, whether it's a stream or surface water, he stated that he felt the appropriate thing to do was to turn it down.

Mike Jones, NWMCHA, stated he wanted to point out one other section of the Code, Section 9-2.3(a) where it discusses the isolation for an ATS disposal field from a body of water. It states that the disposal field shall be located a minimum 100 feet from a body of water. So, if there is going to be a discussion and debate whether it's surface water or not, it does say body of water whether or not there is a definition. A beaver pond would typically be considered a body of water or surface water.

Jones asked the Health Department what Section?

Mike Jones, NWMCHA, responded that it depends on which book you are in because apparently there are two different Code books here. He stated he was referring to 9-2.3. Page 37 or 36, depending on which book you have.

Kaiser asked which subsection.

Mike Jones, NWMCHA, responded, a. He went on to state that as far as the beaver pond goes . . .

Jones, stated this is a tough call, but the Board will have to make a determination of what's a body of water.

Rossi stated the core issue over Jim's point that it is not a body of running water. There were two words - water . . .

Jim Malewitz, Performance Engineers, stated stream and a lake.

Rossi continued to say, right, a stream or lake

Jim Malewitz, Performance Engineers, [unable to make out comment]

Rossi went on to say that was a specific item that had been discussed when writing the Code in 2003. They discussed that because, virtually you could take a 100-foot lot on any lake, have a running

stream run by on either side, have separation, but because of that wording that the speakers are trying to get to, you would absolutely eliminate that piece of property even if you didn't need a mound system, from building or using that property in a humane way. He stated, that's why, we just said, today highways run off water, parking lots runoff water. We create what we call standing water. It comes and it goes. That was one of the reasons. The other reason was that we have culverts on the highways where there is water from time to time and you have particular spots in Emmet County because of all the lakes where you have limited property use but you could use it. But if you go to that definition of a 100 foot of separation you're going to eliminate a heck of a lot of places and a lot of places that are out there right now. That's specifically why we only had the two words in it. He said the other thing is that he knew from a court case in Emmet County, and you can follow it, a dam is not a responsibility of the homeowner, the person that owns the property. The dam is there because of what they call an act of God or a varmint. Now if the varmint goes that whole body of water might go too and it could dry up. That should not be held against this individual in this particular case. He stated the case he was referring to was, and he was involved because it was an insurance case, and there was damage of property.

Jim Malewitz, Performance Engineers, stated they kind of came across that body of water thing, also. But the thing is, it is not defined in the Code, which in his opinion was kind of a screw-up because the body of water thing they probably should have used something that they were familiar with. He stated that when you look at the ATS system, you know that it's meant to be put in tougher circumstances. If you were to do a conventional septic field you would go to the table that says lake or river - and that's it. You know, I don't see away from it, it says nothing about ponds, it says nothing about surface water, it says nothing on nothing. He went on to say, but now I have an ATS which cleans it up even more, and now you're going to make me more restrictive. Now I have to be - because now I'm cleaning it up more does it make sense that I have to be further away from something that I didn't have to be before? It doesn't make a lot of sense. Also, Mike Jones and Aaron Nordman walked that beaver pond, or whatever you want to call it, and then the trailings coming from and going to the lake and it did fan off to nothing. He stated it was their belief that it was not a stream because there's not a defined bank that goes all the way from that to the lake because it fans out enough in the right place but it does channel with the impact [unable to determine what was said]. So it's not a stream, it's not a lake.

So, by not having a definition of body of water it could fall into any spot but if you use your rational of - you're cleaning, with an ATS system you're cleaning it up more. It doesn't make sense that we have to be more restricted on this definition that doesn't exist.

Mike Jones, NWMCHA, stated that he would argue that it is a connecting waterway then. There is an uninterrupted connection of water between that feeder pond and Lake Michigan with evidence of flow in a few locations, especially at the outflow into Lake Michigan. There is water that flows out of the pond, flows into a flooded area, but it's a connecting waterway. But if you're not going to call it a stream, you're not going to call it a lake, you're not going to call it a man-made pond it's a connecting waterway because I walked through water from there all the way to Lake Michigan.

Jim Malewitz, Performance Engineers, stated there's no setback from connecting waterways Mike.

Mike Jones, NWMCHA, responded that if they wanted to enforce this Code exactly as it's written, he would be all for that because they have granted variances to a lot of things that go against what the Code says. He went on to say that if you want to do that, that's fine. If you want to say the intent was not to setback from a man-made pond or a connecting waterway, that's fine. Then let's do the entire Code that way - all the time.

Jim Malewitz, Performance Engineers, asked if Mike Jones thought that was a man-made pond?

Mike Jones, NWMCHA, responded that it was not a man-made pond, but if Performance Engineers thought that the intent was not to have that setback of 100 feet from a man-made pond or connecting waterway, he didn't think that was the intent of the Code when it was written. He stated that he

thought that the intent was to be from the surface water body. He stated that Performance Engineers was correct in that it wasn't listed specifically.

Jim Malewitz, Performance Engineers, replied that your surface water definition says lined man-made ponds.

Mike Jones, NWMCHA, responded, no, it says connected waterway.

Several started speaking at the same time.

Aaron Nordman, Performance Engineers, stated they had tried to follow a connecting water way out. That was the whole purpose of our walk,

Mike Jones, NWMCHA, stated, but there's water flowing.

Aaron Nordman, Performance Engineers, went on to say, and we agreed when we walked it that there is no . . .

Mike Jones, NWMCHA, stated he never stepped foot - he could walk the entire path all the way to Lake Michigan water. It is a connecting water and there is a flow. You can't deny that there's ~~not~~ a flow coming out of there.

Aaron Nordman, Performance Engineers, responded, ok.

Mike Jones, NWMCHA, stated you can't deny there's ~~not~~ a flow ~~going~~ coming out of there.

Several started speaking at the same time.

Jones called the meeting back to order.

Dan Begnoche, NWMCHA, stated he had a question. He wasn't involved with writing the Code, but Section 4-6.2 deal with additional criteria for filled sites and the installation of mounds which would be in play here. He said he was assuming there would be fill and mound, and went on to say [reading from the Code] "The proposed absorption bed area does not experience flooding from a watercourse, flyer *[typographical error in Code book by NWMCHA, should read "river"]*, stream or lake within a five (5) year period, nor lies below the ordinary high water mark of Lake Michigan. Water standing on frozen ground shall not be considered flooding." His question was, and he had to be honest, with this "flyer" he wasn't sure if anyone here knows what that means but he thought that it might help in their discussion of what beaver pond or surface water connected to something. He stated he was assuming flyer is some kind of a finger of water. He didn't know if anyone here knows the meaning of flyer.

Rossi asked, the word you mean?

Dan Begnoche, NWMCHA, responded, yeah. In relationship to Sanitary Code surface water. He then spelled the word showing in the Code as "flyer."

Aaron Nordman, Performance Engineers, asked if Begnoche was saying their beds were going to be flooded?

Dan Begnoche, NWMCHA, responded that he knew it would be but that's not what he was saying - he was just mentioning the Code and there are some things in the Code which are vague even to him which he has to address.

Scott Kendzierski, NWMCHA, stated the Health Department has to uphold what the Code says. Interpretation, he stated he thought, is part of why we are here today. - that is why we are here today. Maybe a little perspective about the development of the ATS requirements - you know the Health Department developed them for both Emmet County and the other three counties in their district and when they talked about isolation distances for approval criteria and used the word body of water they were really looking at, and in fact the other Code defines it as a lot of things plus areas that present standing water. But, it was his thought that was the intent here, didn't end up in the definitions but it was his thought that they had enough public meetings and commissioners meetings, and that was always the intent. It was clearly stated and they were not trying to hide anything. That's what they meant. He went on to say that, be that as it may, that definition did not end up in the Code, flyer did not end up in the Code. There are things they need to make decisions about and, unfortunately, when they interpret the Code they look at those definitions as a criteria. We have some differences of opinions,

clearly, but that was the intent when we were up there to prove criteria. He stated they weren't envisioning surface water on the north end, standing water of 6 inches in a bore hole on one side, a beaver pond on the other, wetlands on the other side and trying to permit a waste water system on an island essentially. It was not the intent. The intent was to look at difficult properties and try to find solutions. This one he really struggled with. He knows the soil is weak, and he's not contesting the water table in the approved area but he was of the feeling that they do have some issues with isolation from surface water.

Jones stated, right now this Board has to make a determination of what is a body of water, what was the intent of the Ordinance. Jones stated he thought the Board was being asked this question right now. Then this determination would follow through for the other requests before this Board and in the future until the Code is amended.

Gallagher stated he had listened to all these definitions. As much as a beaver pond may be similar to a man-made pond, a man-made pond is generally looked upon as a permanent feature in the landscape, it's built there, it's got dams, it's constructed. If it is man-made and a dam is constructed there is a dam permit issued with the idea that it won't fail and it will be there forever. A beaver dam is, from his perspective, is a natural phenomenon. If a fox comes along or some other predator animal along and snatches the beavers and they are gone the dam is going to deteriorate and it's going to go away so it's a temporary feature of the landscape. It may be 10 years, it may be 15, maybe more, it's hard to call, but it was his feeling that it is not a permanent body of water. He appreciated the effort to try to define it but unfortunately that honestly slipped through the Code. He stated there is nothing about temporary bodies of water, and he did believe that a beaver dam was temporary, and stated this was his opinion.

Jones stated he would not argue with that opinion except what if you remove the dam, what do you have? As was noted that there was no recent activity of the beavers there. So what is the level of the pond versus downstream in the pond? There's got to be plenty of water there to have a beaver dam or they won't build it there otherwise. So, what is the level of the water? But that isn't getting to our problem. We have to get down to what was meant by the Code with a "body of water?" He stated correct me if I'm wrong Scott, but basically the Health Department had done a lot of work on the Code for the ATS system rather than the Committee that was here, and asked the Health Department if that wasn't correct.

Kendzierski, NWMCHA, responded, correct.

Jones then stated that he wanted to make a point of that so that people understand it. Basically there is two different groups, Rick [Rossi] was working with the general Code and then the Health Department worked on the ATS system and came up with a criteria for that.

Scott Kendzierski, NWMCHA, stated he just wanted to point out a couple of things. He has heard that a beaver pond can be temporary - he didn't know how temporary, that's undermined. Those issues are acts of God. It may be there tomorrow, it may not be there tomorrow. Every time he's been at an appeal it's always been evaluation. The Health Department tries to provide some historical perspective and they've always been told, we're looking at what we see today. He said that if that's the way the Health Department needs to view these, the beaver pond, the body of water or whatever you want to call it, is there today. The whole intent of isolation is not simply to get away from the lake. There is a reason for that is to prevent sewage contaminates from impacting the surface water body. Once it makes it to an anaerobic surface water body there is no treatment of the pathogens and other waste water contaminates themselves. How long that beaver dam is going to be there, he doesn't know, but when we look at this, in his opinion, is that we need to look at it today. That edge of the water is there today. When they permit a system that goes in under an appeal that system is going to be there and so is that surface water body. Even if you remove it there is nothing to say that another wouldn't be put in. The beaver dam is there for a reason. It arrests flow that provides food and shelter for that animal.

Aaron Nordman, Performance Engineers, stated in regard to regulating that beaver pond that is being connected out to the lake, that in his opinion there is a difference between a connecting waterway, which to him brings up a vision of a defined ground versus it being just hydraulically connected. He stated that they were not arguing that this is not hydraulically connected to Lake Michigan, but if they start interpreting everything is hydraulically connected as being regulated, we start regulating a bunch of ditches and things that are, in his mind, not intended to be regulated. Under the Code itself it mentions that the intent of the Code is to regulate sewage disposal and construction of water supplies in a matter to protect public health. Here we're talking about something that's isolated, way back off from where inhabited spaces will be. He stated he didn't see a problem with this as a public health issue, especially with the advanced treatment, and he stated he thought that when he walked it with Mike [Jones] he did not see a connecting waterway.

Kaiser stated that maybe now is the appropriate time just to quickly put on the record what was seen out in the field today. First of all, the same people that are in the room now, all who have been identified as poking around in the field with the exception of the secretary. There were several holes looked at. One was dug hole # 5 that was cleaned up, that was clean to 30 inches at which point clay was found with no water in hole. Dan [Begnoche] indicated that at two different times, two visits on each of the last two Tuesdays he found water at eight inches, but the issue of water and the seasonal water is currently not really at issue today, from what he is hearing. At PZ #2, which is the short form for Piezometer, and he spelled for the record, there was loamy clay at 37 inches above that was sandy gravel, and at 26 inches was water. The body of water that's being discussed, if that in fact is what it is, was measured, and he stated he felt they would all agree that from Piezometer #2, that's on the map, that the edge of that pond would be in the neighborhood of 50 to 56 feet. So when a couple of guys went out there earlier in the year it was probably at about 48 feet from PZ #2. He stated that, again it was noted out in the field what's been just said, that when it was walked, then that water was walked toward Lake Michigan. It just kind of peters out eventually and is absorbed into the soil. He stated, for his own perspective on some of the definitions that are being discussed, when he reads the definition for surface water, which is defined in 2-24. He stated that he would hate to bring his other life into the purpose he serves on this Board for but his reading of the way that definition is made would make the words connecting waterways part of the phrase the Great Lakes and their connecting waterways, and then they go on with some other examples of surface waters. So the way he reads that, this information, his position is connecting waterways would be referring to waterways that connect the Great Lakes. such as the Straits of Mackinaw, the Saint Mary's River, the Saint Clair River and places like that because that's one phrase all by itself, with the Great Lakes is their connecting waterway. He went on to state that he didn't take what was seen up there today as proving connecting waterways under the Code definitions. He stated he did appreciate the historical perspective that Mr. Rossi brought to the table this morning concerning the words 'body of water' which are, he thought they were agreed are pretty vague, even some of the other good definitions. He stated that it sounded like those words were discussed and it was determined that, you've got to make the Code workable, so that 100-foot notation would not be applicable to this setting given Mr. Rossi's memory and recollection of when the Code was formed. Kaiser also commented on Dan Begnoche's letter, he read it as being kind of, what Dan said earlier on the record, that Dan's position was kind of soft on where the Health Department stood because Dan used words like possibly within 100 feet, that kind of thing. That's at the end of Dan's second paragraph.

Dan Begnoche, NWMCHA, responded that was because he knew they hadn't defined "surface water."

Kaiser stated that you don't usually see in your letters the "possibilities" and "maybes" and things like that. He went on to state that just by writing that Dan underscored what the issue is. Kaiser stated he would ask Dan to, in the letter in the next paragraph Dan goes through certain sections of the Code

and list them as being reasons why the minimum standards are not met. So, he asked that if Dan hadn't done so already he would ask Dan to address 4-5.4 and explain the Health Department's position on why that's not met.

Dan Begnoche, NWMCHA, responded Section 4-5.4, "the maximum groundwater table is less than 5 feet from natural ground surface" and asked if that was what Mr. Kaiser was talking about.

Kaiser responded, that was what Dan had recited in his letter.

Dan Begnoche, NWMCHA, stated they started out with the ATS you end of citing the previous in-ground, they reference those so it doesn't meet that. In addition it doesn't meet, in the Health Department's opinion, the criteria for the Advanced Treatment.

Scott Kendzierski, NWMCHA, stated that basically going through this area if you don't meet the criteria for in-ground, you don't meet it for a mound.

Dan Begnoche, NWMCHA, stated Jim [Malewitz] said, maybe we'll try for a trench test of something.

Mike Jones, NWMCHA, stated that particular section referred to is for approval criteria for an in-ground drain field. Dan [Begnoche] is stating that the type of conditions don't meet the criteria for in-ground at all and continues on stating the Sections that it doesn't meet for criteria on mound systems. There are three different site criteria, and while he didn't have the letter in front of him stated he assumed Dan was going through the three sections - in-ground, mound and ATS citing the different sections of why this property doesn't meet the criteria.

Kaiser said so let's talk about Section 4-6.1, your depth at which the seasonal high ground water elevation and impervious formation is at least 2 feet below the natural ground surface.

Dan Begnoche, NWMCHA, stated this was the standard code for a standard system.

Jim Malewitz, Performance Engineers, (was unable to hear Mr. Malewitz's comment)

Dan Begnoche, NWMCHA, responded, well not mound system, it doesn't require ATS to fit that criteria.

Kaiser stated, so that would not be the case because it's an ATS application?

Dan Begnoche, NWMCHA, responded yes, so now we're going to the back part of the Code that's more stringent.

Kaiser stated that he thought they had already talked about the Section 9-2. He said the Health Department cites 9-2.3(a) and (c) and (a) is what is being debated the most so far. What about (c)? The Health Department cites that as well.

Mike Jones (?), NWMCHA, responded that it addresses the water table and minimal soil.

Dan Begnoche, NWMCHA, read Section 9-2.3(c) which states "The site of the proposed ATS has a minimum of 18 inches of naturally occurring permeable soils below natural ground surface and does not show evidence of high groundwater table conditions within 12 inches of the natural ground surface. The natural ground surface is formed by the forces of nature and not through the activities of man."

Kaiser, asked if that, in the Health Department's opinion, is still a problem?

Dan Begnoche, NWMCHA, responded that personally, what he said earlier is that the site is very dynamic and even though he hadn't seen water in their test pipe within 12 inches of ground grade. We're looking at a 2-inch diameter hole in a rectangle that's 20 x 50 which, and that happened to be located on the highest spot. When he was there, on occasions there was water standing in the low spots. He stated that he didn't chip through - he wasn't going out there and working that site over every time that he stopped by, so he didn't chip through rocks to try and find out the elevations. Based on the overall area and what he saw was enough to make him feel confident that at times the seasonal water table of the area was within 12 inches of grade. Even though we were not seeing it today, he stated he had seen it in the test hole twice. It has also, based on what he mentioned earlier, what Ken [Greenhoe] had. Whether or not Ken looked at the whole site, every square inch of he didn't know, but Ken did write on his report that he was approving a spot. There is an approved spot on this site. They

had an approved spot. It was approved and on that approval letter was the line, this is the only approvable site on this parcel the other ones don't meet the Sanitary Code criteria. So that's what he had to go on. He stated he would have been overturning Greenhoe's inspection and letter and saying basically that Greenhoe was wrong and there is a site up there.

Scott Kendzierski, NWMCHA, stated that may be supported by what we saw today with the one bore hole that showed water at 21 and 3/4 inches to 22 inches and Dan [Begnoche] has a photo from a few weeks ago that shows it at six, demonstrating that, that water fluxuates quite a bit at times.

Dan Begnoche, NWMCHA, stated it is a dynamic site - it's really tough.

Jones stated that on these two sites the engineers have said that anytime that they have been out there, and when the Health Department has been out there, that it never exceeded the minimum.

Dan Begnoche, NWMCHA, responded, right. He was not looking at the whole line of reference dates or what not or when they put the pipes in, rather that was in late-December. He has been to the sites in the fall. The worst he had seen was in the fall prior to the pipes going into the ground. So, he didn't know what to tell the Board. He stated he walked the sites whenever he was in the neighborhood. He never made a special trip.

Jones asked if anyone else had anything they wanted to add or to ask.

Gallagher asked, roughly, how much elevation drop occurs at the beaver dam?

Aaron Nordman, Performance Engineers, response, the beaver dam? Maybe like four feet.

Mike Jones, NWMCHA, asked, from the top of the dam to where . . .

Gallagher, responded, how much water drop to the outlet?

Mike Jones, NWMCHA, responded that would be more than four feet.

Gallagher, stated, about three to four feet. At the site he specifically asked how far it was thought that it would be from the field location to where the water would be flowing in the stream bed, if you would, and it was agreed that it would probably exceed 100 feet.

Scott Kendzierski, NWMCHA, responded that it was hard to tell for sure.

Dan Begnoche, NWMCHA, stated that being as the site had been approved previously was he to understand they are saying that one of these sites is a definite replacement for this approved site and that is taken off the table permanently and they're hoping to make up for that by getting one of these approved?

Jim Malewitz and Aaron Nordman, Performance Engineers, responded that was true.

Jim Malewitz, Performance Engineers, stated they want two (2) sites, period.

Aaron Nordman, Performance Engineers, stated the other site deny it.

Jones stated, [make it] go away.

Scott Kendzierski, NWMCHA, stated he had one more question, also. One of these sites, the way it's proposed, one of them is going to require being an off-site system. So, it's going to be an easement on one parcel. The systems are very close together and he didn't know how far the engineering went and questioned if they sized a four bedroom, the soils - if everything jibes. He went on to state the easement also had some isolation requirements for moving equipment without disturbing the neighbor's property, and he didn't know if that was considered with the design as presented or not. That could potentially push a system over or result in a redesign of one of those systems or both and he didn't know if that was contemplated or not.

Jim Malewitz, Performance Engineers, responded that the orientation of the two systems they are keeping, they're not like parallel, they might be touching. He stated they might have a violation according to. . . .

Scott Kendzierski, NWMCHA, stated they need to be 20 feet apart at the closest because of the space needed for access.

Jim Malewitz, Performance Engineers, responded that you could access, talking realistically.

Unable to determine what was said as several started talking at the same time Recording Secretary requested only one person speak at a time.

Scott Kendzierski, NWMCHA, stated that the Code requires . . .

Jim Malewitz, Performance Engineers, stated twenty feet continually around.

Scott Kendzierski, NWMCHA, responded, right.

Jim Malewitz, Performance Engineers, stated they would have adequate room to access the sites without going on the neighbor's property. He stated that if that is something that needs to be discussed as part of the variance process. Where they have these placed right now, there is no issue of putting those fields in and putting proper easements to allow for proper access for maintenance. He stated that it may not meet the letter of the twenty foot - because you take twenty plus twenty, that's forty so they have to be forty feet apart. Typically that is true if they are parallel, but if they are just touching at a corner the majority of those fields will be forty feet apart but not at that particular corner that you see on the plan. He stated it was his feeling that this was a pretty minor issue, because if you look at the reason for the twenty-foot requirement, it is so that you can get access and get at these fields without trespassing and they'll be able to provide that.

Scott Kendzierski, NWMCHA, responded, or running over the other field . . .

Jim Malewitz, Performance Engineers, stated they would be able to provide that, too.

Scott Kendzierski, NWMCHA, stated that he just wanted to make sure it's not going to push it off an area they agree may work and push it into an area that clearly doesn't.

Aaron Nordman, Performance Engineers, stated that the way he viewed it one of them doesn't require the ten feet because it is on its own parcel. The Health Department wanted ten feet total, so there is ten feet at least.

Mike Jones, NWMCHA, said if the Board determines the variance is necessary for this approval, and that the Board is of the opinion, that they will grant a variance for a waste water system to go on here if they deem it necessary. The purpose for having two (2) versus one (1) drain field sites is the property is owned by a single party which could be served and provide avenue for relief by only granting a singular drain field site rather than multiple sites. Multiple sites, in his opinion, are an attempt to improve their income rather than to serve a purpose.

Jones, responded that, that may be so Mike. You've seen the map and it has been surveyed into two parcels. So, somewhere down the line that was approved.

Mike Jones, NWMCHA, stated but then you are granting approval for a second piece of property rather than the property that is in question.

Jones responded that is correct.

Dan Begnoche, NWMCHA, ask if some day he went in there and took a picture and showed it to the SCBOA later, just so the Board can see what he means when he says dynamic, because that is a big phrase. Not that it would have any bearing on this.

Jones replied he would take Begnoche's word. Unfortunately, the Board has to take what they see today, and that is unfortunate in some cases, but that is how the Board has to operate. It doesn't say in the ~~course~~ Code of what might be.

Dan Begnoche, NWMCHA, responded that was why he measured off to the Beaver Pond.

Jones asked if Performance Engineers had anything further.

Jim Malewitz, Performance Engineers, responded that he thought they were set.

Moore stated that he wondered if there might be a future issue. He stated there are two (2) systems here and two (2) pieces of property, but both systems on one parcel. He asked if there was going to be an issue there? How are they going to sell two pieces of property with septic systems.

Jim Malewitz, Performance Engineers, responded with provided easements. The Code provides .

..

Moore stated that he just wanted to . . . because those would not be able to be split because there is a Land Division Act.

Kaiser asked Performance Engineers if they had a wetland consultant? Who marked wet lands here?

Jim Malewitz, Performance Engineers, responded yes.

Kaiser stated that document that's noted is marked with C5, sanitary site plan in two different spots. There is a line noting wetland boundary, and asked if that was determined by the consultant?.

Aaron Nordman, Performance Engineers, responded, yes.

Kaiser, stated that he took it that goes too, to the question of is that water body water or is it wetlands, which was in his feeling, two different things.

Jones stated, [referring to document] this part's here, in here are the - anything outside of those lines is wetlands.

Kaiser, asked the Chair, what is the variance the SCBOA is being asked to give.

Jones responded that basically as he sees it, the only variance is, is this a body of water or is it not? As far as the determination that the depth meets the Code as far as the twelve inches, the soil underneath meets the Code. He stated that in his opinion he thinks the Board is making a determination, whatever the Board does here, is making the determination what is a body of water and that is what his feeling is.

Kaiser stated, as he sees it, based on that information, the Board could do one of two things. The Board could say it is not a body of water so there is no variance being asked for, or the Board could say it is a body of water and grant a variance because of the circumstances.

Rossi stated that he wanted to comment because he had listened to this discussion, but primarily to the Health Department. He stated that he thought the Health Department really do get it, so take what he is saying to them in a way that is positive. He stated that so many of our sites today are 100 foot lots on lakes, and he was going to use lakes. There is an open body of water on one side and a road on the other. Some of them have depth, some of them don't have a lot. In the criteria for a separation between a sanitary system and a well is fifty feet. He stated that if you add a 100 feet, there are so many parcels that wouldn't be useable. Fortunately, most of our lakes are built on, heavily, and we have very few open properties left. That terminology, that being there for the last forty-five years has allowed for building around our lakes, and certainly allowed this County to prosper and get tax returns on it. You can never take that away, and that is a very important part. He stated he is a builder and does site work it has to be there. He went on to state, you guys get so, when we're on this here and we're saying what we're talking about is this a body of water. He looks at it as, from his perspective, he is saying it isn't. If you took a bomb and blew up that dam, it's gone. He doesn't know where it fell, but it's gone. That's the same way, and he got into before, culverts and drainage ponds. He stated it was his feeling that it shouldn't be held against the person that has the property, that's his whole perspective on this.

Kaiser stated he was going to make a motion and he didn't know where the Board all stood on this, and ultimately it's going to be to reverse the Health Department's decision so he wanted it clear up front.

He also wanted it clear that his motion is to avoid the statement or the claim today that that is not a body of water because when you do that definition today - we're bound.

He stated he would rather, looking at conditions under our variances, he would Move that the Health Department determination be reversed, that the two (2) mound systems with the ATS be approved, and he would find that, particularly as to Section 9-1.1, "The need for the requested variance is

due to unique circumstances or physical conditions of the subject property, and is not due to personal or economic hardship of the property owner.” He stated that the other two (2) criteria for granting a variance speak for themselves and he would not read those. But he would take Dan’s [Begnoche, NWMCHA] comments particularly and the Board’s own view of the site today as very important. It is a dynamic site, there’s no question. It is a very sensitive site, and he thought that those create some of the unique circumstances that he felt fit 9-1.1 and the fact that the water that was there as a result of, apparently as the results of creatures that roam our planet. It can change and it will change. He stated that it was his feeling that the ATS system would work here. He stated that his motion again was to reverse the Health Department’s determination and that the special conditions required for a variance regarding the 100 feet are existing. Supported by Gallagher.

No further discussion on the motion.

Roll call vote: Rossi, support; Gallagher, support; Jones, yes; Kaiser, yes; Moore, yes.

Motion carried in a unanimous roll call vote.

Jones commented that he thought that by doing this, this way - and he thought that it was a very good motion, the Board had dodged a bullet today but it was going to come back as to what is a body of water. He stated that it was his feeling that they needed somewhere along the line to do a better job of defining that. He stated that he also agreed that, maybe this might be a stream at some point in time but the way Mr. Kaiser has proposed his motion, the Board is dodging the bullet on that.

Jim Malewitz, Performance Engineers, asked so does the Motion say that they do need a 100-foot setback?

Jones responded, no. it doesn’t say you need any kind of setback, you were granted a variance for the 100-foot set back.

Public comments. None.

#### Adjournment

There being no further business the Meeting was adjourned at 12:25 p.m.

Minutes approved: 05-24-2011

cc: NWMCHA, Sanitary Code Board of Appeals Members; Roger Moore, Wawatam Township Supervisor