

# Committee of Thirteen Report

September 11, 2007

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, September 11, 2007 at 6:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

12 JPs Present: Brown, Glass, Harrison, Hill, Hubbard, Moore, Schindler, Stephenson, Summers, Winscott, Wolf, Wozniak

1 Absent: Hobbs

Others Present: Judge Jay Finch, County Attorney Robin Green, Richard McComas, Dennis Cottrell, Jeff Hawkins

Media: Dave Bales – KURM, Jennifer Turner – Daily Record, Scarlet Simms – Morning News

Chair Tim Summers called the meeting to order.

## **PUBLIC COMMENTS:**

Rufus Ramey stated that a chip and seal job done last September on some roads in his area was not done correctly, and although he has had numerous conversations with the County Judge's office and the Road Department, nothing has been done to correct the problem. He said he would like an answer as to when it will be fixed, and the situation is more than an eyesore—the loose gravel is a safety hazard.

Doug Timmons stated that he wanted the Quorum Court to be aware that a group of citizens opposed to the proposed nuisance abatement ordinance is distributing literature that contains false and misleading information. He encouraged them to communicate more, and to respond with correct information when they are being attacked.

Tommy Lewis stated that the nuisance ordinance is one person's opinion of what another person's property should look like, and he is against it because it will cause problems in the county.

Sue Elverston expressed concern with certain sections of the proposed nuisance ordinance, including the lack of a definition for "hazard", the makeup of the Appeal Board, and the Summary Abatement process.

Tanya Lewis stated that she is against the proposed nuisance ordinance and distributed a petition containing 256 signatures of people she said are also opposed to the ordinance.

## **NEW BUSINESS:**

### **1. Ordinance Request: Amending Benton County Code of Ordinances – Chapter 38 "Floods"**

JP Glass made motion to forward the proposed ordinance to the September 27, 2007 Quorum Court agenda, seconded by JP Stephenson. JP Glass stated that the code will be amended to reflect the new dates of the Flood Study and Maps that must be adopted, and some changes in the names of agencies that are referred to. He said all of the regulations currently in place will remain unchanged. JP Stephenson asked if the Environmental Committee was satisfied with the ordinance, and if all of their concerns and questions had been answered. JP Hubbard stated that

they had, and this is the ordinance that he wanted from the beginning of their discussions. Motion passed by unanimous show of hands vote.

## **2. Appropriation Ordinance Request: Circuit Clerk Software and AT&T Phone Equipment End of Lease Purchase**

JP Stephenson made motion to forward the proposed appropriation ordinance to the September 27, 2007 Quorum Court agenda, seconded by JP Wolf. JP Summers stated that the software project in the Circuit Clerk's office was started in 2006, but not completed so part of the money budgeted in 2006 was returned. He said that the project is now complete, so they need to appropriate the money to pay for it.

JP Wolf asked Richard McComas if he had determined if the AT&T lease included a service agreement which we will now have to pay for. Richard McComas stated that there is no service agreement, and that they currently pay for service on a per call basis because it is cheaper.

JP Hubbard asked if there is a service agreement available if they continue to lease the equipment. Richard McComas explained that continuing the lease will cost \$48,000 next year, and the buyout is \$23,000, and they would have simply put it in next year's budget, but they are bringing it to them now because exercising the buyout before January 1, 2008 will save \$3,500 in property taxes.

Motion passed by unanimous show of hands vote.

## **3. Request for Approval to Include Cost of Hight-Jackson St. Mary's – Juvenile Detention Center Feasibility Study in 2007 Budget Adjustment Ordinance**

JP Moore made motion to forward approval to include the cost of the Hight-Jackson feasibility study in the 2007 Budget Adjustment Ordinance to the September 27, 2007 Quorum Court meeting, seconded by JP Hill. Jim Ecker stated that South Build Engineering in Memphis submitted a bid of \$28,000, plus additional costs, and Hight-Jackson's bid was for \$14,500, and will be credited back to us if Hight-Jackson is hired to do the project. He said the feasibility study will be done on renovating the third floor of the hospital for use as a Juvenile Detention Center, and county staff is gathering other information such as utility, maintenance, personnel costs, and possible uses by other departments for the rest of the building.

JP Schindler asked about the risks of placing the JDC on the third floor that Judge Finch mentioned at a previous meeting. Jim Ecker explained how those will be addressed with various features in the rooms. JP Stephenson stated that he had concerns about renovating the hospital at all, and asked that they include information on what a new JDC would cost. Dennis Cottrell stated that Hight-Jackson had performed a study in 2007 that estimated the cost at between \$16 and \$18 million.

JP Summers stated that a question has arisen concerning whether a circuit judge may hold court outside of the county seat. Judge Jay Finch was recognized, and stated that the prospect of having a juvenile justice center at the St. Mary's building is appealing, and is in keeping with the kind of facility and placement they will need to have, although a new one would suit him just fine. He said that he is aware that an issue has arisen about whether or not he can hold court in Rogers, and one of the things he cannot do as a judge is give the Quorum Court legal advice, because they have a lawyer who can do that. He said he feels compelled to speak in this particular instance because he is the court, and the question about whether or not he can hold court someplace ultimately devolves to him, unless and until a court of higher authority says he cannot. He said he believes, based upon the statute, Amendment 80, and recent court rulings by

the Arkansas Supreme Court, that he may hold court anywhere in Benton County. He said the Quorum Court may decide to build him a courthouse in Rogers so he can hold court there regularly, or they may not. That is up to them to decide. He noted that he regularly holds Drug Court at area high schools, and that is something that is done both here and in other counties. He said when he was elected judge, he received jurisdiction to decide cases, and where he does that is a matter which is controlled by Amendment 80, which completely revamped that part of our constitution which deals with courts, and which transferred much of the power to make those decisions to the Arkansas Supreme Court. He said the Supreme Court has made a decision which is, on its facts, narrow, but clearly says that Arkansas Code 16-88-105 provides that "circuit courts shall have jurisdiction to try criminal offenses within the bounds of the geographical judicial district as follows: The local jurisdiction of circuit courts shall be of offenses committed within the respective counties in which they are held." He cited Arkansas Code 16-13-210, which provides that "a Circuit Judge who is physically present in the geographical area of the judicial district which he serves as judge may hear, adjudicate, or render any appropriate order with respect to any cause or matter pending in any Circuit Court over which he presides." Judge Finch states that he presides over Division 3 of the Circuit Court of Benton County. He said that he is aware that County Attorney Robin Green has a different opinion, which he believes will be directed at making absolutely no error with regard to having someone in the future say, "No, you shouldn't have done that". He said he cannot advise them with regard to that, but it is always possible that another court will say that they have looked at it and don't think you should have done it, but as it stands today, he does not believe that he has any question that he can hold court anywhere in Benton County as long as he has jurisdiction of the matters over which he sits.

JP Hubbard asked Jim Ecker what part of the research into the overall feasibility of the St. Mary's building is being done in house. Jim Ecker stated that they are looking at infrastructure costs, personnel costs, maintenance costs, and comparing what the hospital spends with what the county expects to spend. He said that the Information Systems Department has begun estimating the cost of hooking up computers and telephones. JP Hubbard asked if they knew exactly who is moving into the building. Jim Ecker stated that they are first going to determine if the JDC, Juvenile Court and Juvenile Probation can all be moved into it, and then look at other probabilities, such as the Coroner, Election Commission, and Assessor, but they will not make any firm decisions until they know if the JDC is feasible, because if it is not, then the county will probably not pursue the purchase. He said other possibilities could be CenCom and D.E.M., but those are more long range plans. JP Hubbard suggested that they ask for a more comprehensive feasibility study so they can get more information cheaper. Jim Ecker stated that they would be wasting money to find out about any of the other departments, because it is his understanding that they are not going to purchase the building if a juvenile justice center cannot be placed there. He said renovating office space is minor and can all be done in house. JP Hubbard asked County Attorney Robin Green to respond to the issue of holding court in Rogers.

County Attorney Robin Green stated that she has served Benton County in the capacity of either County Attorney or Prosecuting Attorney since 1997 and this is the first time this issue has arisen. She said she is in an uncomfortable position, and wants to say at the outset that she fully respects Judge Finch and believes he has one of the most difficult jobs in Benton County, and in the judiciary. She said she also fully respects JDC Director Dennis Cottrell, and it is because of his efforts and those of Judge Finch that they have not faced other legal issues as a result of the sometimes overcrowded conditions in the JDC, and she does not dispute the need for a new JDC.

She said she is not paid to tell them what they may want to hear, and must give them the best legal advice that she possibly can. She said that she has prepared a written opinion putting them on notice that there is a strong question as to the legality of moving a division of the Benton County Circuit Court to another city, and the issue hinges on the legal propriety of holding circuit court on a regular basis at a location outside the county seat and the county courthouse. She said there is great contrast between the case law and the legal precedent and the Arkansas Constitution, and given the inherent conflict in the law, she believes there is an inherent risk in using taxpayer funds to construct a courthouse outside the county court complex and the county seat, and she wants to put them on notice of that. She said that the Supreme Court could say it is fine, and the legislature could convene and correct it so that it is perfectly clear that it is legally proper for a circuit court to regularly hold court outside the county complex and outside the county seat. She said that she wants the minutes to reflect that she is putting them on notice that she believes there is an inherent risk in doing that.

She said it could be that they could choose to go ahead and reserve the space for the courtroom knowing that once they officially get a solid green light to proceed they could then construct the courtroom, or it could be that they choose to proceed with moving the court and see what happens in light of her advice.. She repeated that she wants to go on record that it is her legal opinion that there is an inherent risk involved. She said that the worst case scenario would be that a case taken upon appeal to the Arkansas Supreme Court is determined to be moot because it was not proper for court to be held outside the county seat and the county court complex. She added that if it is a criminal case, it would be dismissed due to speedy trial limitations. She said she personally thinks Judge Finch and Judge Gunn in Washington County do a great public service in holding Drug Court in other locations, so that people can see firsthand the effects and repercussions of methamphetamine and other drugs, and until this issue came up she does not think anyone had really studied the law, but she believes the laws are in conflict and there is an inherent risk with the county proceeding in that direction.

Robin Green said she also wants to point out that the circuit judges will be required to submit an administrative plan at the end of 2008, and it is anticipated that at that time they will readjust their caseload and it could be that Judge Finch will continue to hear only juvenile cases, because there is a steady increase in juvenile cases, but there is no guarantee. She said it is up to the circuit judges and it must be approved by the Arkansas Supreme Court. She said she has prepared a legal opinion and wished that she could say with certainty "Here is the law on this topic", but unfortunately, that is not the case.

JP Winscott asked if they could get an expedited opinion from the Arkansas Supreme Court. County Attorney Robin Green stated that the Supreme Court does not issue advisory opinions; they consider cases on appeal, so one possibility is for a case to be appealed and that would actually be the best way to get a definitive answer. She said that even with the best case scenario, which would be that an appeal is filed tomorrow, it would be quite some time, usually a year, for the Supreme Court to issue a decision. She noted that they might choose to expedite it, but they might not. JP Winscott stated that he understands that if it goes through the normal procedure it could take two to three years, but he also knows that there are cases that they hear in two to three weeks, and it looks as though considering the seriousness and urgency of this matter, they would take that into consideration and issue an opinion on it more quickly than going through the normal process. Robin Green stated that she is not aware of any cases that have been heard in two or three weeks, other than someone on death row whose execution date is pending. She said that if the case were to move through, it would only be proper for it to move through the

normally accepted channels, and the judges should not decide to hear it because it is a test case—it should be viewed based on its merits as any other case and this issue treated as any other. She said she would hope that they would expedite it, but they have no control.

JP Winscott asked Jim Ecker if it has been presented to Hight-Jackson that they are to prepare the information included in the feasibility study in such a manner that another architect can take over if Hight-Jackson is not hired to do the project. Jim Ecker stated that he is not sure about that, but that architects normally own their blueprints once the project gets to that stage. JP Winscott stated that if we do not do that, then by approving this feasibility study they are basically locking in to hiring Hight-Jackson to do the whole architectural phase of the project, and he has a problem in not being able to take the information and going to open bids with it. Jim Ecker stated that they cannot take it to open bids because it is not specs and plans, just a feasibility study, and South Build made it clear that all they were going to get for their \$28,000 bid was a bottom line estimate. JP Winscott said you have to negotiate up front with the architect that you are paying for something and therefore you own it, and he knows it can be done because he has done it. He said that \$14,500 is not going to cover the cost of this study—that in fact it will cost Hight-Jackson \$50,000, \$75,000 or \$100,000 to do it, and in his opinion they are actually trying to buy into a locked situation where they know they are going to get the big apple if we go ahead with the project. Jim Ecker explained that they had two choices—the \$14,500 bid from Hight-Jackson, or the \$28,000 bid for a preliminary study from South Build, followed by a planning session which would cost another \$18,000, and they made it clear that if we backed out, their construction manager would not share any information with us. He said that Hight-Jackson is an excellent architectural firm, and if they agreed to do it for one dollar, they would do a good job of it. He said that he understands JP Winscott's concerns about getting "locked in", but if we decide not to pursue the hospital renovation, we have spent \$14,500, not \$46,000. He said in addition, Hight-Jackson has agreed to 6.5% of the total project cost as their fee, while South Build wants 7% and will require us to use their construction manager instead of someone local. He said they are also going to look at whether the JDC will work without the court system being in the building.

JP Moore asked if we will be required to bid before actually hiring an architectural firm if we decide to purchase the hospital. Jim Ecker stated that the architect and construction manager are professional services and do not have to be chosen through bids. He said that if we hire a construction manager, he will be required to bid the actual construction. JP Moore asked if Hight-Jackson has a vested interest in who is chosen to do the construction work. Jim Ecker stated that Hight-Jackson could provide that, but is not planning on it. He said that usually if an architectural firm also provides construction services, the cost is 10% to 12%, and Hight-Jackson proposes charging 6.5% to do the preliminary work, plans and specs, and any consulting work that is necessary during the remodeling process if they are hired as the architect.

JP Moore asked County Attorney Robin Green if it is her opinion that the practice of holding Drug Court outside the county seat is legally suspect. Robin Green stated that if it is held outside the county seat, then it is, although she does not think the odds are very high of a case coming out of Drug Court being appealed to the Supreme Court since it is a program providing remediation of people's lives rather than a civil or criminal matter.

JP Wolf asked if the building being owned, operated, and paid for by the county would not qualify it as part of the county complex. Robin Green stated that it would not because it is still outside the corporate limits of Bentonville, which is the county seat.

JP Wolf stated that she still has some worries about the JDC being located on the third floor, and despite Jim Ecker's assurances about the construction of the floors and ceiling, she will need more convincing. She said the \$14,500 feasibility study is a much cheaper way to go than anything else that has been presented to them, and without it, they have nowhere to go. She added that Hight-Jackson has worked with the county for years, and she believes they are the best choice because they know the area and the county's needs. She said the issue of the Juvenile Court being there is a major question, and asked if there has been an Attorney General opinion issued on it. County Attorney Robin Green stated that it has been referenced, but either way it came down, her opinion would not change without a decision from the Arkansas Supreme Court or action by the legislature.

JP Hubbard stated that when the discussion first started it seemed to be a priority to keep the JDC and juvenile court together, so with this question about the court and the County Attorney saying we cannot do it, it seems like they should check on that some more before they throw money out there for a feasibility study. He said he is willing to take the County Attorney's advice, and if they cannot have the court there, then maybe they should not put the JDC there, and it seems like they are getting more and more red flags on the JDC, like the third floor problems and now trying to contest the state right off the get-go.

JP Summers stated that the entire project hinges on how much it will cost to do the JDC, and they have to know that cost before they make any decisions, because if it is \$12 million, then they cannot go one step farther because they do not have the reserves or the ability to fund a 5-year loan. He said it is still worth \$14,500 to make sure it can work as a JDC, because that is our first priority. JP Hubbard stated that may they find out it only costs \$3 million but they cannot put the courtroom there, and in the beginning it sounded like the court and JDC had to be together, and now they are saying that it's OK for them to be separate.

JP Schindler stated they cannot take one step further without the information from the feasibility study, so he will be voting for the expenditure. He said with all due respect to the County Attorney, he would like to formally request an opinion from the Attorney General. He said his interpretation is that the County Attorney did not say that is was not possible to put the juvenile court in Rogers, she said there are questions, and in 15 years the Supreme Court might say we should not have done it, but that might never happen.

County Attorney Robin Green stated that she had no objection to two or twenty legal opinions, but she is standing behind her opinion. She stated that she also needs to point out that if they construct a courtroom with taxpayer funds and it is determined that it was not legal to do so, then Benton County is exposed to an illegal exaction taxpayer lawsuit.

JP Wolf asked Judge Finch how much contact he has with the juveniles after they leave his courtroom. Judge Finch stated that there is none unless they come up for review to determine if they should remain in the JDC, or if there is a review for another placement, or a review to determine if there has been a change of attitude. He said that he does need access to the people in the JDC. JP Wolf stated that although she would prefer not to, adult inmates are transported to court, and they can also transport juveniles. She said they have talked about the two being together, and that is the ideal situation, but it is not the only answer to the JDC problem. She said she would also like a second legal opinion.

JP Glass stated that they should request ownership of any plans, because when he worked for Wal-Mart they hired many people, but Wal-Mart owned the plans. He said it is not uncommon, and if Wal-Mart can do it, the government should certainly be able to do it, especially for something as specialized as a JDC, because they are not going to sell them for people to go

around building JDCs. JP Glass stated that he would also like to see a legal opinion regarding some of the fees that theoretically are not a part of the bidding process, because a 6% to 12% fee of a \$15 million to \$20 million project, that is real money, and somewhere along the line he would like to know that they are not required to bid it. He said that if the feasibility determines that they want to move forward, he would like to know exactly what has to be included in a bid package and what is required by law. He said that he agreed with Justices Wolf and Schindler that they need some type of feasibility study to provide them with a detailed analysis, and he will be voting in favor of it.

JP Winscott stated that he has a hard time paying for something that they do not own. Jim Ecker stated that he simply did not know the answer to the question—that he had not asked it. JP Winscott stated that when they write the purchase order, they should make it clear that they are authorizing this \$15,000 because they own it, they bought it, they paid for it; they are not leasing it; they are not renting it, they own it, and then he can vote for it. Summers asked Jim Ecker to find who will own the study, and if we do not, then find out under what circumstances we would be able to own it. Jim Ecker stated that he would definitely do that.

Motion passed by unanimous show of hands vote.

#### **OTHER BUSINESS:**

JP Summers stated that the budget process is a very important part of establishing Benton County's \$40 million budget, and he wants everyone to understand how much work the staff will put into it over the next 3 months, and also to encourage all JPs to ask the Comptroller if they have questions about a particular department. Comptroller Richard McComas stated that everyone has received a calendar which outlines all of the steps that the budget will go through before coming to the Quorum Court for approval. He said that all of the departments received their budget packets at the end of July, requests have been submitted, and he will be meeting with Elected Officials and Department Heads from now through September 28 to make adjustments. He said that October 1-12, he and Treasurer Deanna Ratcliffe will determine revenue projections, and the Finance Committee will be start meeting weekly beginning October 2, and he encouraged all JPs to attend as many of those budget meetings as possible. He said if changes are made, past practice has been to allow the Elected Official or Department Head to discuss the changes with the committee. He said that after reviewing the budget with the entire Committee of Thirteen in November, the Quorum Court will levy the millage at the last meeting in November. JP Summers stated that they will make decisions regarding possible pay increases, additional personnel, and capital expenditures in late October and early November. JP Moore asked to see the original submitted budget requests and the adjustments that were made before being brought to the Finance Committee. Richard McComas stated he would be happy to meet with JP Moore, or anyone who has questions. Richard McComas stated that the process has worked well over the past few years due to the degree of trust that has been reached between his office and the Quorum Court, and between the Elected Officials and his department, and that is largely due to the courtesy that the Quorum Court has extended to the Elected Officials and vice versa.

JP Winscott requested a special Committee of Thirteen meeting to discuss the long range plan and the information that Jim Ecker is gathering, and everything else associated with the decision making process that they have to go through. He said it is an important enough issue that they should have one or two extra meetings to bring them up to date so that when they get down to the

wire and have to make a decision, they all have an in-depth background of how they got there and what the situation is. He suggested starting the process in two or three weeks for the purposes of information transfer and communication. JP Summers suggested waiting a couple of weeks to schedule the meeting, in order to make sure that all of the information is ready. JP Winscott stated that he does not expect to have all of the information available at the first meeting, but they should be able to have time to absorb it and think about it as it is made available. JP Moore stated that there may be concern about such a meeting treading on the prerogatives of the Long Range Planning/Properties & Equipment Committee, and his answer to that is that this is probably one of the most important decisions that any of them will make, and it needs to be made with all thirteen of them sitting in the same place at the same time.

**ANNOUNCEMENTS:**

JP Summers announced that the Quorum Court will meet on September 27, 2007 at 5:00 p.m., the Finance Committee will meet on October 2, 2007 at 2:30 p.m., and the Committee of Thirteen will hold a special meeting to discuss the St. Mary's hospital building on October 4, 2007 at 6:00 p.m.

JP Harrison stated that Deputy Clerk Mike Carney of the County Clerk's Rogers Branch Office has extended an invitation to the entire Quorum Court to come and see all of the information available in the new Archives Department.

JP Moore announced that the Long Range Planning/Properties and Equipment Committee will meet on Tuesday, September 18, 2007 at 5:30 p.m.

JP Wolf requested a 5 minute recess.

Committee back in session.

**PUBLIC COMMENTS:**

Sue Elverston stated that they should keep in mind the everyday operating costs of the St. Mary's Hospital building, such as heat and air, etc...

After motion and second the meeting was adjourned at 7:15 p.m.