

May 24, 2006

ENVIRONMENTAL COMMITTEE REPORT

An Environmental Committee meeting was held on Wednesday, May 24, 2006 at 5:00 P.M. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas

Committee Members Present: Adams, Moore, Schindler, Sheridan, Tharp, Wozniak

Others Present: County Attorney Ed Gartin, Richard McComas, Travis Harp, Jim Ecker

Media: Jennifer Turner, Daily Record; Joe Askins, Morning News

JP Bob Tharp called the meeting to order at 5:00 p.m.

PUBLIC COMMENTS:

None

MINUTES:

JP Adams made motion to approve the minutes of the March 21, 2006 meeting as distributed, seconded by JP Moore. Motion passed by voice vote.

OLD BUSINESS:

1. Update – Proposed Nuisance Ordinance

JP Tharp distributed three drafts of the proposed nuisance ordinance, which is now being called the Environmental Hazard ordinance, and asked the committee members to study them before the June Environmental Committee meeting.

2. Update – Land Sale Septic Tank Inspection

JP Bob Tharp stated that they would be discussing three drafts of a proposed ordinance dealing with inspection of septic tanks at the point of a property sale. County Attorney Ed Gartin explained differences in the three drafts, such as the addition of definitions of terms in the third version. The committee discussed the reference to phosphorous levels, and unanimously agreed to remove it since the Arkansas Department of Health does not define them with regards to septic tanks. JP Moore asked Environmental Services Director Jim Ecker if Arkansas Health Department representatives have assured him that they can handle the increase in the number of inspections without delaying real estate transactions. Jim Ecker stated that the Health Department has told him that they are doing an adequate job in Washington County, and they feel that this is a mechanism that will assist them in catching problem systems early, before a complaint has to be filed. JP Moore asked what the

inspection would cost. Jim Ecker stated that a Designated Representative will perform a perk test on undeveloped land, but he is not sure what it costs. JP Moore asked what an inspection of an existing structure would cost. Jim Ecker stated that he thinks it costs between \$200 and \$300. He said if the home has been empty for a period of time, it may not be apparent that the system has problems, so the DR will note that the home is empty. JP Moore stated that he is concerned that they actually address the problem, and not pass this as a feel-good measure. He asked Jim Ecker if he thought it would actually catch some failed systems. Jim Ecker stated that it would not catch all of them, but it would definitely catch some. JP Moore asked if Washington County officials felt that the ordinance had been successful for them. Jim Ecker stated that Shawn Shrum, his counterpart in Washington County, has told him that it is a good system, and provides another safeguard for homebuyers, and property owners. JP Adams asked who Designated Representatives are and who they work for. Jim Ecker explained that they receive certification from the Arkansas Department of Health, and work for the State of Arkansas. JP Adams expressed concern that those performing the inspections could also be the ones to perform maintenance and therefore profit from declaring a system to be failing. Jim Ecker stated that he was not aware of any DRs that also performed maintenance, but he could not be absolutely certain. JP Adams stated that he did not want to pass regulations without knowing what the real problem is, and asked if there was any real evidence of a threat to our environment from failed septic systems. Jim Ecker cited examples of illegal and failing septic systems that the Health Department uncovers on a regular basis. He said that his office receives calls weekly which they turn over to the Health Department, and this would provide a mechanism to catch some systems before they harm the environment. JP Adams stated that if they pass this, they will be charging approximately 60,000 people \$200 to \$300 in order to sell their homes or property, and he wanted to know the exact amount of damage that is being caused. Jim Ecker stated that he did not have an exact number, but that he is aware that there are problems on older lots, where a septic system has failed and there is not room to install a new one. He explained that there are alternative systems which are more expensive, and a buyer can end up with a \$6,000 to \$10,000 surprise after they purchase a home.

JP Tharp reminded the committee that they had initially considered a mandatory pumping ordinance, and had then decided to consider this land sale inspection ordinance which is modeled after one in effect in Washington County.

JP Schindler stated that he disagrees with Article 6, which states that the ordinance will not apply to estate, foreclosure, and tax sales, and would like to see it modified because those buyers deserve protection also, especially since these properties would tend to be less well maintained than others. JP Tharp asked if the inspection could be made part of the buyer's responsibility. County Attorney Ed Gartin explained that those types of sales are regulated by state laws and cannot be modified. JP Schindler stated that someone needs to help them think that through, and find a way to include estate and foreclosure sales. JP Moore asked if a representative from the Health Department could attend the next meeting to answer questions, as well as a Designated Representative.

JP Tharp stated that it appeared that Draft 2 is the one they will continue to work on. JP Wozniak stated that they have been discussing this for over a year, and when it comes before the committee next month they should make a concerted effort to make a decision, and either table it for good or forward it to the Committee of Thirteen. He said they are trying to find

holes in it where there are none and it is an ordinance that they know works somewhere else, and it is more than needed here.

JP Tharp stated that since the committee is not taking any action and there is not a motion on the table, he will give the public an opportunity at this time to speak to them concerning this issue.

Robert Kossieck stated that they have addressed the articles which concern him most, particularly that some sales are exempt from inspection. He also asked if it would be legal under the Civil Rights Act, because it would restrict the sale of property. He said he believed they should give the buyer the option to assume responsibility for accepting the septic system without an inspection.

Bill Millager stated that he was in agreement with Mr. Kossieck, but is also concerned with the paragraphs which state that the purpose of the ordinance is to protect the surrounding property owners and groundwater, and a perk test does not accomplish that. He also stated that they are opening a Pandora's Box. JP Tharp asked if Mr. Millager had a suggestion on how to re-write the first paragraph. Bill Millager stated that he did not at this time, but would work on one and get it to the committee in a few days.

Frank Winscott described septic system requirements from other states, and said that these would not fit on some smaller lots in the area. He asked what would happen if it was determined that a system had failed and another one would not fit on the lot. He said that a Health Department representative should definitely be at the next meeting to answer those questions. JP Moore suggested that Mr. Winscott develop a list of questions for the Health Department and submit them to JP Tharp before the next meeting.

Warren Phillips asked if the county would condemn the property if the lot was too small for a septic system. Jim Ecker stated that the Health Department will not approve a septic system for a lot that is too small. He added that this ordinance does not answer all of the questions out there, but it will give the Health Department the opportunity to look at every piece of property that is sold in order to help insure that our groundwater remains safe.

JP Moore asked Jim Ecker how older homes which were built before current regulations took effect would be affected if their systems failed. Jim Ecker stated that there are alternative systems, they are just more expensive. JP Moore said he would ask the Health Department what other systems are available. Warren Phillips asked if the county would be liable for paying for the property if it was condemned, since state law requires that the property owner be reimbursed if the county restricts use of their property, and if the property cannot be sold, then they would be restricting its use. JP Moore said it would fall under the state's responsibility since the Health Department is a state agency.

Don Day stated that an existing system should not be deemed a failure just because it does not meet current code if there are no visible signs of failure. JP Moore stated that they are not going to be doing invasive inspections, only looking for obvious problems out on the ground. Jim Ecker stated that no one is required to bring a system up to existing code unless the system has obviously failed. JP Adams again questioned whether they had just cause to go into regulating.

Bob Kossieck stated that he had not heard anyone mention an education program, and he would bet that the 50,000 people who own septic tanks do not know how to properly maintain them. JP Tharp stated that perhaps they could add some sort of information into the tax bill mailings.

Mark Curtis stated that Jim Ecker has done an excellent job of promoting educational programs in the county, such as the one hosted by the Prairie Creek Property Owner's Association. He stated that the proposed ordinance was not an example of regulation for the sake of regulation, but was an attempt to protect our drinking water and it is incumbent upon the Justices of the Peace to do so.

Patsy Angel said that if a septic system is inspected and approved when it is installed, then it should still be working properly. JP Moore stated that Bob Kossieck had correctly pointed out that a lot of people who have septic tanks do not know how to properly maintain them, and it is easy to ruin a perfectly good septic tank in a short time. Patsy Angel replied that she has been on a septic system for 25 years and has never had a problem, but she practices the prescribed maintenance.

JP Tharp stated that he appreciated the public comments and would try to continue the format that they used this evening. He said that once a motion is made and seconded, and once the committee has concluded its debate they will open up to public comment, then decide if there is a need for further discussion by the committee. He said they will continue to receive public comment prior to business in order to comply with the statutes. He also added that he had followed up on comments regarding how Washington County's Quorum Court conducts public comments, and learned that while they do allow more informal comments during committee meetings, during Quorum Court meetings the County Judge opens up the floor for public comments only after an ordinance has been read for the third and final time, a motion has been made and seconded, and the Court has completed its discussion. The Quorum Court then decides whether or not they want to resume debate.

OTHER BUSINESS:

JP Moore announced that the Long Range Planning Committee will meet immediately following the Environmental Committee and listed the items that will be on the agenda.

JP Tharp announced that the next Environmental Committee meeting will be June 20, 2006 at 5:00 p.m.

After motion and second the meeting was adjourned at 5:59 p.m.