

June 20, 2006

## ENVIRONMENTAL COMMITTEE REPORT

An Environmental Committee meeting was held on June 20, 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, Tharp, Wozniak

Others Present: County Attorney Ed Gartin, Jim Ecker, Andrea Medlock

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

JP Jim Wozniak called the meeting to order at 5:00 p.m., and stated that a 30-minute period of public comments will be allowed at the beginning of the meeting and again following the agenda items. He added that the meeting will not last more than two hours.

### **MINUTES:**

JP Tharp made motion to approve the minutes of the May 24, 2006 meeting as distributed, seconded by JP Adams. Motion passed by voice vote.

### **PUBLIC COMMENTS:**

Bill Millager read a statement in which he stated that the tools in the proposed septic tank draft are not powerful enough to accomplish the goal of finding failing septic systems, and that there had been no interaction with the Health Department in drafting the ordinance.

Roger Norbeck stated that he believes in property rights, but not at the expense of other issues such as health and the water quality of nearby wells, lakes, streams, and rivers. He said that pollution can travel a great distance, and cited a study which indicated that every stream flowing from Bentonville to Bella Vista contained between 2 and 30 times the maximum allowed amounts of e coli bacteria. He said that property values will plummet if lakes become polluted, and that remediation is expensive.

Sandy Norbeck stated that she was reading a letter from Wally Sheldon in support of the proposed septic tank land sale ordinance, in which he stated that there is currently no system in place to identify failing septic systems until sewage surfaces on the ground.

Bill Shelton stated that the proposed draft ordinance seemed to be a reasonable solution to deteriorating septic systems, and that several of his neighbors had experienced problems because when Cooper Communities put in the systems several years ago, they used metal tanks which are now rotting. He said that the cost of an inspection would be a minor factor in negotiating a property sale.

Doug Farmer stated that he thought the draft ordinance was far too weak, but it was better than nothing and they must start somewhere in getting control of the 30,000 septic systems in Benton County. He urged the committee to vote for the ordinance.

Warren Phillips stated that he had spoken with John Wham, of the Arkansas Department of Health, who seemed to think that the Health Department was having no problem in handling the septic systems, and that he had only had to prosecute one person for refusing to take care of a failed system. He said he thought the draft ordinance was useless, because a person who knew an inspection was coming could simply stop using the system for two to three weeks in order to hide the evidence of a failed system.

Leo Lynch stated that he has not seen any evidence that septic tanks are polluting Beaver Lake, and that the probability that a septic tank will fail at the time of a sale is extremely remote. He said failed systems are noticed by everyone in the neighborhood, and residents will not want to live with it. He said that he is not concerned with what type ordinance they have in Washington County because he does not live there, and the rate of growth here is much greater. He said this is one more tax being imposed on the citizens of rural Benton County and not on the residents of the cities, and asked the committee to please consider it seriously before they pass this.

Larry Kelly stated that as a realtor he has bought and sold many properties with septic systems, and has never had any problems, and questioned the need for this ordinance. He said he does not think Benton County has a problem, and that it was brought to the attention of the Court due to problems in Bella Vista caused by metal tanks. He said he is also troubled by vague language in the draft which refers to "a piece of property" or "a piece of land" which must perk in "some location", and said that it was ridiculous.

Bob Kossieck stated that John Wham had stated at a meeting of the Northwest Arkansas Property Owners Association that less than 1% of the septic tanks in the county have problems, and most of the problems occur in Bella Vista and other areas where homes were constructed between 1966 and 1982 and steel septic tanks were used. He said since it is a Bella Vista problem, then the Bella Vista P.O.A. should solve it. He said the ordinance will only require a surface check, which will not show that a system is about to fail, and that lenders require certified inspections when a home is purchased, and those inspections include septic systems.

Don Day stated that the actual health hazards from failed septic tanks could be dealt with in an Environmental Hazard ordinance, and a separate septic system ordinance was unnecessary.

Chris Glass stated that there was no need to pass laws when private actions are already in place, and that any prudent buyer will have a home inspection done by a certified home inspector. He said that a person purchasing land for cattle to graze on should not have to pay for a perk test.

Debbie Hobbs stated that she had attended the meeting with John Wham, and had learned that he felt that the Health Department was staying on top of the problem, but was concerned with septic systems being installed on land smaller than one quarter of an acre. She suggested looking at an ordinance which would consider how much space is required for a septic tank before one is installed. She also suggested the possibility of training the County Assessors to spot problems since they are already traveling throughout the county and looking at property, and they could then alert the Environmental Officer.

Frank Winscott stated that he had learned from John Wham that 1% of the septic tanks in Benton County have problems, and 99% of those are corrected by the owner, and that a walk-around inspection will not find a failing metal tank 6 feet under ground. He said they should not pass bad legislation when the Health Department says there is not a problem.

## **OLD BUSINESS:**

### 1. County Septic Tank Ordinance Draft

JP Wozniak stated that the proposed draft on the table tonight is the version that contains definitions, and asked Environmental Services Director Jim Ecker to address the committee. Jim Ecker stated that the Health Department is complaint driven, so they only know of problems after the system has failed and they are reported. He said he has discovered that the Benton County Health Department does not have a clerk to record inspections as the Washington County department does, and there is no enforcement mechanism in the ordinance as it is written now. He said he did not think it would protect the people they were intending to help. JP Schindler asked if the problem would be solved if the County Health Department had one more state employee. Jim Ecker stated that there is still no enforcement mechanism, because the maximum fine for selling property without the inspection is \$500, and that someone might consider that the cost of doing business when they stand to make a profit much greater than \$500.

JP Wozniak asked for a motion to dispense with the proposed ordinance. There being none, the proposed ordinance died for lack of interest. JP Wozniak asked the committee if they would like to direct Jim Ecker to develop another ordinance which would include an enforcement mechanism and address some of the concerns brought up tonight. JP Adams stated that Jim Ecker could develop one on his own and did not need a mandate from the committee because it was in his job description to develop ways of handling problems. JP Schindler stated that he disagreed, because there are approximately 28,000 to 30,000 people in Bella Vista who are in dire need of some protection, and the costs are constantly increasing. He said that one true statement is that septic tanks will fail, and Bella Vista is full of rental properties that have not been maintained. JP Schindler made motion to send the ordinance back to Jim Ecker for further preparation. Motion died for lack of second.

JP Tharp directed a comment at the people in the audience from Bella Vista, saying that as a Justice of the Peace, he is aware that they have problems in Bella Vista, but they should go to Cooper Communities for a solution. He invited them to stay for discussion of the next draft ordinance, because it might provide part of the solution they are seeking.

### 2. Proposed Environmental Hazard Ordinance Draft

JP Wozniak stated that they needed to discuss which of the three drafts they needed to continue working on. JP Tharp asked if the appeal board appointed by the County Judge would consist of Justices of the Peace. JP Adams stated that two of the three versions state "Quorum Court members" but the model ordinance does not. JP Moore stated that he did not see much difference between drafts #1 and #2 other than the reference to "environmental hazard" instead of "nuisance". JP Wozniak stated that he had received several phone calls requesting that old junk cars be included as a nuisance. JP Moore stated that there is a screening ordinance that applies to junkyards, but it does not involve the taking of property. JP Sampier stated that junk cars are a common complaint, and if they are going to be addressing "unsightly, unsanitary" conditions, then junk cars should definitely be included. JP Sheridan stated that he frequently receives complaints about abandoned appliances in addition to ones about junk cars, and the accumulation of both lead to a decrease in property values. He said he would like to see them included in any nuisance ordinance. JP Moore asked if they were to include cars in the nuisance abatement ordinance, at what point would it constitute a taking of property. County Attorney Ed Gartin stated that the taking of property usually refers to real estate, and none of the drafts say anything about taking property. He said they refer to situations that need to be rectified, but the

property would still belong to the owner. JP Moore asked if a grandfather clause would be required. Ed Gartin stated they could include one if they wanted to.

JP Sampier referred to "alternative system" in the section dealing with septic systems, and asked for clarification of what that referred to. Caroline Eastman of the Arkansas Department of Health was recognized and stated that they have a manual which lists systems that are acceptable in place of a septic system, and said that they might want to add that list to the ordinance.

JP Wozniak asked the committee if anyone had any thoughts on which version they should continue to work on. County Attorney Ed Gartin stated that the only difference in draft #1 and draft #2 was the term "environmental hazard" in place of "nuisance". He said that he questioned whether or not they would have problems proving something was an environmental hazard, and typical nuisance language included things that are stinky, smelly, unsightly, junky, and noisy and those things are not environmental hazards. He said for instance, a line of junk cars in a yard might not be a hazard, but could be a public nuisance. JP Moore asked where the model ordinance came from. Ed Gartin stated that it came from the University of Arkansas law library. JP Moore asked if it had been court tested. Ed Gartin stated that he could not say that for sure, but it was based upon certain case law that has been developed over a number of years.

JP Wolf asked if any of the things listed in the draft are already covered by other ordinances and just not being enforced. Ed Gartin stated that he was not aware of any. He also stated that every citizen has a right of action against another individual, but since this is a public nuisance ordinance, the county would take action instead of an individual. JP Sampier stated that he has had many experiences where the neighbor calls with a complaint, but does not want their name mentioned in connection with any action. He said that although he agrees with the idea of letting the courts handle in through the private action of an individual, the reality is that most of the problems will not be taken care of that way. He said they should decide if there is value in the county protecting a public interest that goes beyond just a few individual homes.

JP Moore made motion to recommend that the committee continue to move forward with the model ordinance, seconded by JP Schindler. JP Moore stated that he felt the language is less ambiguous, contains a better appeal process, and provides exemptions for low income and elderly citizens. JP Tharp stated that the proposed ordinance had come about due to consistent complaints from some constituents that he believed were in JP Sheridan's district, and the inability of the county to do anything to help them legally, but now he is hearing that help was already there in the form of legal action, so he wondered if they even needed the ordinance. JP Sheridan explained how the enabling legislation was passed in the last legislative session which gave the county some of the same authority that cities already had. He said that there are other means of getting something corrected, but most people cannot afford attorneys and legal fees. JP Adams stated that the discussion was not germane to the motion. JP Wozniak stated that JP Sheridan could continue. JP Sheridan stated that the people who had complained were actually from Hickory Creek which was in JP Adams' district, and had been coming to the county for about 3 years looking for relief. JP Wozniak asked County Attorney Ed Gartin if the model ordinance would cover junk cars, or if they would need to add that language. Ed Gartin stated that the Arkansas Supreme Court has stated that a public nuisance differs from a private nuisance only in terms of degree, and if it is just a problem between two neighbors the county could, at its discretion, decide whether or not to get involved. He said it would be a different problem if it was something that affected an entire community. He said that he had developed the nuisance ordinance based on the model ordinance and language from the enabling legislation, but it has not been seen by the Environmental Services Department or the Building Inspector, and since

they have particular duties outlined in the ordinance they should review it before any action is taken. He said he could also add language making it clear that the appeal board would consist of three Quorum Court members appointed by the County Judge.

JP Wozniak stated that if anyone wished to comment on the nuisance ordinance before the committee voted, they could do so at this time.

A member of the Beaver Shores Property Owner's Association Board of Directors distributed photos of a yard full of junk cars that is in the neighborhood, and encouraged the committee to include junk cars in the proposed nuisance ordinance. She cited examples of health hazards that could be caused by the cars such as mosquitoes, wasps, and hornets, and asked that no grandfather clause be added because these cars have not been moved for years.

Bob Kossieck stated that Ken Zey, a member of the Northwest Arkansas Property Owners Association, has recommended against combining a nuisance ordinance with an environmental hazard ordinance, and suggested taking the time to write a nuisance ordinance that can be effective in cleaning up the worst messes while still allowing for personal expression. He also said the property owners need to be allowed time to clean up the problem, and that the nuisances should be defined and not left open to interpretation. He suggested education programs and incentives such as places for people to dispose of items that commonly cause problems.

Roger Norbeck stated that he is sure that the committee can come up with some ideas that will make a septic tank ordinance work, and that what the requirements of the septic tank land sale ordinance were much less than what the experts recommend for septic tank inspection. He said that he has also spoken with John Wham of the Arkansas Department of Health, and Mr. Wham told him that he has his own septic tank pumped out every three years, but does not want to interfere with the property rights of other people by telling them that they have to pump theirs. He said that home inspectors are not licensed or qualified to inspect septic systems, so that suggestion is totally misleading. He added that the problem is that even prudent home buyers do not know everything about everything, and do not realize there is a problem until it is very expensive to fix. He encouraged the committee to keep trying to get something passed.

Theresa Pockrus stated she recognizes that there has been growth in Benton County, but they have to be careful how they step on the peoples' rights as citizens. She listed several concerns she has with the proposed ordinance's lack of definitions, and questioned whether someone could be cited for allowing their grass to grow. She said there are problems with the notification process, and that anything could be defined as a nuisance.

Leslie Seawright of Beaver Shores stated that the Beaver Shores P.O.A. receives many complaints about junk cars and septic systems, and said that she would like to quote a Supreme Court Justice who stated about pornography, "I can't define it, but you know it when you see it", and said she felt the same way about public nuisances. She said that she did not believe the county attorney would allow the committee to pass something that would get them in trouble for telling someone how to mow their grass, and asked the committee to please help them clean up their neighborhood.

Velma Traiger stated that the developers of Beaver Shores did not put any protections in place when developing the property, and they have helped neighbors clean up their property when they were allowed to. She said they have also spent their own money going to court to keep the road to the boat launch open, and they need help with a few problem areas.

Larry Kelly stated that he hated nuisance ordinances of any kind because they are extremely vague and subjective. He said he would rather have his day in court before a judge or jury, and if he wants to put 50 cars on his property it is his business. He said if he chooses to junk up his

property, he should be able to do so because he is out in the county, and he is there because he wants the freedom to do what he wants to with his property. He said if others do not like it they should move to the city. He said he dislikes any nuisance ordinance that does not contain very specific information and guidelines for enforcement and determination of what is a nuisance. He said he does not want some director or kangaroo court telling him if his property is acceptable. Justin Lipson stated that he had talked with the property owner who has junk cars in his yard, and was told that if he did not like it he should move. He said that they did move to the neighborhood knowing there were few restrictions, but it is time for the county to help them out with a few problems that they have.

Don Day stated that they should classify real environmental hazards and separate them from nuisances. He said the proposed ordinance did not contain any referral to the Health Department for septic problems, only to the Environmental Office. He stated that the proposed ordinance should go to the Planning Board.

Chris Glass stated that the septic issue should be separated from the nuisance issue, and the county should determine whether a nuisance poses a public health or safety issue before becoming involved. He said they should be very careful in how it is drafted, and it will have to be very specific in order to have something that will not be easily attacked and defeated in court. Johnny Pockrus stated that he only attends meetings when he feels they are trying to limit his personal freedom, and suggested requiring 100 feet of lateral line to solve the septic tank problems instead of requiring inspections of something that cannot be inspected.

JP Wozniak asked the committee if there was any further discussion, or if they were ready to vote to send it to County Attorney Ed Gartin to add language covering junk cars, and then on to the Planning Board. JP Moore stated that he would like to amend his original motion to have County Attorney Ed Gartin add language addressing junk cars, and then send it to the Planning Board. JP Schindler asked JP Moore if he could also add junk appliances to the motion. JP Moore agreed. JP Sampier seconded. JP Sheridan stated that the other departments mentioned may ask for some changes, so the committee should get the draft ordinance again before it is sent to the Planning Board. JP Moore addressed the audience, and said that this is the beginning of a long process, and told them that the final version will probably bear no resemblance to the one they are looking at today. He said there a lot of stakeholders who will have valuable input. JP Wozniak asked for a show of hands to move the ordinance forward. Motion passed, 4 yeas, 1 against (JP Adams).

#### **OTHER BUSINESS:**

None

#### **ANNOUNCEMENTS:**

JP Wozniak stated that the committee would not meet again until a draft is ready for them to look at.

After motion and second the meeting was adjourned at 6:39 p.m.