

October 18, 2005

## ENVIRONMENTAL COMMITTEE REPORT

An Environmental Committee meeting was held on Tuesday, October 18, 2005 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, Sampier

Planning Board Members Present: Adele Lucas, Bill Kneebone

Others Present: County Attorney Ed Gartin, Richard McComas, Travis Harp, Planning Manager Michelle Crain, Tom Wilkerson, JP David Hill, JP Tim Summers

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

JP Bob Tharp called the meeting to order at 5:00 p.m. He stated that the purpose of the meeting was to discuss the proposed Beaver Lake Watershed Ordinance in depth, so they would skip public comments and allow Tom Wilkerson to make his presentation, then recognize anyone who wished to speak later in the meeting.

### **PUBLIC COMMENTS:**

### **OLD BUSINESS:**

#### **1. Discussion -- Proposed Beaver Lake Watershed Protection Ordinance**

Tom Wilkerson introduced Bob Morgan and Amy Wilson from the Beaver Water District, and Jim Von Tungeln and Hugh Ernest who are serving as consultants.

He stated that the document in its present form is their best effort to represent a consensus of a cross section of Benton County, and that they had made several revisions to the ordinance with input from the Water Conservation District, Justices of the Peace, the Benton County Planning Department, the Zoning Committee, and the Corp of Engineers. He also stated that from this point forward, any changes made will be at the discretion of the Quorum Court.

JP Tharp introduced the members of the Planning Board. He addressed the Environmental Committee members, saying that he hoped they would send the Watershed Protection Ordinance to the Planning Board for a Public Hearing, and then to the Committee of Thirteen.

Tom Wilkerson introduced a power point presentation by stating that all of the data they were quoting regarding growth and population was obtained from the Northwest Arkansas Regional Planning Commission. He said that Benton County is projected to triple its 1990 population by the year 2025, with an increasing density moving toward Beaver Lake and nothing in place to protect the watershed.

Tom Wilkerson said there had been several questions regarding riparian buffers, and asked Bob Morgan to define it for the committee. Bob Morgan explained that it is a corridor of a set distance along a stream, as in this case, but in some cases may include specific vegetative zones of either native or managed vegetation further away from the stream. Tom Wilkerson stated that it serves to slow runoff into the lake, allowing sediment to settle.

Tom Wilkerson led the Committee through the proposed ordinance article by article.

JP Tharp asked if the Corp of Engineers had reviewed the ordinance and how they had responded. Tom Wilkerson stated that they had reviewed the ordinance, and were the ones who actually recommend using the take line to measure distance from the lake, but they have not taken an official position on the proposed ordinance. He added that the Corps had given them a lot of input, and he did not feel they would have done so if they had objected to the ordinance.

JP Moore asked what qualified a stream as a riparian buffer. Tom Wilkerson stated that it was every stream that appeared on the National Hydrology Dataset.

Hugh Ernest explained that the first paragraph of Article 6 was written so that future high-density developments could be addressed by creating a separate overlay district within a special use area.

Tom Wilkerson stated that the question of landscaping had been raised. He explained that it was addressed in the regulations, but that a person doing small landscaping in their yard would not be affected.

JP Tharp asked if the Planning Department currently had enough staff to handle the review of storm water pollution prevention plans mentioned in the second paragraph of Article 6. Michelle Crain stated that they did.

JP Tharp asked if lots smaller than one acre would retain their ability to receive a special use permit if ownership of the property changed. Tom Wilkerson stated that it would.

Tom Wilkerson went through the descriptions of the four special use areas listed in Article 6 -- A, B, C, and D.

JP Adams asked if mobile home parks would be allowed to replace existing mobile homes. Jim von Tungeln stated that would probably be allowed because that would fall under maintenance and the same type of use.

JP Summers asked Michelle Crain if the county currently has any prohibitions on septic tank use. Michelle Crain stated there were none.

JP Schindler expressed concern that 12 units per acre in Special Use Area B would result in too much impervious surface area, which would lead to too much runoff. Tom Wilkerson stated that they could address that by modifying the regulations after the ordinance is passed. Hugh Ernest stated that there are three pages in the Regulations that deal with Planned Unit Development and that there is plenty of time to strengthen them before the final reading of the Watershed Ordinance.

County Attorney Ed Gartin asked Tom Wilkerson to brief the committee on discussions that were held concerning input on possible economically viable uses of property located within riparian buffers. Tom Wilkerson stated that is was their understanding that the county could restrict the rights of property owners as long as some use for the land was available. County Attorney Ed Gartin stated that they were still researching this issue to identify some economically viable use of land that is located within a riparian buffer. He stated that this was one area of the ordinance that would be subject to change, because stating that there could be "no use" of the land might lead to legal problems. JP Adams asked for an example. Ed Gartin stated that he was not ready to comment, but that whenever you restrict development on parcels of land, you risk having to purchase it. He said that if an economically viable use for the parcels can be identified, then that risk is lowered substantially.

JP Moore left the meeting.

JP Adams asked if the fees mentioned in Article 9 are in addition to the fees being considered for building permits and inspections. Michelle Crain stated that the one-time \$500 administrative fee is additional, but the \$.25-per-square-foot fee is not.

JP Hill asked if the Certificate of Compliance mentioned in Article 9 also included the Environmental Impact Study. Tom Wilkerson stated that it did not.

JP Summers asked Michelle Crain where the Site Plan in Section 4 of Article 9 would be obtained. Michelle Crain said that a Registered Land Surveyor or engineer could provide it.

JP Summers asked if it was possible to obtain the Environmental Assessment in Article 7 by simply hiring someone who would say what they were paid to say. Tom Wilkerson stated that the Planning Board has approval of consultants that are hired. JP Summers asked if the Planning Board had the technical expertise to determine if the information is correct, and if so, why was it necessary for a person to go out and hire someone to provide that information for them. Michelle Crain stated that they had the expertise, but that an engineer's stamp on a report made him accountable if there were any problems later.

JP Schindler noted Section 5 of Article 9 mentioned landowner assistance for the improvement of vegetative cover, and asked if that included financial assistance. Tom Wilkerson stated that it did not, that there were several government agencies that provided educational assistance.

Tom Wilkerson concluded the presentation. County Attorney Ed Gartin stated that any ordinance that regulates land use is required by State law to go before the Benton County Planning Board for a Public Hearing. He said that after the Planning Board makes its recommendations, the ordinance would come back to the Quorum Court for consideration. Bob Morgan stated that he would like to thank the staff of Assessor Shirley Sandlin and the rest of the excellent staff that Benton County is fortunate to have.

JP Summers asked what the potential cost liability was to Benton County, and stated that he would like to see a 4-County effort as opposed to Benton County acting alone, because he felt the water quality would benefit. He asked if cities were excluded from the ordinance.

Tom Wilkerson stated that the cities as defined by their city limits are excluded, but the planning limits of the cities are not necessarily excluded. JP Summers asked what percentage of Beaver Lake's shoreline was in Benton County. Bob Morgan stated that he did not know the percentage, but that the majority of the lake and its headwaters are in Benton County.

He said that Washington and Madison counties contain more of the watershed than Benton County, and that Carroll County contains the part of the watershed that is north of Clifty Creek. JP Summers asked if any progress had been made with the other counties.

Hugh Ernest stated that the Protect Agriculture and Rural Areas Committee has made a series of very strong recommendations to Washington County, which will be further reviewed over the next several months. He said that there is deep concern regarding the watersheds for both Beaver Lake and the Illinois River. He stated it was their hope that watershed protection could be adopted in phases, and that the region will move forward with action on the Illinois as phase two. He said that conversations with Madison and Carroll counties have just begun.

JP Summers asked Hugh Ernest if he thought that Washington County would consider the Beaver Lake issue.

County Attorney Ed Gartin stated that he had worked with the Assessor's office, the County's GIS staff, and Beaver Water District personnel in trying to assess potential county liability in regards to this ordinance. He stated that he believes that the law will require an economically viable alternative for the use of parcels in riparian buffer areas if all development is to be prohibited.

JP Tharp recognized Jim Gately of Rogers. Jim Gately stated that nothing was more serious in this area than protecting our watershed from pollution. He said he is concerned with the

contamination of wells, and there is nothing in the proposed ordinance to protect sinkholes or caves. Referring to the maps that were displayed, he said that the lines were all very nice, but that water does not follow artificial man-made lines, particularly in a karst area. He said he was concerned that economic potential was being placed ahead of the health and safety of the public, and if something is prohibited, then a variance should not be available.

Roger Norbeck stated that the proposed ordinance is not as strong as he would hope, but urged the committee to pass it, and to make it as strong as possible.

JP Adams made motion to forward the proposed Beaver Lake Watershed Protection Ordinance to the Benton County Planning Board for their consideration and a Public Hearing, and then on to the Committee of Thirteen, seconded by JP Sampier. JP Adams commented that it has been said that no government official ever passes a law that negatively affected them, but he wanted to point out that he lives in Special Use Areas 1, and he will be restricted from building on his property. He said that this ordinance, if passed, would be one of the greatest things that the Quorum Court has ever done, and he is very proud of it. JP Sampier encouraged those who supported the ordinance to attend the public hearings, because the people who are making the decisions need to know that the support is there. He added that those with special interests, along with many who do not understand the ordinance, will be there.

Motion passed by voice vote.

**ANNOUNCEMENTS:**

None

After motion and second the meeting was adjourned at 6:17 p.m.