

November 15, 2005

ENVIRONMENTAL COMMITTEE REPORT

An Environmental Committee meeting was held on Tuesday, November 15, 2005 at 3:30 P.M. in the QC Meeting Room, Third Floor, County Administration Building, 215 East Central, Bentonville

Committee Members Present: Moore, Sampier, Schindler, Tharp, Wozniak

Others Present: Jim Ecker, Roger Norbeck, JP Sheridan, Jim Ecker, Carey Gray

Media: Jennifer Turner—Daily Record; Joe Askins – Morning News

Chair Bob Tharp called the meeting to order at 3:30 p.m.

PUBLIC COMMENTS:

Roger Norbeck of Bella Vista invited the committee to attend the Bella Vista POA Environmental Committee meeting on November 23, 2005 at 10:00 a.m.

DISPOSITION OF MINUTES:

JP Sampier made motion to approve the minutes of the October 18, 2005 meeting as distributed, seconded by JP Moore. Motion passed by voice vote.

OLD BUSINESS:

1. Washington County Land Sale Septic Tank Inspection Ordinance

Environmental Services Director Jim Ecker stated that he had spoken with his counterpart in Washington County, Shawn Shrum, regarding the ordinance which requires a septic tank inspection by a Health Department Designated Representative whenever a piece of property changes ownership. Jim Ecker said he was told by Shawn Shrum that they catch approximately 10% to 20% of the failed or failing septic systems in Washington County. He also told Jim Ecker that many people move into the area who are not familiar with septic systems, and aren't even aware that one exists on their property. Jim Ecker stated that if the house is vacant at the time of the inspection, it is noted on the report and the buyer or seller may ask for a clause in the contract which guarantees the system for a certain period of time. JP Sampier stated that all real estate contracts have that information in them. Jim Ecker stated that the problem is many people don't take the time to read every piece of paper at a closing. The committee heard from Carey Gray of the Arkansas Department of Health regarding the qualifications of a designated representative, and how they determine their fees. JP Sampier asked how someone selling a house would locate a designated representative. Carey Gray stated that the counties usually kept a list, but it is a state license, so a DR can work anywhere in the state. JP Sampier asked what kind of experience Washington County had had with the ordinance since its passage. Carey Gray said Washington County officials had reported very few complaints, and that one of the advantages was that many problems were caught on the front end. JP Moore stated that Washington County Judge Jerry Hutton was strongly in favor of keeping the ordinance in his county. JP Schindler stated that his only concern about this ordinance is that a septic system may be leaking for 20 years before a problem is discovered, and that could lead to serious health problems. Jim Ecker stated that he would not be in favor of this ordinance on its own, but he thought it would be effective when paired with the proposed nuisance ordinance. JP Schindler suggested taking the reference to septic tanks from the proposed nuisance ordinance, and adding it to the land sale septic tank inspection ordinance. Jim Ecker stated that

would not be necessary if both ordinances were passed. JP Sampier stated that he would need to see in-depth information from the Arkansas Department of Health, the Corps of Engineers, and the Beaver Water District before he would be willing to go any further than the restrictions imposed by these two ordinances. JP Moore made motion to commission a draft ordinance to be prepared for the next Environmental Committee meeting, seconded by JP Sampier. Motion passed by unanimous voice vote.

NEW BUSINESS:

1. Draft – Proposed Nuisance Ordinance

County Attorney Ed Gartin stated that he had combined existing enabling legislation and parts of the septic tank ordinance with the goal being to set up a mechanism to identify certain nuisances in the county to the appropriate officials. JP Sampier asked if there was anyway to address an imminent threat in less than 30 days. Ed Gartin stated that there was no language in the state regulations that addressed emergencies, but he thought that the Arkansas Department of Health would be brought in to handle an emergency. JP Sampier stated that he supported the proposed nuisance ordinance, and that those in unincorporated areas might find it burdensome until they have a problem next door to them. He said that those charged with enforcing the ordinance would have to do so with common sense, and be careful not to abuse it. He said he has seen problems in other organizations where the authority has been over bearing, but is confident that Jim Ecker can operate the department fairly. JP Tharp asked if a Public Hearing would be required. County Attorney Ed Gartin stated that the safe approach would be to ask the Planning Board to consider it and then decide if it needed a public hearing, although there is nothing in State law which requires it. He added that it is land use regulation at its lowest level. JP Sampier made motion that the proposed nuisance ordinance go to the Planning Board, who would then forward it to the Committee of Thirteen. JP Schindler asked if the ordinance would regulate noise. The definition was read, which included “excessive or noxious noise”. JP Schindler asked if that included barking dogs. Ed Gartin stated that he had more research to do, but since the ordinance’s purpose was to address unsightly and unsanitary conditions, he was not sure he would leave in the reference to noise. JP Sampier stated that typically, the nuisances they are discussing are evident day after day. JP Schindler urged Ed Gartin to keep the reference to noise in the ordinance.

JP Tharp recognized Jim Ecker, who stated that he was slightly concerned with allowing the Building Inspectors, Planning Department, and Fire Marshal to write up infractions. He said that they could not make a legal case against an offender unless the Sheriff’s Department or an Environmental Officer wrote the citation. Ed Gartin stated that was a valid observation, and would be in favor of removing them. JP Sampier made motion to delete the Planning Officers, Building Inspectors, and the Fire Marshals from the language of the ordinance, seconded by JP Wozniak. Cary Gray stated that this ordinance is very similar to some regulations that the Health Department has had in place for quite some time which have to do with general sanitation. He said that Act 96 of 1913 established the health department and defined public health nuisances, which are now under the jurisdiction of the Board of Health. JP Sampier stated that coordinating between the State agencies and the county should not be a problem, and Carey Gray agreed. Motion to amend the previous motion passed by unanimous voice vote. Motion to forward the proposed ordinance to the Planning Board passed by unanimous voice vote. County Attorney Ed Gartin stated that he wanted the opportunity to make some minor changes to the ordinance before it goes forward.

JP Tharp announced that the Planning Board would be meeting on Thursday, November 17, 2005 at 5:30 p.m. to review the Beaver Lake Watershed Protection Ordinance.

After motion and second the meeting was adjourned at 4:22 p.m.