

# Committee of Thirteen Report

October 09, 2007

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, October 9, 2007 at 6:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

11 JPs Present: Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Moore, Stephenson, Summers, Winscott, Wolf  
2 Absent: Schindler, Wozniak  
Others Present: County Judge Gary Black, Sheriff Keith Ferguson, Coroner Wesley Lewis, County Attorney Robin Green, Travis Harp, Richard McComas, Kathy Bannister, Dennis Cottrell, Jeff Hawkins, Chief Don Townsend, Major Gene Drake, Captain Hunter Petray

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

Chair Tim Summers called the meeting to order.

## **PUBLIC COMMENTS:**

County Judge Gary Black apologized to Comptroller Richard McComas for a remark made earlier at the Finance Committee meeting.

## **NEW BUSINESS:**

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

JP Brown made motion to forward the proposed ordinance to the October 25, 2007 Quorum Court agenda, seconded by JP Stephenson. He said that in the absence of Environmental Committee Chair JP Wozniak, he felt it was better to go ahead and bring this to the Committee of Thirteen, rather than hold another Environmental Committee meeting, since there were not that many changes being made.

Planning Director Ashley Pope went through the ordinance, explaining the changes and additional language that FEMA is requiring. There was discussion regarding the definition of “substantial improvement”, and the possibility of extending the deadline. Motion passed by unanimous show of hands vote.

### **2. Appropriation Ordinance Request: Engineering Contract in Conjunction With War Eagle Bridge Renovation Grant**

JP Moore made motion to forward the proposed ordinance to the October 25, 2007 Quorum Court agenda, seconded by JP Stephenson. Comptroller Richard McComas was recognized and explained the grant that the county is receiving to help with the cost of rehabilitating the War

Eagle Bridge, and stated that they are requesting an appropriation of \$221,000 for the engineering contract. JP Summers stated that the option that was chosen by the previous Quorum Court was less expensive than building a new bridge downstream, and the area residents were not in favor of that. Motion passed, 10 votes in favor, 1 opposed (Stephenson).

**3. Appropriation Ordinance Request: Wal-Mart Donation for Emergency Services**

JP Hobbs made motion to forward the proposed ordinance to the October 25, 2007 Quorum Court agenda, seconded by JP Hill. Motion passed by unanimous show of hands vote.

**4. Appropriation Ordinance Request: Northwest Arkansas Sex Offender and Violent Crime Task Force Grant From the Edward Byrne Memorial Discretionary Grants Program – Sheriff’s Department**

Richard McComas stated that the Sheriff’s Department is combining efforts with 4 other counties and 3 cities to form a task force which will be funded by grant funds, and this ordinance is to appropriate the money and set up the grant fund. JP Hobbs made motion to forward the proposed ordinance to the October 25, 2007 Quorum Court agenda, seconded by JP Wolf. Motion passed by unanimous show of hands vote.

**5. Resolution Request: Accepting Legislative Audit Report**

JP Summers stated that all of the Quorum Court members should have received a copy of the 2005 Legislative Audit, and in the past the Quorum Court has adopted a Resolution acknowledging that they have received the report and that there are exceptions noted. JP Stephenson made motion to forward a proposed Resolution to the October 25, 2007 Quorum Court agenda, seconded by JP Wolf.

County Attorney Robin Green stated that the statues direct the Quorum Court to adopt a Resolution which states that the Audit Report is to be reviewed by the governing body, which is then to take appropriate action on each finding and recommendation, but it is ambiguous as to what is “appropriate action”. JP Summers stated that they have never been written up for not taking appropriate action in the proceeding years after adopting a Resolution such as the one they have before them. JP Stephenson read the exceptions from the Audit Report and expressed concern that some of the deficiencies were so serious. Richard McComas explained that the Elected Officials are required to file a letter of response with the Legislative Audit Committee explaining what actions have been taken to correct the exceptions, and if the Committee is not satisfied with the explanations, they will require the Elected Official to appear before them in Little Rock. He said that so far, no Benton County official has been requested to make such an appearance, so apparently the Legislative Audit Committee was satisfied with all of the answers provided by the Elected Officials. County Attorney Robin Green noted that if the exceptions in the Audit Report rose to a certain level, the Legislative Audit Committee would forward them to the local Prosecuting Attorney, who could then file charges of misfeasance, malfeasance, or nonfeasance, and stated that she wanted to make it clear that none of the issues being discussed rose to that level. Richard McComas reminded the Committee that the report in question was for 2005, so any corrections made have been in place for a long time. JP Summers requested that copies of the Elected Officials’ letters of response be mailed to each Quorum Court member. Motion passed by unanimous show of hands vote.

## **6. County Participation in National Association of Counties Prescription Discount Card Program – JP Hobbs**

JP Hobbs stated that she has found out that this does not require a Resolution; it is provided through the National Association of Counties, of which Benton County is a member, for people who do not have any other prescription insurance. She said it is free of charge for anyone who wishes to sign up by filling out a card at a participating pharmacy, including Wal-Mart, Walgreen's, and some others. She noted that prescriptions for pets can also qualify.

## **7. Discussion: Farm Bureau Memo**

JP Summers stated that they all received a letter from the Farm Bureau asking them to consider three issues—a special committee to study Agricultural issues, appointing only persons who live in the unincorporated areas to the Benton County Planning Committee, and changing all county meeting times to 7:00 p.m. JP Summers stated that he has spoken to the County Judge, who is responsible for committee appointments, and he has asked JP Summers to contact the Farm Bureau and report back to the Committee of Thirteen regarding the scope and function of such a committee. Regarding the Planning Board, he said those appointments are at the discretion of the County Judge, and the Quorum Court confirms them, and he believes that the County Judge has attempted to make sure there is representation from the unincorporated area. JP Stephenson stated that he does not think that they can legally exclude a portion of the county's population from the Board. County Attorney Robin Green stated that she would research that question. JP Summers stated that item number three is open for discussion. JP Hubbard made motion to request an ordinance changing the Quorum Court meeting time to 6:00 p.m., seconded by JP Hobbs. JP Stephenson stated that no matter what time they set the meetings, people will have conflicts with various work schedules, and added that he would like to say without sarcasm that he would be more impressed with a request from the Farm Bureau if they would support a realistic anti-animal cruelty bill instead of fighting every one that is proposed. JPs Moore and Winscott spoke in favor of the change to 6:00 p.m. Motion passed—7 votes in favor, 3 opposed.

## **8. Revision to Nuisance Abatement Ordinance – JP Kurt Moore**

JP Moore made motion to bring the item to the floor for discussion, seconded by JP Harrison. JP Moore stated that it is apparent that the proposed nuisance abatement ordinance does not have the support needed to be adopted, and that Environmental Director Jim Ecker has informed him that he believes there are problems with enforcement. He said that he asked Jim Ecker to make revisions to the ordinance to make it enforceable and to limit its effect to health and safety issues.

JP Hubbard asked if they have to vote on the version that is already on the October 25<sup>th</sup> Quorum Court agenda. County Attorney Robin Green stated that they could put the ordinance on first reading as amended with the revisions proposed by JP Moore.

Jim Ecker was recognized and went through the proposed revisions to the nuisance ordinance, stating that he had attempted to stick to health and safety issues, and limit abatement to stabilizing the situation or boarding up the structure, and not demolishing anything. He said if the ordinance is written so that the Environmental Department can issue citations, it eliminates

the need for appeals committees and so forth, because the issue would go straight to Circuit Court, where a judge either dismisses it or orders that a fine be paid and violation remedied.

JP Summers asked how failed septic systems would be handled, because currently they report them to the State Health Department repeatedly, and nothing is done. Jim Ecker stated that they would still refer them to the Health Department, because they are specifically trained to deal with them and it is their responsibility. He said that the Health Department employees work with the owners, and if the situation is not remedied, the Health Department will request the Environmental Department to issue a citation, which gets the matter into the Circuit Court. He said it seems to work well, because the only thing that the Health Department can do is report to Little Rock, and the workload at that level puts a failed septic system in Benton County at the bottom of the priority list. He said one problem they have is that landlords will not fix septic systems on their rental property, but continue to collect rent. He said the revised ordinance will address that problem by allowing them to condemn the property until it is fixed. He said that the previous ordinance allowed for multiple appeals and paperwork, and if a mistake was made at any point, the County could end up in a lawsuit.

JP Stephenson questioned why the ordinance was not offered 27 months ago, and why Jim Ecker presumed to know what the Quorum Court wants. Jim Ecker stated that this revised ordinance is nearly identical to one he offered the Environmental Committee two years ago, and since his department is the one that will have the responsibility of enforcement, it is what he is recommending to the Court. JP Stephenson stated that septic tanks are not taken care of by anybody in Benton County. Jim Ecker stated that currently, they have to wait for a request for assistance from the State Health Department, because the county does not have the authority to act, and they have issued several citations for septic tanks. JP Stephenson stated that the version of the ordinance on the October 25<sup>th</sup> Quorum Court agenda gives the county the authority to act on failed septic tanks, and now Jim Ecker and JP Moore are proposing a version which gets them back to square one where nobody does anything about septic tanks. JP Hubbard stated that they have received conflicting information from the Environmental Department.

Jim Ecker stated that he originally attempted to get an ordinance which would include the state laws that his department has the authority to enforce as Illegal Dumps Officers under ADEQ regulations. He said he had recommended getting all of the state regulations into one document, so that anyone could easily determine what will be enforced. County Attorney Robin Green noted that the current ordinance on its third reading has some liability issues regarding the proper filing of paperwork.

JP Glass stated that it is clear that the ordinance which is on the October 25<sup>th</sup> agenda is not what they want to adopt, but they owe it to the public to address it. He said that they need to find a way to address problems that the State Health Department is apparently too busy to deal with, and suggested that they dispense with the one already on the agenda, and allow Jim Ecker to work with the Environmental Committee or anyone else, to address the weaknesses in the current version. He said it might be that they need to simply authorize the Environmental Department to enforce all of the state laws at the county level.

Jim Ecker noted that if they choose to address septic systems instead of working with the State Health Department as they currently do, they would have to hire more staff.

There was discussion regarding the proper procedure to deal with the version that is already on the October 25<sup>th</sup> agenda, and the revised version presented tonight. County Attorney Robin

Green advised that it might be best to limit action on the revised ordinance to discussion only, until the Court has taken action on the nuisance ordinance that is on the October 25<sup>th</sup> agenda.

JP Wolf stated that the ordinance has gone through several revisions over the past two years, and the problem is that no one wants to make a decision. She said she favored voting the one that is already on the agenda, and if it is voted down, a different ordinance may be proposed later.

JP Hubbard stated that he would like to cancel anything that has “Nuisance Abatement Ordinance” on it, and favored adopting the state laws at the county level. He said that if the Environmental Department encounters difficulties, the Court could come back and address those issues individually by adopting specific ordinances.

JP Moore stated that the original requests from citizens in the county had asked the Court to deal with two issues—failing septic systems, and old, abandoned structures, especially mobile homes, and the revised ordinance addressed both of those issues. He said that whatever they decide, those two issues should eventually be addressed.

#### **9. Discussion: Holiday Meeting Schedule**

JP Summers stated that the November Quorum Court meeting needs to be changed because it falls on Thanksgiving Day, and the December meeting falls two days after the Christmas Holiday. JP Moore made motion to change the meeting dates to November 29<sup>th</sup> and December 20<sup>th</sup>, seconded by JP Glass. Motion passed by unanimous show of hands vote.

#### **OTHER BUSINESS:**

None

#### **ANNOUNCEMENTS:**

JP Summers announced that the Quorum Court will meet on October 25, 2007 at 5:00 p.m. and the Finance Committee will meet on October 16, 2007 at 2:30 p.m.

JP Moore announced that the Long Range Planning/Properties and Equipment Committee scheduled for October 16 has been cancelled.

County Attorney Robin Green stated that she anticipates that they may receive a ruling on the lawsuit filed against the County Clerk regarding the issuance of underage marriage licenses sometime this week.

#### **PUBLIC COMMENTS:**

Don Day spoke in support of the revised nuisance ordinance and in favor of changing the Quorum Court meeting time to 6:00 p.m.

Tommy Lewis stated that he appreciated the Town Hall meetings held by JP Winscott, and spoke against the nuisance ordinance.

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