

March 21, 2006

ENVIRONMENTAL COMMITTEE REPORT

An Environmental Committee meeting was held on Tuesday, March 21, 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, Sampier, Tharp, Wozniak

Others Present: County Attorney Ed Gartin, County Judge Gary Black, Travis Harp, Jim Ecker, Tom Wilkerson

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

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

PUBLIC COMMENTS:

Don Day of Rogers read a recent "Thumbs Down" column in the Benton County Daily Record which criticized the Quorum Court and its committees for holding public comments before conducting the business of the meetings.

Robert Kossieck of Rogers stated that he agreed with the previous speaker and suggested having public comments both before and after business is conducted, or perhaps having public comments after each item on the agenda.

MINUTES:

JP Sampier made motion to approve the minutes of the February 21, 2006 meeting as distributed, seconded by JP Schindler. Motion passed by voice vote.

OLD BUSINESS:

1. Update – Proposed Nuisance Ordinance – Jim Ecker

JP Tharp stated that the proposed Nuisance Ordinance had gone to the Planning Board for its first public hearing. He said that after hearing from the public, Environmental Services Director Jim Ecker had made some revisions. He recognized Jim Ecker, who reported on the proposed changes in the ordinance. Jim Ecker said that the name of the ordinance has been changed to "Environmental Hazard Ordinance", because public nuisance was too vague a term. He stated that they have decided to limit enforcement of the ordinance to the Environmental Officers, since that office is responsible for the record-keeping. He said that they will be sending notification through Certified Mail - Return Receipt Requested, and if the mail is refused it will be treated the same legally as taking delivery.

JP Wozniak asked if there was any way to include "good common sense" in the language of the ordinance. Jim Ecker stated they would be using "what a reasonable person should do" as the standard, since they will have to justify their actions to the public and possibly in court. JP Moore stated that a simple solution to that would be to change "one or more of the following" to "two or three or more of the following". Jim Ecker stated that using only those criteria could still be interpreted by the public as being nitpicky. He explained that

Environmental Services will not take any action on a structure until the Building Inspector rescinds its Certificate of Occupancy. He said that including that additional step and involving another department will help the public see that the County intends to be reasonable. JP Sampier stated that similar laws have been enforced by other municipalities and counties for years, and it usually boiled down to a person who does not want any regulation making up unlikely scenarios to argue against it. He said that the County government, like other governments that have used this to try and clean up obvious environmental hazards, does not want to be ridiculed in court by a judge and jury and common sense has to enter into it. Jim Ecker stated County Attorney Ed Gartin had taken most of the proposed ordinance directly from the state statute that was passed in August and which made this ordinance possible. He also said that the Environmental Officer can be denied access to a structure by its owner or occupant, in which case they will have to obtain a search warrant as they do to investigate other Environmental violations. Jim Ecker noted that there are remedies available to the property owner, and that the Environmental Services Office makes every attempt to work with them as long as they are making some reasonable progress to remedy the situation. Jim Ecker explained how including septic tanks in the ordinance would speed up the process of handling problems. He said that when complaints are made to the State Health Department, they are sent to Little Rock and it is several months before any action is taken. He said that in order for the Environmental Officers to enforce septic tank standards through the Health Department they would need special licensing. He said this ordinance would give the Environmental Officers authority to handle septic tank complaints.

JP Schindler stated that he had several concerns about the proposed ordinance and felt they had moved centuries away from the original intent of a nuisance ordinance. He said they were providing more opportunities for delay and non-action. He said that all reference to noise had been removed, and gave no relief whatsoever for the incessant barking of dogs and other noise pollution. He said septic tanks have been placed on the back burner and enforcement weakened. He said there were no provisions addressing occupied homes with junk on the property which destroys neighboring property values. He said he wanted to see something for noise protection, something stronger for septic systems, and something that gives the public a chance for relief.

JP Moore asked if the Junkyard Ordinance would address one of those concerns. Jim Ecker explained that the Junkyard Ordinance was a screening ordinance which only applied to people operating junkyards, and they only have to screen them if they significantly change the size of the operation. JP Schindler made reference to a house on Highway 71 in Hiwasse, and stated that the Nuisance Ordinance that they started out with 14 months ago had been simmered down considerably. He added that while people certainly have rights, they also have responsibilities, and he is concerned that septic tanks can still go on polluting lakes and streams for years with nothing being done about them. JP Sampier asked if the phrase "rendering other persons insecure in life or insecure in the use of their property" could be applied to a junk-filled yard, because they are essentially denying neighboring property-owners the economic use of their property by affecting their property values. County Attorney Ed Gartin stated that it might be applied that way, but he always tries to keep in mind that when the county creates a land use ordinance, such as this one, it in effect creates a public right of action by the public entity involved, in this case the Environmental Services Office, but still does not deprive any private citizen from taking his neighbor to court over common law public nuisances. He said that private citizens often come to the government

wanting it to assume that responsibility, which does not exist in the absence of an ordinance such as the one being discussed.

JP Adams asked what the additional costs will be if the ordinance is adopted and takes effect, such as additional personnel or equipment. Jim Ecker stated that they will need at least one additional person, if not two. He said that when the ordinance requiring notification before burning was enacted, it essentially doubled the workload, so trying to handle any additional duties without more personnel will result in a backlog of investigations.

JP Wozniak stated that it would be better to get something started as opposed to doing nothing at all. He added that they can make it stronger later, or take some things out if they need to make adjustments.

JP Sampier stated that the public needed to understand that the Environmental Officers will be acting in response to complaints, not seeking out offenders. Jim Ecker stated that was the way they were already operating, although if they happen to see a violation they will not look the other way. He also noted that the number of complaints they are receiving has doubled since last year, and it may be because people are beginning to understand that the complaints are being taken seriously and action is being taken.

JP Tharp stated that he would like to see County Attorney Ed Gartin and Jim Ecker continue to work on the ordinance and bring it back to the April Environmental meeting, and hopefully it will then be forwarded to the Planning Board. County Attorney Ed Gartin stated that State statutes will require an additional public hearing if any changes are made following its appearance before the Planning Board.

2. Update – Land Sale Septic Tank Inspection – Jim Ecker

JP Tharp referred to questions asked at the last Environmental Committee Meeting, the first one concerning the involvement of the Health Department. Jim Ecker stated that he had spoken with the Health Department, they are enforcing the ordinance in Washington County, and it is working well. He said they have a good working relationship with the Health Department and he had talked to Cary Gray, who at that time was representing the sanitarians, and he has said they will be happy to assist with enforcement. The second was a question by JP Adams concerning language that did not make it clear whether the ordinance included land with buildings on it. County Attorney Ed Gartin stated that he had changed the wording in Article 1 to clear that up.

JP Sampier stated that he was concerned with language spelling out phosphorous levels because he is unaware of any standards in Arkansas which spell out what is acceptable. County Attorney Ed Gartin stated that he felt an ordinance like this should include definitions, but he had been instructed to copy the Washington County ordinance. He said he would not have drafted the ordinance as it was done by Washington County. JP Moore stated that County Attorney Ed Gartin should write the ordinance the way he wants to, and suggested striking reference to phosphorous levels. JP Adams stated that he is still concerned because he has not seen scientific data which says there is a problem and feels they should have some before enforcing something throughout the county. JP Sampier agreed that the County Attorney should be comfortable with the ordinance before it is passed. County Attorney Ed Gartin suggested that Jim Ecker and the Health Department look at the ordinance in terms of what needs to be defined because there are technical aspects he is not familiar with. He said he would also send a draft to the Prosecuting Attorney since it is a penal ordinance. He added that he would be interested to see if it had ever been enforced. JP Tharp stated that he had spoken with the Washington County judge and it has been enforced, and so far no one has challenged it. JP Tharp stated that he would like County Attorney Ed Gartin to bring a draft to the April Environmental Committee meeting.

3. Update – Trash Pick Up Issue – Jim Ecker

Environmental Services Director Jim Ecker reported that several months ago Inland took over trash hauling from Waste Management in the city of Rogers, and this had left county residents on that side of the county with no trash service. Waste Management had provided a transfer station for a nominal fee, and Inland does not. He said they have agreed to take 3 bags from individuals for \$3.00 per bag, and have gone up to a \$55.00 minimum per pickup load. He said it is still not the best scenario for county residents, but they are having fewer complaints because either they have resigned themselves to the situation, or they are satisfied with things as they are now. He said he would continue to research the matter to try to find better options for residents on the east side of the county.

4. Update – Beaver Lake Watershed Advisory Committee

JP Tharp stated that he had received an email from Tom Wilkerson, which detailed Beaver Water District's plans to form its own technical advisory committee of water quality experts, which will provide information for a policy group consisting of various stakeholders and representatives from the four counties which contain the Beaver Lake Watershed. JP Tharp recognized JP Sampier. JP Sampier stated that it had been the consensus of reasonable people throughout this entire process that they need to determine what the problems are, which is a valid question in determining what the solutions are. He said he wanted to make the committee aware of another initiative, and read a statement describing the makeup and purpose of the Northwest Arkansas Conservation Authority, of which he is Executive Director. He said that it appeared that the two groups are providing experts to collect in a comprehensive fashion over a period of time the data that will show what the problems are, what they are not, and what the projected problems could be in the future based on the rapid growth in the area. He stated that in his opinion, the formation of another advisory board through this proposed ordinance would be both redundant and premature. He said there was no way that policy decisions could be made before the groups gathering data have had time to do their jobs. He said that there was a small part of the proposed Watershed Protection Ordinance that was never discussed, which prohibited certain activities on the shoreline of the lake which any reasonable person would agree did not belong there. He stated that an ordinance to prohibit those kinds of things could be passed fairly quickly, and that if there was a group of people who would like to have an electro-plating facility on the shores of Beaver Lake he would like to hear from them. JP Schindler stated that he agreed. JP Tharp asked if the committee would like to table the advisory committee ordinance. JP Moore stated that there had been enough movement on the ordinance that it should probably be brought up to the Committee of Thirteen. JP Adams stated that would mean sending it out of this committee. JP Moore stated that it could be sent to the Committee of Thirteen with a "Do Not Pass" recommendation. He said that since the Committee of Thirteen had commissioned the draft ordinance forming the advisory committee, then it should be the committee that kills it. JP Sampier asked if that was the case, then what was this committee doing. JP Adams stated that the Committee of Thirteen had remanded it back to the Environmental Committee, and since it was on their table, they could do with it what they wanted. He agreed with JP Sampier, and asked why the taxpayers should be charged with another committee when the work is going to be done by other groups outside the government. JP Sampier stated that he wanted everyone to be aware that the process would take time if it is going to be done scientifically, and that it would probably be 6 months before the NACA Technical Advisory Group brings its proposal to NACA. He said they will have identified monitoring points, but will need time to get equipment funded and in place.

He said the very most he would do is tell the Committee of Thirteen that it was the Environmental Committee's recommendation to table the advisory committee ordinance indefinitely, at least until the other two groups have had time to do their work. JP Tharp stated that he respected JP Moore's experience on the Court, and asked him if his concerns would be satisfied if he were to report to the Quorum Court at next Thursday's meeting that they were recommending that the advisory committee ordinance be tabled at least until the new directives are formed. JP Moore stated that it would.

County Judge Gary Black asked to be recognized. JP Moore recognized County Judge Gary Black, who reported that he had been working on forming the advisory committee, and needed guidance from the Environmental Committee as to how they wanted him to proceed. JP Tharp asked Tom Wilkerson if he thought that the Beaver Water District's group would have made enough progress in 90 days for the Quorum Court to see some direction and work being accomplished or if nothing had been accomplished and needed to go ahead with its own advisory board. Tom Wilkerson stated that the first thing that would have to happen is for the scope of the project to be defined, and the Beaver Water District will be looking for partners and that will take some time. JP Tharp asked when he thought they would be able to get a report from the Beaver Water District committee. Tom Wilkerson stated that he thought he would be able to give a status report in 90 days, but that the process outlined in the memo will probably take 18 to 24 months. He added that he would be happy to give periodic reports as frequently as they liked.

JP Sampier stated that it was his understanding that the intention of the county's advisory group was to gather data much as the other two groups are doing, and they would then make policy decisions. He said he did not see the point of having a policy group convene now or in 90 days until a point in time when either the Beaver Water District's initiative or the NACA initiative can provide some scientific data that can provide a policy group something with which to make some decisions. JP Tharp stated that it was his opinion that since the Beaver Water District had brought the ordinance to the Quorum Court, that there is a strong initiative out there somewhere that believes the water quality of the lake is in jeopardy. He said they need to table the county's advisory committee ordinance and wait for the scientific evidence. JP Schindler suggested regular informal reports from the Beaver Water District, perhaps 3 or 4 times per year.

OTHER BUSINESS:

JP Tharp stated that as Chair, he would like to address the public and said that as a JP he has attended many public meetings, appreciates public comments, and has even had his mind changed because of public comments. He explained that the Quorum Court follows Robert's Rules of Order, and a Procedural Guide from the University of Arkansas, and read the procedure that allows for public comments, noting that although public comments are not required, this Quorum Court has chosen to allow them. He said that he does not care when they have them, but they have traditionally had comments before business. He said he does not want anyone to think that he or the Quorum Court does not want to hear from them. He said he welcomes phone calls, emails, telephone conversations, and public meetings.

JP Tharp announced that the next Environmental Committee meeting would be April 18, 2006 at 5:00 p.m.

After motion and second the meeting was adjourned at 6:10 p.m.