

Committee of the Whole

September 8, 2015

The Committee of the Whole met Tuesday, September 8, 2015 at 6:00 p.m. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

15 JPs Present: Easley, Shadlow, J. Harrison, Allen, K. Harrison, Adams, Jones, Sandlin, Anglin, Chiocco, Slinkard, Leadabrand, Moore, Meyers, Moehring

Others Present: Administrator of General Services John Sudduth, Comptroller Brenda Guenther, Administrator of Public Safety Marshal Watson, Benton County Health Department Director Loy Bailey,

Media: Tom Sissom - Daily Record

JP Kurt Moore called the meeting to order.

PUBLIC COMMENTS

Sue Elverston of Pea Ridge stated that she does not see the need to revisit consideration of the Highway 102 location as a possible site for the courts facility.

JP Anglin gave a report on the Arkansas Association Counties' annual conference held recently in Springdale. She reported said that that some of the subjects discussed included: 1) advice to justices of the peace performing wedding ceremonies that they either perform all ceremonies or none, in light of the recent Supreme Court ruling; 2) the process to be followed to fill vacancies in county offices; 3) the AAC's influence at the recent legislative session – 375 of the 1,350 pieces of legislation that were introduced were sponsored by the AAC; and the Arkansas Public Employees Retirement System's outstanding funding rate of 85%. She added that they were encouraged to use these retirement benefits as a tool for attracting and retaining employees.

1. Ordinance Request: Adopting the Arkansas Fire Prevention Code – 2012 Edition (Three Volumes – Fire, Building, & Residential) by Reference; Sponsor: JP K. Harrison

JP K. Harrison stated that this and the following five ordinances were reviewed by the Legislative Committee and forwarded to the Committee of the Whole.

County Attorney George Spence explained that these codes are already in effect, as they have been adopted by the State of Arkansas, but these ordinances are necessary to give the current Building Safety Department employees the authority to enforce them in Benton County.

JP Moehring asked if adopting these ordinances would require any additional resources. John Sudduth stated it would not at this time; these duties are already being performed by the current staff.

Discussion followed concerning penalties for violations, current enforcement of the codes already on the books, the steps taken when a violation is discovered, and whether Planning Department employees have authority to issue citations.

Johns Sudduth stated that strong code enforcement is the best method of fire prevention, and emphasized that these codes are already in effect, and will be enforced by trained, certified personnel who know what to look for. He explained that when a violation occurs, the homeowner or contractor is eager to fix the problem, and the Building Safety staff works hard to help them find a solution. He added that it is very rare for one of these violations to end up going to court, but in the event that a citation is issued, the process at that point is turned over to the Prosecuting Attorney's office.

JP K. Harrison made motion to forward the ordinance request to the September 24, 2015 Quorum Court agenda, seconded by JP Anglin.

JP Allen stated that all of these ordinances are simply allowing the Code Enforcement Department to do what they have been doing all along, now with updated codes. He added that in his experience, these situations rarely, if ever, end up in court.

JP Meyers called for the vote.

Public Comment – Item 1:

Steve Patton recounted his experience with a contractor who he hired to remodel a home. The contractor first told him he did not need permits, and then tried to take several shortcuts with issues that could have been costly and dangerous. He said when some of the work was called into question the Building Safety Department saved him thousands of dollars, and did an outstanding job of trying to help him solve all of the issues.

A roll call vote was recorded as followed:

15 Yeas: Easley, Shadlow, J. Harrison, Allen, K. Harrison, Adams, Jones, Sandlin, Anglin, Chiocco, Slinkard, Leadabrand, Moore, Meyers, Moehring

Motion to forward the ordinance request to the September 24, 2015 Quorum Court passed.

**2. Ordinance Request: Adopting the National Electric Code, 2014 Edition by Reference;
Sponsor: JP K. Harrison**

JP K. Harrison made motion to forward the ordinance request to the September 24, 2015 Quorum Court agenda, seconded by JP J. Harrison.

JP Easley asked if there were any examples of major changes to the code. John Sudduth stated that there was not one big change, but many changes, which occur when new materials and products are developed and tested. He said that anytime a violation occurs, the contractor or homeowner is provided with a copy of the code section in question, and it is never based on the opinion of an inspector. He reiterated that the inspectors are trained in what to look for, and receive certifications on this training.

JP Adams stated that he would support forwarding the ordinance to the Quorum Court agenda, but still has questions regarding Article II, which he wants reflected on the record, because he is not sure who can legally issue citations.

Motion passed by unanimous show of hands vote.

**3. Ordinance Request: Adopting the Arkansas Energy Code, 2014 Edition by Reference;
Sponsor: JP K. Harrison**

JP K. Harrison made motion to forward the ordinance request, with an exception to Article II, to the September 24, 2015 Quorum Court agenda, seconded by JP Adams.

Motion passed by unanimous show of hands vote.

**4. Ordinance Request: Adopting the Arkansas Fuel Gas Code, 2006 Edition by Reference;
Sponsor: JP K. Harrison**

JP K. Harrison made motion to forward the ordinance request, with an exception to Article II, to the September 24, 2015 Quorum Court agenda, seconded by JP Adams.

Motion passed by unanimous show of hands vote.

**5. Ordinance Request: Adopting the Arkansas Mechanical Code, 2010 Edition by Reference;
Sponsor: JP K. Harrison**

JP K. Harrison made motion to forward the ordinance request, with an exception to Article II, to the September 24, 2015 Quorum Court agenda, seconded by JP Shadlow.

Motion passed by unanimous show of hands vote.

**6. Ordinance Request: Adopting the Arkansas Plumbing Code, 2006 Edition by Reference;
Sponsor: JP K. Harrison**

JP K. Harrison made motion to forward the ordinance request, with an exception to Article II, to the September 24, 2015 Quorum Court agenda, seconded by JP Shadlow.

JP Allen questioned what is meant by the exception to Article II.

County Attorney George Spence stated that he would look at the language and see if it can be clarified to answer any concerns prior to the Quorum Court meeting.

Motion passed by unanimous show of hands vote.

7. Ordinance Request: Requiring the Owner of Any Property, Not Connected to a Public Sewer System, Prior to Any Transfer of Title, to Have an Inspection Done of Any Onsite Wastewater Treatment System or for Approval of a New System by an Arkansas Licensed Designated Representative or by a Septic System Installer Approved by the Benton County Unit of the Arkansas Department of Health on a Form Approved by and Reviewed by the Benton County Unit of the Arkansas Department of Health; Sponsor: JP M. Slinkard

JP Allen made motion to forward to the September 24, 2015 Quorum Court agenda, seconded by JP J. Harrison.

JP Meyers spoke against the ordinance, noting that there are no state standards in place, the ones doing the inspections are going to benefit financially from doing the repairs, the attention is being unfairly focused on the people who live in the Beaver Lake area, and this is being pushed forward by a special interest group imposing its wishes on the county

JP Allen stated that he needs more information before he can vote either for or against the ordinance. He said that he knows there is a real problem out there with septic systems, but he feels the need to balance that with the reducing government regulations.

James Gately, Chair of the Wastewater Committee, introduced other members of the committee who were present including Larry Kelly, a longtime Benton County Realtor, Carrie Eastman from the State Health Department-Benton County Unit, and Dave Casseletto, Executive Director of Ozarks Water Watch from the Table Rock Lake area in Missouri, where a similar ordinance was adopted five years ago.

James Gately noted that one of the major functions of the quorum court is to protect the health and safety of the county's citizens and this is an important health and safety issue. He said that the need to address this issue was brought to their attention while developing the "Land Use Guidelines" which were adopted several years ago. He said that this ordinance has been unanimously approved by the Planning Board, and after input from realtors, title companies, the Health Department, septic tank installers, the County Judge, and the County Attorney, they are presenting the eleventh revision.

He added that in addition to the health and safety issue, there is an increasing problem of people buying homes with no knowledge of the location or condition of the septic system; they are from cities or areas of the country where septic systems are not used, or from areas where routine inspections are required.

JP Adams asked if there are any state statutes regarding maintenance or inspections after a system is installed, or are they asking for action that will only be taken in Benton County.

Carrie Eastman, Onsite Wastewater Specialist for the Arkansas Department of Health, stated that once the system is inspected after the initial installation, there would never be a reason to revisit it unless someone turns in a complaint about the smell of raw sewage. She said at that point, they go to the site to determine if the system has failed. She said no change in that process is being proposed; this ordinance simply provides a checkpoint at the sale or transfer of title, so that they can catch some systems before they fail completely.

JP Adams asked if the quorum court is being asked to create law that the state of Arkansas has not addressed. Carrie Eastman stated that more septic systems are being installed in Benton County than anywhere else in the state, so this issue affects Benton County on a much larger level than the rest of the state. JP Adams said the state should address this. Carrie Eastman stated that it is only a problem in Benton County, and the state does not usually address issues that do not affect the entire state. JP Adams stated that he is concerned about passing a law that only concerns Benton County, and has no concern to the rest of the state.

James Gately stated that no changes are being made to the mechanism already in place for dealing with septic systems that have been identified as failing; this ordinance simply triggers an inspection prior to a sale or transfer of title being completed. He noted that a few of the lenders have begun to require inspections of the septic system prior to a sale, but there is no standardization of these inspections.

He said this does not just affect Beaver Lake, but also the other watersheds in Benton County, including the Illinois River. He said that perhaps Beaver Lake gets more attention because it is the source of our drinking water, and must be protected.

A slide was presented detailing the locations of known septic systems throughout the county, and James Gately noted that systems were not required to have permits prior to 1977, and until 1999, systems being installed on parcels of 10 acres or more were exempt from being permitted.

James Gately explained how karst geological formations can allow contaminants to travel long distances from where they originate, which caused the contamination of several wells following a gasoline spill on Copper Mine. He said the unusual thing about that spill was that the contaminated wells were at a higher elevation than where the spill occurred.

The committee viewed several slides provided by the Health Department of faulty or failing systems, and examples of algae blooms in Table Rock Lake and Grand Lake of the Cherokees, which were caused by high phosphorous levels. James Gately stated that these are warning signs that they do not want to see in Benton County, and noted the negative impact on the area's economy and quality of life that could occur if any of our water sources become contaminated. He said there are 2,193 wells in the county that have to be protected.

JP Shadlow stated that she spent some time working at the Health Department, and the staff there is phenomenal, under paid, and overworked, and she cannot imagine them taking even more work without additional resources.

Carrie Eastman stated that the Health Department would not be doing additional inspections; only the paperwork would come through their office. She said that a similar ordinance has been in effect in Washington County since 2003, and they have not needed additional staff. She said the county has provided assistance through the part time clerical pool and with the GIS mapping of septic systems, and they hope that will be enough.

JP Shadlow stated that either the state or county should charge some fee so that the designated representatives and people from the private sector who are backing this would not be the only ones making money on it.

Carrie Eastman stated that a certification will be required, and the applicants would be charged a fee for it.

JP Harrison expressed concern about approved installers inspecting their own work, and stated that he would like to see language that would not allow that.

Carrie Eastman stated that they just wanted to make sure that the systems are being inspected by people who understand how they work and what they are looking for. She said that the ordinance in effect in Washington County since 2003 does not have a provision spelling out the standards for the inspections, so people are paying from \$50 to \$175 for inspections that vary greatly in the degree of thoroughness.

James Gately stated that the language prohibiting installers from performing inspections on their own work would be included in the rules for inspections that the Health Department will create.

JP K. Harrison expressed concern that the inspectors could declare a system failed, and the Health Department would have to take their word for it because they do not have the staff to inspect it themselves.

Carrie Eastman stated that once a system is noted as failed, there is a process already in place for confirming it, and that process will still be followed. She also said that any installer found to be filing false reports would be removed from the list of inspectors "in good standing" as the ordinance requires.

Larry Kelly stated that home inspectors are not allowed to repair any deficiencies they note, so perhaps they could put a similar provision in this ordinance. The inspector will be issuing a certificate that says they are certifying that the system is in working order, and the definitions for failing systems are spelled out in the rules.

JP Chiocco asked to whom the penalty portion is referring.

Larry Kelly stated that the seller is the one responsible for providing the certification, but there is no violation unless the title is transferred without it, and there will not be a certificate if the system is determined to be failing according to the checklist provided by the Health Department.

JP Moehring asked if banks are requiring inspections as a condition for financing. Larry Kelly stated most of them are not. He said that if this ordinance were to be adopted, they would notify and educate the lenders and title companies about the requirement.

JP Moehring asked if he could request an inspection on his septic system if he wanted to before selling it. Larry Kelly stated that he can, but this is something that most people just do not think about, and listed several examples. He noted that there are still a lot of systems out there that were installed prior to 1977, when no permits were required, making them hard to locate.

JP Moehring stated that he believes that there is a problem, and there are issues with septic systems, but they still do not know, through hard data, that there is a problem. He said there is anecdotal evidence, but no actual data that he could use to talk to people about this issue.

James Gately stated that it would cost millions of dollars to find out exactly where the nutrients and phosphorous are coming from, but they do know that the systems do leak phosphorous and that the karst topography allows it to travel great distances, so it would be dangerous to not be proactive. He cited the example of Table Rock Lake, and Grand Lake of the Cherokees, and asked why they would not lean toward the safe side.

JP Moehring asked about the Planning Board had sought additional public input regarding this ordinance, such as public hearings or town hall meetings, or opinions from organizations such as Farm Bureau, because often an issue does not seem to get a lot of attention until it is before the quorum court. He said that although the responses he has heard do not qualify as a scientific sample, they still have been mostly negative.

Larry Kelly pointed out that as an association, realtors hardly ever agree on anything that puts up a potential roadblock to a transfer of property, but they have agreed that this is a problem. He said this has been extremely well thought out, and the Health Department has been instrumental in guiding this ordinance through the process. He said this is something that home inspectors are not adequately trained to evaluate, and they want to have people in place who know what they are looking for.

James Gately stated that people in the agricultural community are concerned about their wells. JP Moehring asked if Farm Bureau has taken a position on this. James Gately stated that there has not been a formal vote.

Dave Casseletto, Executive Director of Ozarks Water Watch in Stone County, Missouri stated that his organization obtained grant money to conduct a study in 2002 in order to search for septic tank influent entering Table Rock Lake. He said the area is very similar to the area around Beaver Lake, with rocks, karst geological formations, lack of soil, and steep slopes. He said they searched along the shoreline of the lake for fabric detergent brighteners around the lake, which is a good indicator of septic tank effluent, and the only places where the brighteners were indicated were in front of homes, both old and new. He added that he served on a committee in Stone County five years ago, that was similar to the one recommending this ordinance, and he heard some of the same concerns voiced here tonight expressed. He said at the time they did not have the support of local realtors, but the ordinance was adopted and the realtors now support it. He said it is working successfully and there has been no other vocal opposition. He urged the committee to keep an open mind, adding that the point at which a house is sold is a good time to look for a problem.

Larry Kelly presented several slides showing examples of problems that arose from homeowners not knowing where their septic systems were located.

JP Anglin asked if a seller would be required to provide a certificate of inspection if they were selling property with an old dwelling on it, that no one had any intention of living in.

Larry Kelly said there is no way to anticipate when that might change, so if there is an inhabitable dwelling on the property, it should be inspected.

JP Anglin stated that there are checklists for people to look at when buying homes, so the buyer should be able to look at that and demand information about the septic system. She said she cannot support this, even though she thinks it has merit in protecting the water quality, but they need to have more information given to the public and more education of people about septic systems.

JP Adams stated that he believes what they are trying to do has merit, but he has some issues with how they are trying to go about it. He stated that he would like to see the guidelines spelled out in the ordinance before he votes on it.

JP Meyers again spoke against the ordinance, citing the additional cost to the seller.

JP Allen stated that he believes people should check on the septic system when they are checking on all of the other things that are inspected prior to purchasing a home. He said this would not solve the problem of all failing systems, but it would be one way to catch at least a small percentage of them.

JP Leadabrand asked how people would know what to look for if they wanted to know if their system was failing, and suggested that a checklist be developed so that people can check their own even if this ordinance is not adopted. Larry Kelly stated that one of the purposes of this ordinance is to put trained, certified inspectors in place who will know what to look for if someone wants their system inspected.

He stated that this process could be compared to a seller being required to provide a clean title free of liens before selling a house.

JP Leadabrand asked why this is not a statewide concern. Larry Kelly stated that Benton County and the rest of the northwest quadrant of the state have more septic systems than any other area of the state, and Washington County has already adopted an ordinance similar to the one being proposed.

JP Allen stated that he believes the more locally we are governed the better off we are, and this is an example of asking local government to pass a law that is specific to this area. He noted other times when the county has passed laws specific to its needs without waiting for the rest of the state to act.

JP Jones stated that he agreed that having the inspections would be on the safe side, just as a good real estate agent strongly suggesting an inspection is on the safe side, but what they are talking about here goes beyond a suggestion – this is an enforcement. He said that is why they are asking so many questions and want to be certain they are making the right decision.

He added that there might be situations where the owner is unable financially to make the repairs, and if the buyer accepts that and agrees to pay for the repairs, the ordinance needs to have an allowance for that. He added that he also would like to see the details of the ordinance, such as the specific criteria to be used to determine that a system is failing.

Following a brief discussion on the procedure to be followed concerning the previous motion on the floor, JP Allen withdrew the motion to forward to the September 24, 2015 Quorum Court agenda, second agreed.

JP Jones made motion to forward the proposed ordinance back to the Legislative Committee for further study, seconded by JP Adams.

Further discussion was held concerning the implementation of the ordinance, the definition of a failing system, and the potential consequences to the local economy and public health if septic systems eventually contaminate surrounding water.

James Gately stated that the Wastewater Committee would be happy to provide more details of the implementation of the ordinance and provide copies of the forms that will be used. He said the committee was asked to develop a process that was budget neutral, and an inspection only at the point of sale seemed to be the best opportunity. He said the committee would need to know specifically what the objections are to the ordinance in order to address them.

JP Easley stated that he thinks the Wastewater committee is being asked to clarify some of the details of the ordinance, such as what defines a failing system. He asked if there is any data available supporting the contamination of Beaver Lake, or if this is a real threat right now.

Carrie Eastman stated that the Health Department has been approached by the Beaver Water District, the Beaver Watershed Alliance, concerning issues with the water, because they are all aware that it is less costly to clean it up on the front end rather than waiting until pollution is evident. She said that Beaver Water District is looking at a brightener study similar to the one in Table Rock that was mentioned earlier, but it is not only Beaver Lake that they are concerned about – there are five other watersheds in Benton County. She said that they are frequently asked what percentage of systems are failing, and that is impossible to know. She said they have tried to be very clear in the ordinance concerning what defines a failing septic system, and they have seen photos of examples here tonight.

JP Allen stated that this also includes the Illinois River Watershed, which has been the subject of a recent lawsuit due to the phosphorous levels, and one of the contributors to those levels is septic systems.

Carrie Eastman, in response to why Benton County would take action when the State of Arkansas has not, stated that in 1999 and 2000, both Benton and Washington County did away with the 10-acre exemption for the septic system permitting requirement. They recognized that it was becoming a problem due to the growth being experienced in Benton County, which was not being experienced elsewhere in the state.

JP Easley stated that home inspections are not required, but are highly recommended, and the same can be done with septic inspections, so he thinks we have a system in place that is working, until someone shows him the data that proves it is not.

JP Moehring stated clearly this is not an easy issue, and he does believe that there is a potential problem out there, because several people have told him that there is, but he needs the data. He also noted that the key difference between a home inspection and the proposed ordinance is that failure of a septic system has a much broader impact than the failure of an air conditioning system. He encouraged the committee to keep trying if they believe there is a real problem out there.

JP Adams stated that what they are asking is not out of the realm of possibilities, but he does not want to pass a law without knowing what is in it, so he would like to see the specific rules and regulations.

JP Meyers agreed that the ordinance needs to go back to the Legislative Committee.

JP Jones stated that this is an important issue, and he thinks that this is a good checkpoint, but it is also important for the court to know that what they pass is good for all of the unincorporated area of Benton County.

JP Allen stated that the Wastewater Committee needs clear direction on the issues and questions that need to be addressed at the Legislative Committee.

James Gately stated that as he understands, the Legislative Committee wants data proving whether Beaver Lake is contaminated, and that would cost millions of dollars. He said they have presented evidence of what has happened in other areas where nothing was done, and asked if this is going to be a place where something has to happen before we take steps to protect what needs to be protected – the

local economy and our health. He said he would need to know specifically what the questions and objections are.

JP Allen asked John Sudduth to be in contact with Legislative Committee Chair Kevin Harrison to gather a list of concerns from everyone, and asked those present to make sure that any questions or concerns that have not been addressed tonight are brought up in the Legislative Committee meeting.

Motion to forward to Legislative Committee passed by show of hands vote:

11 in favor

2 against (Anglin, Slinkard)

2 absent (Chiocco, Moore)

8. Resolution Request: Accepting the Audit Report for Benton County for the Period Ending December 31, 2013; Sponsor: JP M. Slinkard

JP Slinkard made motion to amend the resolution by deleting all language in Article I except the first sentence, to read "That pursuant to A.C.A. §10-4-418, the 2013 Audit Report with its accompanying recommendations and comments is hereby accepted," and forward to the September 24, 2015 Quorum Court agenda, seconded by JP Meyers.

Motion to amend passed by show of hands vote: 12 in favor

1 against (Sandlin)

2 absent (Chiocco, Moore)

JP Slinkard requested that a draft of the proposed resolution be sent to the Legislative Audit Committee, because they will be reviewing the audit prior to the date of the next Quorum Court meeting.

9. Resolution Request: Stating the Intent of the Quorum Court With Regard to 2016 Funding for Emergency Medical Services; Sponsor: JP M. Slinkard

JP Slinkard stated that the funding amount of \$466,028 has now been inserted into the draft resolution.

Brief discussion was held concerning amending the language in the resolution to refer to the specific area in southeast Benton County that is to be served by the new ambulance service.

JP Slinkard made motion to forward the resolution to the September 24, 2015 Quorum Court agenda; motion seconded.

Administrator of Public Safety Marshal Watson stated that the purpose of the resolution is to authorize the County Judge to enter into a contract with Mercy, and that contract will have the complete details of the service area with a map attached.

Motion passed by unanimous show of hands vote.

PUBLIC COMMENTS

James Gately thanked the committee for their time spent hearing septic inspection ordinance, and reminded the court that when he moved here thirteen years ago, there were no ordinances in place to

protect homeowners from dishonest builders, and the quorum court recognized that need and put ordinances in place to protect the public. He asked them to remember that as they continue to discuss the septic inspection ordinance.

Sue Elverston stated that the septic inspection ordinance would be another layer to protect people who are buying homes and that not knowing where the septic systems are located or what condition they are in could be a big issue. She added that she hoped that someday they could move beyond the EMS issue because she is tired of hearing about it.

OTHER BUSINESS

ANNOUNCEMENTS

Shirley Sandlin announced that the Personnel Committee will meet September 29, 2015 at 6:00 p.m.

JP Jones announced that the Public Safety Committee will meet September 10, 2015 at 6:00 p.m. to discuss the Arkansas Wireless Information Network.

JP Allen announced that a special Finance Committee meeting will be held September 28, 2015 at 6:00 p.m.

ADJOURNMENT

After motion and second, meeting adjourned at 9:12 p.m.