

November 09, 2015

LEGISLATIVE COMMITTEE REPORT

A Legislative Committee meeting was held on Monday, November 9, 2015 at 6:00 p.m. in the Benton County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas.

Committee Members Present: JPs K. Harrison, Easley, J. Harrison, Sandlin, Anglin, Chiocco, Slinkard, Meyers

Others Present: JPs Leadabrand, Adams, Administrator of General Services John Sudduth, Election Commissioner Russell Anzalone, Election Coordinator Kim Dennison, Benton County Planning Board Vice Chair Starr Leyva, President of the Association for Beaver Lake Environment James Gately, Real Estate Broker Larry Kelly, Gopala Borchelt, and Angela Danovi of Ozarks Water Watch, Benton County Farm Bureau President Bob Schafner

Media: Tom Sissom – Northwest Arkansas Democrat-Gazette

JP K. Harrison called the meeting to order at 6:00 p.m.

1. Public Comments

Angela Danovi of Lowell, Arkansas and Projects Director with Ozark's Water Watch, spoke about their septic system education program. She explained that, through their Lake Smart program, they have a section on septic systems and that their program, along with the outreach done by the health department, are the only programs in the county that she knows of that deal with septic issues. The one problem that she found with relying strictly on education is that people will only come if they find out about it or if they have a vested interest. This year they partnered with the health department to put on a septic education seminar; they were happy with the turnout of thirty-five people. Obviously, most of the population in the county did not attend; they have no way to reach everyone in the county. Septic education is limited, resources are limited, and they need some mechanism that provides education to everyone. Relying solely on education programs is not going to help address the issues regarding septic systems.

Dave Boyer, a resident of Benton County, spoke in favor of the ordinance. He was shocked to discover that two of the lots near his home have outhouses or pit-toilets. The health department said that these are grandfathered in and are legal. When they built their house, they hired an expert and had the State of Arkansas and Benton County both approve the system. He said that it was expensive but no more so than someone who lives in a city and pays for water and sewer. He stated that he lives in an area with small homes, trailers, and fishing cabins. He said there has been a lot of turnover in the ownership in these properties. He also talked to some city people who have moved in and did not even know they had septic systems. He said that this is a public health issue and needs to do be approached in a scientific, expert and certified way to make sure that everyone complies with a minimum standard. He would like to see an ordinance like this in the county for the sake of public health.

Bruce Pertle of Prairie Creek, Arkansas spoke in favor of the proposed ordinance. He stated that they are living in an area with Karst geology and it would be easy for a failing system to

contaminate the lake. He said that this ordinance would give people peace of mind when they buy a property in knowing where their septic systems are and that they are functioning up to standards. He believes this ordinance would be a very positive step forward.

2. Proposed Ordinance 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

James Gately of Rogers, Arkansas began a presentation on the proposed wastewater ordinance that was sent back to the Legislative Committee from the September 08, 2015 Committee of the Whole meeting. He stated that they were asked to address a lot of the concerns that came up in the Committee of the Whole meeting. They considered the most efficient way to do this and ended up breaking it down into three parts. He said that they have presented a broad picture of how wastewater systems fit into protecting the health and safety of the water supply by showing current illustrations that the health department deals with every day. They have also given examples of potential future problems if action is not taken which have already been experienced by the Grand Lake and Table Rock Lake areas. They have given eight major reasons why this is so important. He presented a document that outlined the eight reasons as follows:

- To help protect the drinking water supply and water quality of Northwest Arkansas from pathogens and increased nutrients entering ground and surface waters.
- To help protect the over 3,000 estimated wells (Arkansas Dept. of Natural Resources) and 19 active community wells in Benton County from pathogens and other contaminants especially in the Karst region.
- To help ensure cheap, high quality water needed for area industries such as Tyson and family farms in the county.
- To help protect water quality for future economic growth as the wells throughout the county continue to age and have not been maintained properly.
- To help continue sales tax money for future county projects from businesses and spending related to recreation on clean Benton County water bodies which would be endangered by algae blooms experienced in neighboring Table Rock Lake and Grand Lake.
- To help protect property values.
- To have full disclosure on transfers of property so all parties know the location and functionality of the onsite wastewater treatment system in order to prevent future legal problems with repair costs left in negotiation between current title holders and future title holders and any failing systems (as defined in the ordinance) requiring repair falling under requirements already in place.
- To create a standardization in inspections by qualified inspectors certified by the Benton County Health Unit.

He said that the proposed ordinance was developed over eight years through three land use committees set up by three different county judges with plenty of public input. The wastewater concerns were separated from the planning ordinance because it was important to have a full

discussion on its own which probably wouldn't have happened in such a large overhaul of the planning regulations. He stated that Larry Kelly and he agreed to meet with the health department to draft an ordinance. They identified the problem, its causes and investigated possible solutions with all the costs and benefits. Over the last three years, they worked the drafts with representatives of the health department, installers, real estate brokers, title companies, the planning board, the county judge, etc. The 12th ordinance draft provided reflects a change that reflects the double-dipping issue that was brought up by the court. He said that the state of Arkansas and all the other states see septic systems as a major health issue. They all have mandatory regulations and requirements administered in every county through county health departments. That is at the installation stage; follow-up for health and safety is left to each county. Follow-up is done when someone complains. The Health Department is saying that the present system is not adequate and the Planning Department voted unanimously to support this ordinance. He reminded the committee that there were no regulations and permit requirements before 1977 and there were 10-acre exemptions before 1999. They know that there are thousands of septic systems and all of them are aging. Septic tanks have a lifespan. He provided a link to the Michigan State University article entitled "Got Water: Time of Sale Septic Inspections Can Protect Water Quality." It states that the average age of a failing septic system is around twenty to twenty-five years. They have heard of septic systems lasting thirty years with no problems but that does not change the information given when applied elsewhere because there are so many other variables such as location, the soil, maintenance, number of people using the system, etc. Waiting has no advantage as these systems continue to age. They have a chance to recommend corrective actions of faulty systems and expand their lifespan before they become failing systems. He offered a potential explanation as to why the state legislature is not doing anything. Even though hundreds of bills are submitted every session, this issue that is so important to Benton and Washington counties, would not be a priority to large city legislatures on a city sewer system. It would not be a priority to many rural legislatures in different areas with better soils who are not in a Karst region. They do not worry about Beaver Lake district's cost in making the water clean to drink, they do not have industries like Tyson who need clean water, nor do they have a major tourist area that generates sales tax money that would be lost to health risk signs if health risk signs have to be put up. The state has left follow-up health and safety in the Quorum Court's hands. He stated that education is a helpful tool but it is not the solution. For many years, the Health Department, Cooperative Extension Ozarks Water Watch, ABLE and other groups have put on educational programs yet the Planning Board and the Health Department deal with the same problems every year. Benton County is also probably the fastest growing county in the state which further compounds the problem. The beauty of this proposal is that it is an excellent educational opportunity because everyone getting a property will get direct information about their septic system. He stated that they have research that septic tanks are contributing to water quality issues. John Pennington, Executive Director of the Beaver Lake Watershed Alliance, sent a good summary. Like the Illinois River partnership, the Watershed Alliance cannot take a position on any ordinance because of their bylaws but they can provide information. Their figure is that 78% of the watershed is considered very limited for conventional septic tank suitability. 48% of the watershed is ranked moderate to severe in soil erosion hazard potential. Phosphorus and sediment are the two pollutants of the greatest concern. Phosphorus can increase algae blooms which can increase water treatment cost, disinfection by-products, taste and odor problems which people complain about when this is brought to the surface when the lake turns over twice a year. Septic tanks are estimated to be the 4th largest source of phosphorus-loading to the lake and it is estimated to increase. They report

that individual wastewater systems require regular maintenance, such as pumping every three to five years, in order to function properly. He stated that the Arkansas Water Resource Center reported on research done by Dr. Julian Fairey, Associate Professor in the department of Civil Engineering at the University of Arkansas, in their August 2015 newsletter. Dr. Fairey took samples from Beaver Water District's intake to research the impact of nutrients entering a lake in relation to meeting water treatment regulations. He found that the more nutrients there were, the more algae growth occurred. This reacts with disinfectants during the process and creates various chemical compounds referred to as disinfection by-products. Some of these disinfection by-products are regulated in drinking water because of their wide-spread occurrence and concerns with public health issues such as bladder cancer. They found that adding increasing amounts of phosphorus increases the amount of algae. The more algae in the water, the harder it was to remove these disinfection by-products which increases treatment costs. To the final point in his presentation, he stated that Table Rock Lake is like the water bodies in Benton County, with the same soils, Karst topography and it is a Corp of Engineer lake. He then introduced Gopala Borchelt, who has worked at the Missouri State Research Laboratories, has been Executive Director of the Table Rock Lake Water Quality, Inc. and now works with Ozarks Water Watch. Gopala Borchelt of Old Field, Missouri stated that she is familiar with the septic systems around Table Rock Lake since she has worked with Table Rock Lake Water Quality and, before that, with Missouri State University as a graduate student doing water quality testing and monitoring throughout the Upper White River Basin. Their organization did a project where they went to populated coves around Table Rock Lake. They did fluorometer testing which uses an instrument to measure optical brighteners in the water. They found that, in the coves that had homes close to the water's edge, they could detect the optical brighteners in the water with the fluorometer. These optical brighteners come from detergents. They did not see the optical brighteners where there were no homes. This simple study involving taking readings in the coves and is how they got started with Table Rock Lake Water Quality to determine how they, as a non-profit, could help with this issue. Ozarks Water Watch has now merged with Table Rock Water Quality and they continue to provide a lot of education and outreach related to septic systems, such as rebates for pumping septic tanks. They also help by consulting with individuals throughout the watershed. They don't advocate for ordinance changes or passage; they are simply providing information that they have found a connection between homes built on Table Rock Lake and the presence of optical brighteners in the water from the septic systems of these homes.

Larry Kelly of Bentonville, Arkansas stated that James Gately asked him to cover the implementation process that this ordinance would entail. He stated that the articles in the proposed ordinance explain the process very well. He read the articles to the committee which state:

- “Article 1: Upon title change, the owner of an improved property, the septic system for which is not connected to a public sewer system, regardless of the size of the tract, is required to have an inspection done of any existing onsite wastewater treatment system.
- Article 2: Inspections must be conducted by Benton County certified inspectors in good standing who are Arkansas Licensed Septic System Installers or DRs (designated representatives). Certification will be issued by Benton County. Licensed inspectors will be prohibited from repairing properties they have inspected.
- Article 3: Onsite wastewater treatment system inspection shall comply with regulations of the Arkansas Department of Health and the Benton County Health Unit for proper functioning of existing systems, so that a failing system does not contribute to a danger to

public health, safety, and welfare or water quality as well as to provide for protection of the consumer.

- Article 4: The onsite wastewater treatment system inspection form shall be provided to the Benton County Health Unit, the buyer, and the seller.
- Article 5: Prior to the transfer of title, a completed Onsite Wastewater Treatment System Inspection Form and a Certificate of Inspection for an onsite wastewater treatment system from the Benton County Health Unit, and completed repairs to any faulty system, will be required.”

He stated that there are different processes for different properties. He then read a document from the dashboard which explained these processes as follows:

Procedures “A” – Approved septic systems less than 10 years old:

- Provide copy of septic system permit.
- If tank has not been pumped in last 5 years, suggest pumping.
- Walk over lateral field and note any observations of surfacing, damage, fill material, etc.
- Cycle pump & alarm if applicable.
- If system uses a diversion valve, is it accessible?
- Complete Form X noting all observations. Attach separate sheet of paper if necessary.
- Have client sign Form Y.
- Give copy of Septic System Do’s and Don’ts.

Procedures “B” – Approved septic systems more than 10 years old:

- Provide copy of septic system permit.
- Tank to be pumped and inspected. Note if baffles, tees, risers, etc. need replacing.
- Walk over lateral field and note any observations of surfacing, damage, fill material, etc.
- Cycle pump & alarm if applicable.
- If system uses a diversion valve, is it accessible?
- Complete Form X noting all observations. Attach separate sheet of paper if necessary.
- Have client sign Form Y.
- Give copy of Septic System Do’s and Don’ts.

Procedures “C” – Septic systems in which there is no permit or previous inspections on file.

- Must locate septic tank, distribution device and lateral lines. This is best accomplished by hiring a professional with video inspection capabilities.
- If there is no septic system, note this on Form X.
- Tank: pump, inspect, determine size, condition, etc.
- Walk over lateral field and note any observations of surfacing, damage, fill material, etc.
- Cycle pump & alarm if applicable.
- Complete Form X noting all observations. Attach separate sheet of paper if necessary.
- Sketch location of all components (incl. measurements)
- Have client sign Form Y.
- Give copy of Septic System Do’s and Don’ts.

Vacant Structure Procedure “D” – Inspections when structure is not currently occupied or in use.

- Follow the appropriate Guideline A, B or C as appropriate.
- Advise client that information about the functioning of the system is limited when the home is not occupied.

He continued by presenting the wastewater inspection form from the dashboard which gives the inspector a checklist of things to inspect and guidelines of what to look for. He stated that there is an opportunity to report a failing system on this inspection form. If the home has increased in size, the septic system may no longer be adequate. There is also a section on the form where they can sketch the approximate layout of the lateral lines and the septic tank if it is different from the permit or previously unknown. He then presented the Certificate of Inspection document from the dashboard. This will be submitted to the health department for filing. Obviously, if there is a failing system, then the health department will be tasked with taking further action and working with the property owner on getting it into compliance. This form also gets turned in to a perspective buyer so the buyer will know what they are getting. He stated that, as they went through the procedures, the cost came into question. Ultimately the marketplace determines that but an “A” property cost will be pretty minimal. Right now that costs about \$150 in Washington County. If it is a “B” property older than ten years, it might require a bit more. If it is a Procedure “C” where there is no permit on file, it is going to be a more costly inspection. He does not have the cost information on this but older systems with no record will be harder to find.

James Gately said that they would be remiss if they did not comment on pushback. They received copies of emails from Leo Lynch, heard JP Meyers’ comments, and have a copy of the resolution from the Farm Bureau. One thing that the pushback all has in common is that conclusions have been made before they have even made the complete presentations. There is either misinformation or it just reflects a personal philosophy about government, that it encroaches on property rights, or that any ordinance is a bad ordinance. They are very disappointed with the position taken by the Farm Bureau; they have great respect for how important farmers are to this county and to this nation. However, he feels strongly that they have this one wrong. He stated that the Farm Bureau is correct that there is a property rights issue here; aging septic systems could affect the property values of their neighbors. It could pollute their wells. He stated that pushback from the Farm Bureau wanting exemption is nothing new. There are Farm Bureaus in Washington County and in Stone County where a septic tank ordinance has been in place for years with no big problems. Nevertheless, these groups have phone banks that call to express a negative view. He stated that they have presented a list of eight major reasons why this is public interest. He asked what studies the naysayers have used to make their arguments. He questioned why the 400,000 users of the Beaver Lake water or the thousands of people who come to use the recreational facilities are not calling the JPs about this issue. He stated that they are not calling because the people elected the justices of the peace to be their representatives to protect the public interest. He stated that maybe they should do it reverse; maybe they should call the constituents and ask them if the JPs should do whatever is necessary to protect their water supply and health. He stated that this deals with a major component of a home, just like an electrical or heating system. The home is the biggest investment people make. If it costs \$500 for an inspection on a \$150,000 house, that is a 0.003% investment. If it is up to \$700, it is a 0.004% investment. He stated that he is on the Arkansas Board of Public Accountancy. He said that, like the justices of the peace, he took an oath before

a judge that he is to protect the public interest. He stated that the JP's job is more important than his because it deals with public health and safety. He stated that this is not a feel-good ordinance. It is not another layer of government but a way to help the health department and the planning board to do their job more effectively as their representative. The state has left it to the justices of the peace to protect public health and safety after the initial requirements are met by septic systems. The county's Karst geology adds another problematic dimension. This is not a ground-breaking ordinance; it is common in other parts of the county. Their neighbors in Washington County and Stone County were used as local examples of this being in place for several years and working well. The most important part to remember is what this ordinance does and that is, upon transfer of title, an inspection must be done as specified. Recommendations will be made to the buyer and the seller. They negotiate from there to decide whether to fix the system or not. If it is found faulty, however, and the health department has to deal with it, that is a whole different ordinance. He concluded his presentation by saying that this is an issue for all fifteen JPs and they request that it be returned to the Committee of the Whole.

3. Public Comment

JP K. Harrison stated that, before they went on to questions, he wanted to give a second opportunity to hear public comments.

Leo Lynch of Pea Ridge, Arkansas said that he was not aware of how expensive this could be. He said that he ordered his own septic tank pumped just to become more educated on septic tanks. He stated that it cost \$350 to pump his septic tank. He said that some of the information supplied to them by the Beaver Watershed Alliance draws on the Beaver Lake Watershed Protection Strategy which came out in 2009 and was revised in 2012. On page 4 of the document, it states that one of the overarching goals of the study as prepared by the policy advisory committee reads as follows: "they want to use strategies that are voluntary and/or do not impose additional regulations on land owners or municipalities." He said that the information from the Beaver Watershed Alliance lists the potential drawbacks to this proposed ordinance as including: inspection does not guarantee the system is failing or that it is functioning, the cost is imposed on the property owner, it is an intrusion of government into the land owner's private property rights which is an additional regulation. All three of those violate the tenants of the policy advisory committee when the Beaver Lake Watershed Protection Strategy was put together. He thinks they have to utilize the time to educate the people who have septic systems. He said that the JPs are not obligated to pass this ordinance; their obligation is to decide if it is needed or not needed. He said that is ordinance may be a good idea but it is not practical in application. He strongly opposes this ordinance because he believes it fails to meet the objectives originally proposed. He also thinks it will encompass a lot of septic systems that are not even in the Beaver Lake Watershed area. He hopes the JPs will consider all of the people that will be affected by this ordinance. He stated that, in digging up lateral lines, the cost may be more in line with \$7,000 to \$8,000.

Sue Elverston of Pea Ridge, Arkansas said that this ordinance looked good at first but, as she began to gather information from septic system installers and inspectors, she began to get more concerned. She stated that, when it gets to be a situation as outlined in Procedure "C," it gets much more costly; just looking a system can be easily be around \$1,000 or more and, even then, they may not be able to find out where the system goes anyway. If the system is on someone else's property, this can bring up all sorts of other issues. She questioned if it solves the issue of how well they are protecting the drinking water. She said that this is important county-wide, because everyone is affecting someone

else's drinking water, whether it be private wells, or the Illinois River, etc. She said that they really need to look into the cost and how much it will realistically be.

Bob Bland of Centerton, Arkansas stated that he finds it curious that they have estimates for the cheaper \$150 inspection from Washington County but they don't have any estimates of the more expensive inspections. He agrees that it is probably a lot more costly than anyone is imagining. He said that this seems like a Beaver Lake issue and yet they want to impose this legislation on everyone in the county. Lastly, he said that it seems like Larry Kelly is trying to get the county to do his work. It seems to him that a good real estate agent should say to a potential buyer that the septic system needs to be inspected just like the inside of the house. He believes the issue would be resolved then.

Randall Ward of Garfield, Arkansas stated that he does not know if Benton County needs a septic system ordinance. He said that, when he first heard about the desire for a proposed septic system ordinance, he assumed it was to address fecal contamination or coliform contamination of Beaver Lake water or the water wells. He spoke with two county sanitarians, Dr. Morgan of the Beaver Lake Water District and the Senior Ranger of the Corp of Engineers, and he obtained a copy of an October 10th health department bacteriological summary of treated lake water. He stated that there are no E. coli contaminated wells in Benton County. The minimum distance between a well and a septic system lateral field is 100 feet. Beaver Lake is not experiencing problematic bacterial levels and treated water from the lake is free of coliform bacteria including E. coli. To find out what problems the lake is facing, he turned to the Beaver Lake Watershed Strategy document. He was surprised to learn that coliform bacteria and fecal contaminations are not considered a priority watershed issue for the coming decades. Instead, it is the increasing level of sedimentation and algae-feeding nutrients that are stressing the water quality of the lake. These nutrients are nitrogen and phosphorus. They feed the algae that affect the taste and odor of the water. Septic systems currently contribute almost no nitrogen and about 6% of phosphorus-loading to the lake. The other 94% is from soil erosion, runoff and discharge from the wastewater treatment plants themselves. In 2055, septic tanks are projected to contribute 9% of the total phosphorus-loading of the lake. The study states on page 21 "lake protection actions taken to mitigate sediment-loading should also address much of the projected increase in phosphorus." He stated that the question is whether the 6% of phosphorus that may grow to 9% in forty years warrants a septic system ordinance. Perhaps it does, but if it does, surely those small numbers do not justify the provisions of the proposed ordinance which, in his opinion, is intrusive, punitive, and heavy-handed. It is an ordinance that has clear conflicts of interest and no appeal process. He suggests an alternative ordinance that requires that the buyer be informed that the property is on a septic system and be shown the location of the tank. That puts the responsibility on the real estate dealer, the seller and the buyer. Such an ordinance would require that a county-approved, comprehensive septic system brochure be provided to the buyer. And, finally, it would require that the buyer sign a closing statement document that he or she is satisfied that the septic tank is functioning properly. With those provisions, the economic self-interest of the buyer and the seller would ensure that the county's goal of a properly operating septic system is met. The American free-enterprise system, rather than government intrusion, would spur the growth of the businesses that provide the inspection, maintenance and the correction services to meet that demand.

Starr Levya, Vice Chair of the Benton County Planning Board, stated that she was one of the members who voted unanimously for this ordinance. She said that she previously worked for the Arkansas Department of Health in the environmental section. She stated that it is simply not true that there are no E. coli contaminated wells in Benton County. She said that they got samples repeatedly from private submitters with bacteria and E. coli in their wells and they advised them on how to treat their wells to have safe drinking water. The Benton County Planning Board believes that this ordinance is a good

thing that will protect all citizens in Benton County, not just those on Beaver Lake. She said that they recently had staff re-show them a project that was put before them as a land-split; the septic system was not on the property they wanted to split because the permit was not provided at that time. In situations where someone has bought that land that someone else wants to build on, it helps to know where the septic tanks are located. Because this information would be provided at the time of sale, it would prevent them from having to come to the planning board later to deal with these issues.

James Gately stated that he also wishes it were true that they do not have E. coli problems in the county. He stated that this is not coming from the Alliance. They do not have the ability to go for or against a proposal; they can only give information. The health department is going to train these people so, as a consumer, they will know what has to be fixed. They decide if they want to buy this property, who is going to pay for it and if it should be fixed at all. If it is failing, that is another ordinance; they are in violation of Arkansas state health laws. This proposed ordinance is talking about an inspection only.

Bob Schafner of Centerton, President of the Benton County Farm Bureau, stated that there are adequate laws on the books today. He is in favor of keeping the existing laws as they do not need another layer of government bureaucracy.

JP Adams said that, a few months ago, the US government tried to do what is known as the Waters of America Act. Benton County and the Quorum Court as a whole opposed it 100% because the government would dictate to private land owners what they could and could not do; they would regulate any stream and anything that would drain into the waters. He is not going to support this ordinance if it goes to the Committee of the Whole. He believes in buyer beware; he does not want to do the realtor's job and put a burden on the planning commission. It is not going to affect people on septic systems that are in the city limits; rural people on septic systems will be the only ones affected. He feels that the state has shirked their responsibilities on this issue. He cannot see this going forward without putting too much undue burden on the citizens of Benton County.

JP Meyers stated that there were 100 to 150 people who voted at the Farm Bureau meeting. He believes the people at the Farm Bureau are long term residents who know what they are talking about, with or without scientific evidence. He has attended a watershed meeting and, at this meeting, he asked where the pollution comes from into Beaver Lake. He found out that no studies have been done on the rivers and streams that feed Beaver Lake. It appears that water run-off is a major source of pollution, not septic systems, and yet no one has even addressed the rivers. Another concern is condos and POAs and who pays in the case of a shared system. Or in the case of farms and ranches, since cattle can contaminate, he wonders if there would be restrictions on cattle ponds. He does not appreciate the threats made earlier about going to the constituents. He has spoken with many of his constituents who do not like the ordinance. He has talked to realtors who do not like it. He stated that realtors are already taking care of this; they do not need an ordinance imposed on the people of the county. He strongly feels that this is a feel-good law, no matter what anyone says, and he does not like the implication that they are at fault if they do not do this. He is still against it and, if it does go to the Committee of the Whole, he will vote against it again.

JP Meyers made a motion to reject this ordinance in its entirety.

Motion died for lack of a second.

JP Chiocco asked Larry Kelly when exactly title changes.

Larry Kelly stated that it changes at the closing. He said that the bank would not fund unless this was taken care of. Title does not transfer unless these inspections are done.

JP Chiocco stated that this is a buyer's responsibility, just as it is their responsibility to do a home inspection even though it is not required by the state of Arkansas. She asked who is responsible for this in the case of a foreclosure.

Larry Kelly stated that this is a negotiable item. It does not impose upon on the buyer and seller but it simply has to be done.

JP Chiocco said that it does impose upon the seller; it says: "upon title change, the owner of an improved property" and that is the seller.

Larry Kelly said that it is upon the owner to do that but the cost of anything in a real estate transaction is negotiable between the parties.

JP Adams called a point of order to have Larry Kelly come to the podium to speak.

Larry Kelly clarified the inspection process. He encourages his clients to get home inspections and, if the property is on a septic system, he will encourage them to get a septic inspection. He stated that there is a critical point being missed in that right now there are no inspectors trained to do this in Benton County. This ordinance entails training people who are already in the business to know how to do this and have uniformity in doing it. Right now, it is not very well done because they are not qualified to inspect septic systems. Home inspectors defer to other professionals because they are only qualified to make visual observations; they are very limited in what they can do.

JP K. Harrison asked if there is an ordinance in Washington County but there are no qualified inspectors, how they are enforcing it.

Larry Kelly stated that this proposed ordinance is not the same as Washington County's ordinance. There is no enforcement of Washington County's ordinance because it is basically a guideline. He feels that this does not accomplish the goal. He said this ordinance does not copy Washington County; he does not want to copy Washington County because he does not feel that they are doing a good job. However, he adds that they do have a septic ordinance which is more than Benton County currently has.

JP Adams called a point of order to have James Gately come to the podium to speak.

James Gately said that they were concerned that, if a consumer is going to pay money for something, that they are actually getting something for that money. He said that the Washington County ordinance is what they refer to as a "sniff test." They go out and walk the property and they will charge the money. But, with this proposed ordinance, trained inspectors will actually tell what is wrong with the system and then the buyer and seller can decide how to get it fixed and who pays for it. He stated that this is the difference between the two ordinances.

JP Easley stated that he is trying to determine if a septic ordinance is needed. Based on what they have heard tonight, there is a minimal effect on water quality from septic systems. Septic systems are important and not to be dismissed. But, based on the study, they are not even in the top five issues for protecting the water quality in this watershed area. He is trying to stay out of the what-ifs and just ask if they need to put an additional expense on the rural residents of Benton County with no evidence that the lake is in trouble. According to information from the Benton County Water Department, the nitrate contents of the lake are lower than they have been for nine years. The cost is going to be shared between the buyer and the seller, it is not free, and if there are issues with septic systems there is already a means today to deal with that. He feels that education is a great opportunity. He is not dismissing the concerns about septic systems but he does not know if this is an appropriate ordinance and it is the only one that has been presented.

JP Adams addressed the cost factor. He said he used to be a septic system installer. If the tank has to be dug up and replaced, it is \$1,000. It is about \$7,000 to \$8,000 to move a system from Point A to Point B. He said the cost factor is huge; this is an expense that a lot of people in Benton County can't afford.

JP J. Harrison asked if the municipalities have an ordinance.

James Gately stated that he is not familiar with what they have. Their hope is that, once this is in place in Benton County, that others will follow suit. He said that this is not just a Beaver Lake ordinance; it is talking about the Illinois River watershed as well. The same issues would apply to all the unincorporated parts of Benton County.

JP Anglin said that this presentation has been a good education process. She attended the Beaver Watershed Alliance in Huntsville and that was a good meeting. She said what bothers her about this is that they are not fixing the failing systems. She said that they will catch them but not fix them. She said that usually this affects people who do not have the funds to fix their septic tanks. She said that the county could be looking at the dirt roads around the lake; there are seven dirt roads around the lake that are listed on the map. She sent an email to Jeff Clark and asked if those were on their list and he said no. Repairing some of those roads is one thing they can do. Another is education; they desperately need more watershed education. There are some good programs in place but they are not getting enough word out. She did express concern to the health department that the county could work on getting grants to help people fix failing system tanks. She believes in water quality but she doesn't want to impose this on people in the county at this point.

JP Leadabrand said that he agrees with JP Easley about questioning if there is a need. When there is a need, government wants to help people by filling that need. He said that they make rules and regulations but they do not cure the problem. If there is a need, there should be a free market solution. JP K. Harrison said that they would get farther if they could develop some kind of grant program for failing systems based on income.

Gopala Borchelt said that Ozarks Water Watch and Table Rock Water Quality do offer a grant program on the Missouri side of the Upper White River Basin. It is actually state revolving fund money called SRF through the state of Missouri. It is a revolving fund and they stretch the payments out based on income so that the money gradually comes back in to be given out to others. It is working out very well for the counties on the Missouri side of the Upper White River Basin. They would love to do an Arkansas side of the Upper White River Basin SRF grant but the problem they have run into is that non-profits can no longer receive and utilize those funds. She does not know if non-profits could be written back into that. The good thing about it is they are not just gifting taxpayer dollars to an individual, it is coming back into a money market account to be given back out to others in need.

JP Slinkard asked if this is a federal law about non-profits or a state law.

Gopala Borchelt said that the funding that provides for state revolving fund money is normally going to municipalities and counties to take care of water and sewer infrastructure. The federal bill that funded that crossed out non-profits as a potential recipient of that kind of money.

JP Slinkard said she does not recall anything about septic being discussed during her time in the state legislature. She stated that they need to talk to someone to answer the questions about grants.

James Gately apologized to the committee for not having made it clear what the need for the ordinance is for the county. First of all, for the concern voiced that they are not fixing the septic systems, he said that this is correct. In this ordinance, they are not fixing the septic systems. However, they will be fixed because the inspectors will have looked at the system and, if it is a failing system, the health department ordinance applies in order to abide by state law. He said that they have to stop confusing what this ordinance does and what they think it does. If septic systems are faulty, phosphorus is

entering. The problem with this county is that they are on Karst so it can go for a long time. He cannot guarantee that it will contaminate a well but, if it does, it could have serious repercussions. When they say there is sediment erosion, he reminded that committee that sediment is not just dirt; it is picking up contaminants. He stated that he cannot guarantee that there will be an algae bloom tomorrow, however, he can show that the same Karst system that is in Grand Lake and Table Rock Lake is the same as with the Beaver Lake water supply.

JP Meyers asked JP K. Harrison if he closed this to public comment.

JP K. Harrison said that he allowed five minutes for the last public comments and there are three minutes to go.

Randall Ward wanted to remind everyone that they are talking about a septic tank contribution of phosphorus in the lake of 6% which may go up to 9%. The Beaver Lake watershed protection strategy says that taking care of sediment will probably take care of the 3% increase in phosphorus-loading in the lake from septic tanks. He said that erosion is the major source of phosphorus in the lake.

JP K. Harrison declared public comments closed.

JP J. Harrison asked if this is passed if it goes to the November 10th, 2015 Committee of the Whole meeting or the December 8, 2015 Committee of the Whole meeting.

JP K. Harrison said it will be the December meeting.

JP Adams asked if there is no motion on this, if it dies and does not go anywhere.

JP K. Harrison answered in the affirmative.

JP Meyers made motion to reject this ordinance and not send it on to the Committee of the Whole, seconded by JP Sandlin.

Motion passed by a roll call vote as follows:

7 Yeas: Easley, J. Harrison, Sandlin, Anglin, Chiocco, Slinkard, Meyers

JP K. Harrison called for a five minute recess at 8:00 p.m.

Meeting resumed at 8:07 p.m.

4. Discussion Regarding the Implementation of Vote Centers

Russell Anzalone, Benton County Election Commissioner, said that they are attempting to create vote centers rather than traditional polling sites. Currently, an individual is assigned a precinct and then they have to go to a specific poll site on Election Day. A vote center will operate like early voting currently does in that a registered voter can vote at any vote center location on Election Day. This would give more registered voters the opportunity to vote because they can vote at any of the locations.

JP J. Harrison asked if they already do this with early voting anyway.

Russell Anzalone stated that they do but they get less than 50% of votes cast with early voting. At the last election, approximately 48% of votes cast were cast in early voting. The total number of votes cast was about 70% of total voters and they would like to get more.

JP J. Harrison stated that he has noticed that the number of people early voting is growing each cycle.

Russell Anzalone said that they put out a lot of publicity at the last major election and two radio stations gave them public service announcements to get more people out to vote.

JP Meyers stated that he is all for this and asked when this would be implemented.

Russell Anzalone said they are trying to get it for the primary. He said that, when considering the month of March, there may be inclement weather. If they have the vote centers, the people can vote at a center nearby.

JP Meyers asked if a person walked into a place outside their precinct and wanted a paper ballot, if they would be able to have one printed.

Russell Anzalone stated that they would like to go all electronic and they are going to request that the requirement to provide paper ballots be changed.

JP Slinkard stated that what a vote center does on Election Day is make it possible that any voter can go to any vote center and cast their ballot. It works more or less the same as absentee ballots. The Election Commission has to come up with a plan to get it implemented in a short period of time. She stated that the most important thing is to get the education out to the voters. She also encourages trying to find computer savvy poll workers. These are the kinds of things that they must do in implementing this plan to get these vote centers open on Election Day. She said that this may require an ordinance, although some states have just done a resolution through their legislative body. She is all for this and she said that the poll books that moved through the Finance Committee are part of this as well. One of the first steps to getting vote centers implemented was getting the electronic poll books. She said that it is an innovative way to do voting and she feels it is time for Benton County to implement this system.

JP K. Harrison asked if they will be the first county to do vote centers.

JP Slinkard said no. Boone County has been doing it with modems and Washington County is doing it.

JP Adams stated that there are a lot of people who don't know what district they are in but they know where they usually vote. He asked what their plan is to inform these people of the changes and how they will get the correct ballot for their district.

Kim Dennison said that, when their name is pulled up inside of the book, their voter registration information can be pulled up to tell the poll worker which ballot they need.

JP Easley said he likes the idea but wants some numbers. He asked how many voting centers there are currently and how many there will be when this is implemented.

Russell Anzalone said there are currently 67 polling sites and there will be 46 vote centers.

JP Easley asked where these vote centers will be located.

Kim Dennison said that they will be the current locations already being used but some of them will be closed. She has looked at numbers as to how many registered voters are assigned, the voter turnout at each polling location, and where early voting locations are placed, as well as Wi-Fi availability, which they will have to have for the electronic poll books.

JP Easley asked if there is an estimate of the percentage of increase they expect to see by going to this and how that success will be measured.

Russell Anzalone stated that he does not have a specific number but they would like the percentage of voters to be in the high 70's or the low 80's. The weather in March is one of their major concerns. Even though they are closing some of the polling sites, they are also picking up an additional 54 voting machines from Hot Springs which means more machines will be available at the vote centers.

JP Easley asked if they go to this and it is not successful, if they can go back to the old way.

Kim Dennison said that they can always go back and it can be changed from election to election if the ordinance is written that way.

JP Easley said that if it does not get communicated, the percent of increase will not be achieved. He asked about the advertising plan.

Russell Anzalone said they plan to do more advertising on television, radio and newspaper. They have the PSAs on radio and he is going to do PSAs on cable. They plan to utilize as many media outlets as they can. He stated that it is upsetting when they do an election and only have 6-7% of the voters actually vote. They know they will get the most numbers in the primary and general elections. They are trying to make it easier for the people to get out and vote.

JP Chiocco commented that she is absolutely against getting rid of paper ballots. She stated that she would not support this just based on that.

Russell Anzalone stated that the paper ballots will be available with early voting.

JP Chiocco argued that she likes to go on Election Day.

JP Leadabrand said that there is a lot of concern that things will get messed up. A lot of people vote paper ballots for just this reason. He asked about contingencies for computer malfunctions or if the vote centers get over-crowded.

Russell Anzalone stated that they will be getting more machines so that they don't anticipate getting too swamped at any particular vote center.

JP Sandlin stated that they hope that everything goes smoothly but there have been three concerns mentioned. Those are weather, Wi-Fi and paper ballots. She stated that they do need backup for the electricity and Wi-Fi for these machines. She asked if there could be some paper ballots offered.

Kim Dennison said that one of their hopes in creating vote centers is to cut back on the cost of elections. She stated that paper ballots cost about \$0.25 apiece. This adds up fairly quickly because there are 250 different ballot styles and to provide that to 46 vote centers in large quantities gets quite costly. There is a provision in state law that says that there must be paper ballots available. It does not say how many but there must be some available for provisional purposes. If someone comes in and refuses to vote on the machines, there will be some paper ballots available. She has a Ballot on Demand machine in her office so she can print more ballots and run them out to the polling sites, if need be.

JP Sandlin asked if they have tracked how many paper ballots were actually used in the last election.

Kim Dennison stated that she is going to present this information tomorrow at the Committee of the Whole meeting.

JP Meyers asked how much time the election commission needs for this to be implemented.

Kim Dennison stated that the state must approve this 30 days before early voting starts. After the Quorum Court approves this ordinance, she must check all the poll books they are receiving to make sure they work before she can send it to the state.

JP Meyers asked how long that will take.

Kim Dennison said it will take three to four days. She stated that early voting starts February 16th so she has to have it approved by the middle of January.

JP J. Harrison asked if this will include all elections.

Kim Dennison said yes, if the ordinance is written that way.

JP Anglin asked how they will know how to staff the voting centers to make sure there are enough people to assist.

Kim Dennison said that they want to have one person per electronic poll book. They have to have a clerk, the Sheriff and one IVotronic worker for every two IVotronic machines that they put in every location. And, if possible, they would like one extra person to allow for breaks and lunches.

JP Anglin said that, for the first few times, having more staff would be better. She asked about the outlying areas like Maysville or Avoca.

Kim Dennison said that Maysville's polling place was closed a few years back and they now go to Gravette. There is an early vote site in Gravette. They are also putting an early vote site in the Garfield area so the residents of this area will have more opportunities to vote.

JP Anglin stated that she is supportive of the plan but she thinks many people will not be happy with change.

JP Slinkard said that there are already things in place to help with these issues. Because of the many ballot styles there are in the county, paper ballots can be easily confused. She believes that it will take a severe media blitz to get these questions answered from the voters about what this does.

JP K. Harrison suggested that, when the ballot samples come out in the newspaper, the vote center locations could be listed in that. He said there are many ways to get the information out.

Russell Anzalone said that this will cure almost all provisional ballots; most of these are from people in the wrong precinct trying to vote.

JP Meyers asked JP Slinkard about the resolution she already has prepared.

JP Slinkard said she has a sample resolution used by other entities across the country that use vote centers. She did a lot of research on how other counties have done this. She did a comparison of a county similar in size to Benton County. She feels that the Election Commission is on the right track to getting this done.

JP Meyers made motion to send this as a discussion topic to the November 10, 2015 Committee of the Whole meeting, seconded by JP Slinkard.

Motion passed by a show of hands vote (1 against: Chiocco).

5. Discussion Regarding Reducing the Number of Poll Workers Required by the State of Arkansas; Sponsor JP Moore

Because JP Moore was not in attendance to discuss this item, JP K. Harrison tabled until the next Legislative Committee meeting.

6. Discussion Regarding Benton County Code of Ordinances Section 2-49 – Agenda; Sponsor JP Meyers

JP Meyers stated that he did not realize there was already something on the books when he said he wanted to discuss this item. He stated that he wrote up an ordinance that County Attorney George Spence has read.

JP K. Harrison said that he talked to George Spence about it and he said that it is not much different than what they have now.

JP Meyers read his proposed ordinance as “all ordinances and appropriations will be provided by either written or electronic copy to all justices of the peace no less than forty-eight hours prior to the applicable committee meeting or Quorum Court meeting that the ordinance or appropriation is to be voted on. Emergency ordinances or appropriations are exempt from this requirement. If an ordinance or appropriation is not provided in writing or electronically to the applicable county committees or Quorum Court at least forty-eight hours prior to the meeting, it will be tabled or postponed until the next meeting or Quorum Court. By simple majority vote of the voting members of the committee or court, this regulation may be suspended and the ordinance or appropriation will be considered at that time.” He stated that he has reduced the time to two days instead of six days and the court or the committee by simple majority can waive the two day requirement so they can get it through immediately.

JP K. Harrison stated that George Spence said either ordinance is okay with him; it is up to however the committee wants to do it.

JP Anglin asked if that meets the requirement for public notification.

JP K. Harrison said that it does.

JP Meyers stated that, at the time he came up with this idea, there were instances where they had to vote on things that did not have time to be published. He wants to have enough time to think about things before they are supposed to vote on them.

JP Slinkard said that, at the time this part of the code was written, they were having trouble getting the ordinance and resolution requests into the county clerk's office in time to mail them out. They needed that time to get them out before the Quorum Court meeting. But now with electronic technology in place, it could change.

JP Meyers made motion to table this until the next Legislative Committee meeting. It was determined that this motion did not require a second.

Motion passed by unanimous show of hands vote.

7. New Business

JP Meyers stated that there has been controversy about employee use of county vehicles for personal business. In a letter he got from Prosecuting Attorney Nathan Smith, it was not made clear to county employees what they could or could not do therefore there could be no criminal intent determined and it could not be prosecuted. He believes they need to come up with something that would be a county-wide mandate for all employees.

JP K. Harrison said that there is already a county policy but the elected officials make their own policies. He has talked to the state legislatures and they may be able to pass something so that the elected officials can still pass their own policies provided that they are not any weaker than what the Quorum Court requires.

JP Meyers said that a policy is superseded by an ordinance.

JP Slinkard states that any county law cannot supersede state law.

JP K. Harrison said that this is about policies for things like vehicles. They have a policy in their county handbook that they passed several years ago but the elected officials choose not to follow it.

JP Slinkard said that, if it is in their code book, it is a policy done by ordinance.

JP K. Harrison said that the only policy in the handbook done by ordinance is the ethics policy. He said that the ethics policy does touch on the use of county vehicles but it is not a policy for vehicle use. He said that the employees are required to sign this policy. It is ultimately up the prosecutor because he has to prove it in court and he felt like, because of the policies in place at the Sheriff's office, he could not. He stated that the Quorum Court cannot state what kind of disciplinary action an elected official can take. He said that the only power the court has is through funding but he argued that the taxpayers ultimately suffer if funding is decreased. He said that they need some fundamental change in state law to make it mandatory that the elected officials have to follow the policies that the court makes because the Quorum Court is supposed to be the policy maker for the county. He stated that there may be a new policy in place at the Sheriff's office.

JP Meyers said that that Prosecuting Attorney Nathan Smith said that the Sheriff did make a verbal policy.

JP Slinkard made motion to adjourn, seconded by JP J. Harrison.

Meeting adjourned at 9:03 p.m.