

Feb 14, 2020

TO: Brown County Commissioners. ATTN: commissioners@browncounty-in.us

SUBJECT: Proposed Septic Ordinance – Comments and Suggestions

FROM: Tim J. Clark

Reference: Brown County Democrat, [Comments accepted on septic ordinance](#), 2/11/20.

Septic systems are a proven technology that have an indefinite life if properly maintained. The septic ordinance, as drafted, reflects a technical and bureaucratic perspective. The draft does not indicate that it incorporates the needed leadership, management, and administrative perspective. This perspective is critical in identifying and mitigating likely adverse consequences of the overall policy on county residents. Enclosure 1 identifies a few of the areas that need more explanation than what is included in the proposed ordinance.

The Ordinance has too many unanswered questions and *should not* be approved as-is. I suggest the Commissioners schedule working sessions with the Health Board to address more detailed questions and concerns. These working sessions should result in a better understanding of the advantages and disadvantages of this ordinance as written and lead to improvements that may be supported by county citizens.

An additional suggestion is to support the application of a better process for proposing significant changes. Testing this new approach can be supported by volunteers from the Brown County Leader Network (BCLN) of which I am a member. The BCLN is currently testing a prototype on the application of proven methods and tools for supporting needed improvement in policies and ordinances.

The BCLN was created from the county's participation in the Hometown Collaborative Initiative (HCI). With data collected from surveys and a community forum that provided even more data, HCI team members unanimously selected "leadership" as an area needing improvement. The proposed approach for improving leadership capabilities supports the civic engagement and community development strategies recently introduced by the Brown County Community Foundation. (Reference: Brown County Democrat: [Community development course invigorates residents](#), Feb 13, 2020, By Sean Hildreth, for The Democrat)

Background and Context on Septic System Management – Need for Change

In May of 2013, county health department employee and then-commissioner John Kennard alleged that there was "an environmental nightmare" in Bean Blossom. His claim served as the premise to establish a county-wide regional sewer district, a proposed sewer project for Bean Blossom, and an aggressive septic maintenance program that would need to be supported with an ordinance.

Brown County Democrat May 1, 2013. *"Brown County Commissioner John Kennard called Bean Blossom an "environmental nightmare" due to many failed septic systems in the town located north of Nashville. The comment came during discussion of forming a countywide sewer district. Kennard said the purpose of the district would be to increase the chances of Bean Blossom acquiring a grant to pay for installation of a sewer system for the town. Commissioners voted 3-0 to pursue formation of the district, which could include a septic maintenance program."*

A new ordinance was passed by the commissioners in 2013, successfully challenged in court, and rescinded in 2015. Mr. Kennard, in addition to the proposed new 2020 ordinance, led efforts to develop a new ordinance in 2017 and 2018. These versions were considered by the Health Board, opposed by citizens, and disapproved by the commissioners. Clint Studabaker, vice president of the Brown County Regional Sewer District Board, has also been a significant contributor to the proposed 2020 ordinance.

Since May 1, 2013, there has been no documented evidence that supports the claim of an "environmental nightmare" in Bean Blossom. The January 28, 2020 article in the Democrat – "[Stream Sampling: Where's the contamination coming from?](#)" does not support the allegation of contamination caused by failed septic systems. To quote: "Is E. coli found in local waterways coming from humans or from animals? Short answer: We don't know yet."

Further, the past two Brown County RSD Board presidents – Evan Werling and Judy Swift- Powdrill acknowledged that there was no documented evidence of failed septic systems that would validate a need for a new sewer plant. At their Feb 11, 2020 board meeting, Brown County Regional Sewer District (BCRSD) board members acknowledged that they did not know of any evidence of failed septic systems in their district. Board President Mike Leggins stated that Brownies Restaurant in Bean Blossom closed as a result of a failed system. Septic systems designed for commercial use are approved and inspected by the State.

When federal money from the United States Department of Agriculture (USDA) is used to support local sewer projects, proof of need is required to avoid whistleblower allegations of waste, fraud, and abuse.

The current proposed ordinance follows the same pattern as past efforts that identify "solutions" without identifying and validating the extent and scope of the problems. My specific comments, concerns, and questions are provided in enclosure 1.

The commissioners should vote to disapprove the proposed new ordinance and support an improved fact and process-based approach for proposing a major change. Such an approach has the potential of earning the trust, respect, and confidence of citizens that elected officials are performing their due diligence when considering significant changes that affect the health and financial security of county residents.

Tim J. Clark
Enclosure

Enclosure 1: Comments, Concerns, Questions

Identify Unique Requirements. Identify the sections in the ordinance that are unique to Brown County and exceed state requirements.

Cost, Benefit and Risks. The unique requirements identify a proposed solution. Identify the problem that these new requirements will resolve, the options considered to include the respective advantages, disadvantages, risks, and costs.

Operating Procedures (SOPs). Develop documented procedures that support and explain the actions that “will be” taken by the Brown County Board of Health, the Brown County Health Department, and Brown County Health officer that are referenced in the ordinance. In addition to explaining proposed changes, SOPs are useful in educating and training personnel and identifying the need for improvements.

Higher repair and installation costs. What is the justification for a Brown County “test” of septic system contractors and the requirement that contractors have a one-million-dollar general liability insurance policy (Section 603)? This change will likely result in fewer contractors and higher costs to customers. It also creates a perception that the ordinance is intended to support local contractors by discouraging competition.

Penalties and Legal Costs.

What are the situations (identified in SOPs?) that can lead to the assessment of penalties and motivate citizens to take legal action? Does the county and health department have a policy and budget regarding legal costs? Is increasing funding a matter of just raising taxes?

If a citizen needs legal support, runs out of money and must drop their case, the ordinance requires them to reimburse the county for the county's legal bills. Is this an ethical requirement? What are the total costs and results of these actions? Does the government win more than it loses in time and money?

Since 2013, how many legal actions have the Health Department initiated or had to defend?

Pump and Haul. A reference to the pump and haul option needs to be in the proposed ordinance. If there are no other alternatives besides condemnation, pump and haul should be supported indefinitely. This also provides a check and balance on potential abuse of power by the Health Department. Bill Monroe Music Park and Campground have been on a pump and haul system for over 20 years.

Tourist Homes, Bed and Breakfast (Section 801). How many tourist homes and Bed and Breakfasts do not meet current standards and will require new or upgraded systems? Is this even possible? Why are increased requirements appropriate?

Other

Section 204. Is requiring elevation readings a new requirement? If so, what is the estimated cost to residents?

Section 304. Regarding water samples, when will state protocols for conducting water testing to determine human-caused contamination be available?

Section 501. How will the security and confidentiality of a new “test” be maintained? What will stop the answers to the test from being shared thus reducing the effectiveness of the test requirement? Is there a direct correlation between someone passing a test and being competent to repair or install a new system?

Section 503. Why does a Brown County Registered Septic Contractor have to be on-site throughout the installation process?

Article VI. Regarding soil conditions and slopes in Brown County – this may be unique in Indiana but not throughout the nation. Why do these “unique to Indiana conditions” require “particular knowledge and expertise”? What is this knowledge and expertise?

Article XI. Administrative Appeals. Is the 15-day deadline for an appeal clearly stated in any written documentation provided to the resident?

Section 701. Where is the specific “intent and purpose” of this ordinance specified?