

SEPTIC

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choose to make the 2013 ordinance legal by passing it again and publishing it, Biddle said. However, they have chosen to first seek input from the Brown County Board of Health, which has many new members since the 2013 ordinance was written.

Ultimately, the commissioners would like to create a septic ordinance that is based on state septic code, Biddle said. The commissioners' actions will hinge on what the health board recommends.

Biddle would not speculate on whether any cases that have been dealt with since May 2013 would be invalidated by reverting to the 1997 ordinance.

John Kennard, an environmental health specialist with the health department and former commissioner, who had a hand in writing the 2013 ordinance, said the most significant difference between the two was an increase in the fine amounts.

The only person fined since May 2013 was Simpson, Kennard said. However, the \$9,000 fine levied against him was decided by then-Prosecutor Jim Oliver, and it was less than what could have been imposed under the 1997 ordinance, Kennard said.

Aside from that case, all other violations cited since May 2013 were of Indiana state code, not local code, Kennard said.

What's the difference?

Stewart's opinion says several elements of the 2013 ordinance differ from both the 2012 and 1997 ordinances, and the difference is significant enough for her to judge the 2013 ordinance "materially and substantially different" from even the 2012 version.

The Bean Blossom Regional Sewer Board had asked the

commissioners to change wording that mandates anyone with a property line within 300 feet of a public sewer line to hook into the sewer. The board expressed concerns that the requirement, which is more stringent than any state law, would create too much opposition to developing sewer systems elsewhere in the county.

In addition, some residents felt that the definition of a bedroom was too broad, applying to almost any room in a house.

The 1997 ordinance has the same requirements for hooking to a public sewer, and the language defining a bedroom is identical.

Biddle said the commissioners would take such issues into consideration when a new septic ordinance is drafted.

Other sections, such as those dealing with privies — commonly known as outhouses — also are different, with the 1997 ordinance allowing them for up to six months, and the 2013 ordinance forbidding privies, portable toilets and composting toilets.

Why the lawsuit?

Simpson's registration as a septic system installer in the county was revoked without a public hearing. He had argued that portions of the septic ordinance were unconstitutional and denied him due process.

The powers of the county to remove an installer from the list of approved installers was unchanged from the 1997 to the 2013 ordinance.

Because the 2013 septic ordinance was not valid, Stewart ruled in favor of Simpson, in part. Simpson also had asked for summary judgment on other matters, some of which went in favor of the county.