

Septic Ordinance for Brown County Indiana

"Alone we can do so little, together we can do so much." Helen Keller

Outline

Introduction and Overview of the Board of Health	p.2
A Bit of History	p.3
The Team	p.5
Assessment	p.8
Ordinance Comparison 1997 – 2020	p.16
A Committee Member’s Comments	p.18
Conclusion and Recommendation	p.22

Proposed Ordinance	Appx 1
Current (1997) Ordinance	Appx 2
State Code Rule 410 IAC 6-8.3	Appx 3

Introduction and Overview of the BOARD of HEALTH

1500 B.C.

Leviticus is believed to be the first written health code in world. The book dealt with personal & community responsibilities and included guidance regarding the cleanliness of body, sexual health behaviors, protection against contagious diseases and the isolation of lepers.

What is Public Health?

Public health is "the science and art of preventing disease, prolonging life and promoting health through the organized efforts and informed choices of society, organizations, public and private, communities and individuals." (1920, C.E.A. Winslow) It is concerned with threats to the overall health of a community based on population health analysis. A population can be as small as a handful of people or as large as all the inhabitants of several continents (for instance, in the case of a pandemic). Public health is typically divided into epidemiology, biostatistics and health services. Important subfields **include nursing, environmental, social, behavioral and occupational health.**

There are two characteristics of public health that differ from medicine:

- 1. The focus of public health is on **preventive** rather than curative aspects of health*
- 2. The target audience for public health is on the **population** as a whole rather than on individual health issues (specific disease or injury)*

The goal of public health is to improve lives by promoting the health of the population through organized community efforts.

Local Board of Health - Core Functions

Assessment of the status of public health in the community

- Monitor** health status to identify community health problems
- Diagnose and investigate** health problems and health hazards in the community
- Evaluate** effectiveness, accessibility and quality of personal and population-based health services

Policy Development

- Develop** policies and plans that support individual and community health efforts
- Enforce laws and regulations that protect health and ensure safety**
- Research** for new insights and innovative solutions to health problems

Assurance

- Link** people to needed personal health services and assure the provision of health care when otherwise unavailable
- Assure** a competent public health and personal health care workforce
- Inform, educate, and empower** people about health issues
- Mobilize** community partnerships to identify and solve health problems

A BIT OF HISTORY

Since the first homestead was built in 1836, Brown County has continued to grow at a moderate to slow pace. With its rolling hills and beautiful landscapes, it has become an attractive place in which to live and retire. With little to no restrictions on development, houses sprang up on the hills and clay soils of the county. Not much attention was given to regulations and septic ordinances did not exist. As the state and county grew, Indiana began to develop regulations and restrictions that governed how homes were built and residential septic systems were installed. Only major cities had the luxury of city or county run sewer systems. In the early 1970's, Indiana adopted its first set of septic ordinances, and of course this was to present a myriad of problems for the residents who already had systems installed that did not meet the criteria. In 1997, Brown County adopted its first county wide septic Ordinance to address the specific needs of the county. As time passed, it became evident that the code was insufficient for the needs of today.

Initial Ordinance Committee

In 2015 a committee was elected at the Spring Septic Installers meeting to begin on a revision of the current septic ordinance of 1997. This committee consisted of 2 septic installers, one soil scientist, one appraiser, and two environmentalists. The committee met for 18 months and completed the new Ordinance in 2016. This Ordinance was finally published on March 6th 2018 for public review.

In January, the ordinance was submitted to the County Commissioners.

In March, the first public hearing was held. The meeting was over 2 hours long and resulted in the ordinance returning to the Brown County Health Department for revisions. It was decided at the following Board meeting to re-group and begin fresh with members of the public as well as members of the department and board.

Second Ordinance Committee

In May 2018, the health board chair, Thomi Elmore, reached out to the community asking for volunteers to serve on a new committee to help re-write the 1997 septic ordinance.

On July 24, 2018, an article ran in the Democrat asking for citizens to serve on a new committee to work on the septic ordinance. In August of 2018, six individuals applied to assist in the rewrite of the ordinance and all were all accepted as new members of the committee. Included on the committee as well were two board members, and all three environmental health specialists. Thomi volunteered to chair the committee.

The committee held its first meeting July 31, 2018 to put together a preliminary strategy on how to move forward. It was decided to divide the committee into six sub-committees. They were: Assessment, Enforcement, Organization, Point of Sale, Technology and Remediation.

As the sub-committees met throughout the past 18 months, the full committee met a total of 9 times with members of the sub-committees reporting to the full group at various times. All

meetings held were announced and the public as well as the Board of Commissioners were invited to attend. Several drafts were posted on the Health Department's website and comments/suggestions from the public were discussed and reviewed. A draft was submitted to the Board and was passed in late November 2019.

The septic ordinance was presented at a commissioners meeting on February 19, 2020. Due to conflicting schedules, no one from the Health Board attended. A few members of the committee that helped draft the ordinance spoke in favor of the ordinance.

At its March 4, 2020 meeting, commissioners requested minor changes to the draft ordinance before the first of two required meetings. The ordinance was sent back to the Board of Health.

Current Proposed Ordinance

On July 21, 2020 the septic ordinance was changed based on Commissioner's request. The health board voted to recommend that the commissioners consider approving this version of the proposed septic ordinance.

On November 18, 2020, the proposed septic ordinance was published in *The Democrat* newspaper. The first public hearing was scheduled for November 30, 2020.

The November 30, 2020 public hearing was postponed due to illness following months of delay due to COVID-19. Commissioners stated they wanted to wait until the first of the year, as they plan to welcome a new member in January 2021.

THE TEAM

Brown County Septic Committee

“Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments toward organizational objectives. It is the fuel that allows common people to attain uncommon results.” Andrew Carnegie

REPRESENTING THE PUBLIC

Kara Hammes, MPH

Extension Educator, Health and Human Sciences & Ag and Natural Resources

Purdue Extension- Brown County

BA Degree in Biology from Rose-Hulman Institute of Technology

Masters of Public Health in Health Policy and Management from IUPUI/IU School of Medicine.

ISD Health Laboratory, Microbiologist & Director of the Lab Outreach and Training Team.

IN Board of Animal Health as the Director of Animal Health Support Programs.

Licensed Realtor

Richard Hall,

Richard M. Hall practices primarily in the areas of business law and transactions, estate planning, probate/trust administration and business succession planning. Mr. Hall is a certified public accountant (inactive status) and a member of the Association of Attorney-CPAs. He has served as a panelist at ICLEF legal seminars entitled *Basic Probating of an Estate, Estate Administration, 1041 Preparation, The Basics of Trusts* and *Representing the Small Business*. In addition, Mr. Hall has spoken at seminars sponsored by the Indiana CPA Society, the Financial Planning Association and Purdue Cooperative Extension (Midwest Women in Agriculture Conference). Mr. Hall has been designated as an Indiana SuperLawyer by *Law & Politics* and the publishers of *Indianapolis Monthly*. Mr. Hall is a graduate of Indiana University (B.S. Accounting, 1977) and Indiana University School of Law – Indianapolis (J.D. cum laude, 1981).

Russ Herndon

John Herron School of art, Indiana University, minor - fine arts

Indiana Wesleyan University, BS business management

Indiana school for the blind - Braille read write program for ADA consulting

Semi-Retired - Self employed (Russ Herndon Design) - design/build company - 40 yrs experience.

Randy Jones

BA Degree in Biology/Anderson University

Environmental Health Director/ Henry County Health Dept. (10 yrs.)

Registered Environmental Health Specialist/ State of Indiana

Senior Environmental Manager with Indiana Dept. Environmental Management (30yrs - retired)

40 years total in Environmental/Public Health Profession.

Clint Studebaker

BS Civil Engineering, Purdue University Executive MBA Northern Illinois University
MA Teaching, National Lewis University. Retired Professional Civil/Environmental Engineer.
Director for numerous Fortune 500 clients for projects involving environmental and waste services, lowering environmental liabilities, and resolving wastewater, waste disposal, energy recovery, and groundwater issues. He began his career with the Atchison, Topeka, and Santa Fe Railroad as the emergency responder and environmental engineer for train derailments involving hazardous materials. Mr. Studabaker directed engineering and construction services for a premier international hazardous waste management company. Mr. Studabaker managed a business unit for environmental engineering, consulting, and construction services that served clients throughout North America and around the globe. Throughout his career, projects included remediation of Superfund sites, hazardous waste incinerators, waste landfills, mobile wastewater treatment units and mobile laboratories for groundwater analysis and cleanup, and energy production through landfill gas-to-energy plants. In 2018, Mr. Studabaker was appointed by the Brown County Council to serve on the Brown County Regional Sewer District board of directors.

Brad Williamson

BA Geology Indiana University
Indiana Department of Transportation, Licensed Realtor
Environmental Manager, Geologist

REPRESENTING THE HEALTH DEPARTMENT

John Kennard

BS Management
Environmental Manager with 20 years in Food Safety and Inspection Experience

Ernie Reed

AS Environmental Science
Senior project bidder for Heritage Environmental Services (15 years)
Owner of Reed Excavating Septic Design & Service, Inc. (21 years)
Founding member of the Indiana Onsite Wastewater Professionals Association (IOWPA)

Jennifer Heller

BC Health Department 2010-current.
She trained on the job for the procedures involved in Site evaluations for Septic, and other septic related issues. She is Presby certified. She also is the main Environmental Health Specialist involved in Food Establishment inspections. Jennifer is a Licensed Pool Inspector, TAHP Committee Chair for the Indiana Environmental Health Association, LEPC and EMAC member in Brown County, and handles complaints as needed.

REPRESENTING THE HEALTH BOARD

Thomi Elmore

BSBA Indiana Wesleyan BSBA. AS Computer Technology, IN Vocational Technical College
Retail Management, Business Owner
Homeland Security certified – First Responder & Fire Instructor – Public Safety
Systems Analyst/Project Manager - Manufacturing, Finance, Health and Technology - 20 years
Appointed to Board in 2012, currently serving as President

Dr. William Irvine

Dr. Irvine has served on the Brown County Board of Health for six years. Dr. Irvine served on the original septic committee.

Cathy Rountree

BA English/BSN Nursing Indiana University, Bloomington MSN Nursing/Nurse Practitioner,
University of New Mexico Albuquerque, NM Registered Nurse/Nurse Practitioner United States
Public Health Service (27 years) Registered Nurse, Indiana Board of Nursing
Member, Brown County Board of Health since 2015.

Proposed Septic Ordinance Assessment Information

(Information as of August, 2020)

Findings:

Brown County Overview:

- According to the Brown County Auditor's office, there are approximately 8,400 current households in Brown County.
- Data reported by the Brown County Redevelopment Commission states that approximately 50% of all the homes in Brown County were built prior to 1980.
- In January 2020, BCHD evaluated nearly 2,900 records of properties with homes:
 - Of homes with septic records on file, 55% of the homes were over 30 years old;
 - Of homes without septic records on file, 86% of the homes were over 30 years old.
- Of homes with septic records, nearly 40% have septic systems older than 30 years old.
- According to the Brown County Health Department (BCHD), only 700 households are connected to public sanitary sewers, including 543 homes in Nashville, 66 in Helmsburg, and 91 in Gnaw Bone.
- The remaining 7,700 households have on-site sewage systems of one type or another.
- BCHD reports that since 1990, 3,887 permits (representing approximately 50% of the County's households), were issued for new systems or repairs to old systems.
- That means that 3,813 households have septic systems that have been operating for more than 28 years without permitted improvements. Various sources suggest 25 years as the average lifespan for a well-maintained septic system.
- The Indiana Code for septic systems (Rule 410 IAC 6-8.3) was updated in 1990 to include a requirement for soil testing prior to installing any new on-site septic system.
- Many septic systems were installed prior to soil testing (from late 90's).
- Soils are poorly suited throughout Brown County for septic systems with lateral fields:
 - USDA Soil Classification for entire BC as "Severe" for septic systems;
 - Likelihood of inadequate wastewater treatment;
 - Initial BCHD records review of 528 systems show 16% are installed near or in the water table or violating 24" minimum Rule 410 IAC 6-8.3 standards.
- IDEM lists Bean Blossom Creek and numerous tributaries as "Impaired":
 - High levels of E. coli reported in Bean Blossom Creek.
- IDEM identifies pathways for E. coli to enter surface waters:
 - Septic systems falling into disrepair or home straight pipes directly to creeks and ponds;
 - Waste from deer, geese, and other wildlife, including agricultural runoff from farm animals.
- Stream Sampling Program throughout Brown County under development by the Brown County Regional Sewer District (BCRSD) to differentiate animal vs human source analysis of E. coli.
- US EPA has designated septic density of greater than 1 system/16 acres as high potential for groundwater contamination.

- US EPA states “single most important means of limiting groundwater contamination is to restrict density of septic systems”.
- US EPA states that septic tank leachate is the most frequently reported cause of groundwater contamination associated with disease outbreak.
- US EPA reports that over ½ of water borne disease outbreaks are due to contaminated groundwater and septic systems are the most frequently reported cause.
- Several cases of Enteric Diseases reported by ISDH:
 - 41 cases from 2012 – 2017.

Watershed Management Plan findings:

Lake Lemon Watershed Management Plan, completed by Malcolm Pirnie, January, 2002:

- “Failing septic systems are believed to be sources of the isolated bacterial contamination because of the older on-site septic systems and poorly suitable soils for on-site septic treatment systems.”
- “...flooding could be a leading cause of the stream bank erosion, reservoir sedimentation and fecal coliform bacteria from runoff of inundated livestock operations.”

Bean Blossom Creek Watershed Management Plan, completed by Hoosier Environmental Council, 2008:

- “The Bean Blossom Creek is a beautiful stream...in spite of this, water quality data indicates the E. coli levels exceed state standards for safe recreational use along most of the stream reaches.”
- “High E. coli levels are the primary reason that the IDEM has included the Bean Blossom Creek on the CWA Section 303 (d) list of impaired waters.”

IDEM "Impaired" Stream Classification per US Clean water Act (CWA) Section 303(d) :

- In 2006, IDEM set a Total Maximum Daily Load (TMDL) for E. coli in Bean Blossom Creek watershed = pollution budget, or a target for the water quality goal for E. coli in the streams:
- **125** colony forming units (cfu’s) / 100 ml of a water sample (Calculated as the Geometric Mean based on 5 samples taken equally spaced over a 30-day period);
- Or, if a single water sample (grab sample) is taken, the standard is not to exceed **235** cfu’s/ 100 ml
- **NOTE:** All the streams listed below exceeded the IDEM geometric mean allowable level of 125 cfu's/100ml.

	Impaired Waters	
<u>County</u>	<u>Name</u>	<u>Parameter</u>
Brown	Bean Blossom Creek Headwaters	E. coli
Brown	North Bear Fork	E. coli
Brown	Lick Creek	E. coli
Brown	Bean Blossom Creek	E. coli
Brown	Bell Creek	E. coli
Brown	Bear Creek	E. coli
Brown	Bean Blossom Creek (2)	E. coli

Stream Sampling Data (per IDEM collection and analysis):

Bean Blossom Creek & Tributaries E. coli Data	Geometric Mean Levels (cfu's/100 ml)
Sprunica Road	185
Gatesville Road	442
SR 45 Bean Blossom	388
Bean Blossom at Helmsburg	1731
SR 45 Bean Blossom at Helmsburg Road	165
East Fork	172

Hoppers Branch	744
North Fork	268
Lick Creek	258
Plum Creek	168
Wolf Creek	Too numerous to count
Honey Creek	223
Indian Creek	1779
Jack's Creek	393

BCHD 2019 Stream Sampling Data:

In addition to IDEM above listed sampling programs, BCHD has collected stream samples over the past several years. Numerous samples have exceeded the grab sample limit of 235 cfu's/100ml for E. coli.

In 2019, BCHD sampled, and the ISDH Environmental lab analyzed, stream samples in the Bean Blossom Creek Watershed for various pharmaceuticals.

Pharmaceuticals specific to human activity, including acetaminophen, caffeine, ibuprofen, and others were observed.

BCRSD Strategic Stream Sampling Study:

In May through June 2020, BCRSD implemented a stream sampling program throughout Brown County to measure E. coli levels. Lochmueller Group collected stream samples from a total of 31 locations in both the Bean Blossom Creek watershed feeding Lake Lemon and the Salt Creek watershed feeding Lake Monroe. Samples were collected weekly over a 5-week period to determine Geometric Mean levels.

Results exceeded IDEM geometric mean allowable level of 125 cfu's/100ml at 23 of 31 locations:

- 11 locations in Bean Blossom Creek Watershed;
- 12 locations in Salt Creek Watershed.

All sites except one possessed at least one sample in excess of the Indiana state grab sample standard limit of 235 colonies/100ml.

A follow up study will be conducted in 2021 to determine the source (human vs animal) of E. coli in those locations.

Lake Lemon Annual Water Quality Reports by IU SPEA (highest measured levels of colonies/100 ml):

	<u>2014</u> (E. coli)	<u>2015</u> (E. coli)	<u>2016</u> (E. coli)	<u>2017</u> (E. coli)	<u>2018</u> (E.coli)
Near N. Shore Marina	7,632-TNTC	500			
Chitwood			2,400	11,100	10,980
Bear Creek	40-TNTC	370	4,600	2,500	8,800
Bean Blossom Creek	124-TNTC	1190	12,400	4,100	5,100
Knob Creek		17,400	1,600	1,900	10,400

TNTC = Too Numerous to Count

Enteric Diseases:

- If your septic system is not functioning properly, and needs repair or replacing, your system may be discharging untreated waste onto your yard, a neighbor's property or to a nearby creek.
- Failed or poorly operating septic systems restrict the usability and value of local recreational areas.
- Untreated household wastewater poses significant health risks for anyone who comes into contact with it (Enteric Diseases).
- Enteric diseases are infections caused by viruses and bacteria that enter the body through the mouth or intestinal system.
- They are primarily caused as a result of eating, drinking and digesting contaminated foods or liquids.

- Direct contact with contaminated feces is a secondary method of contracting enteric ailments.
- **Major Enteric Diseases** particularly harmful to children under 5 years old; the elderly; and anyone with weakened immune systems:
 - A. Campylobacteriosis = Most common diarrheal illness in the USA
 - B. Cryptosporidiosis = Most common waterborne disease in the USA
 - C. Escherichia coli (E. coli) Diarrhea = Transmitted by contaminated water
 - D. Salmonellosis = Contaminated food, water and soil
- **41 Reported cases** of Enteric Diseases in Brown County from 2012 – 2017
- Campylobacteriosis = 12
- Cryptosporidiosis = 7
- Giardiasis = 5
- Salmonellosis = 11
- Other pathogens (fewer than 5 cases) including Shigellosis, Shiga toxin-producing E. coli, Hepatitis A

Soil Issues:

Septic systems rely on the natural soil to filter wastewater and to allow naturally occurring bacteria to consume harmful bacteria in the wastewater.” Purdue Extension

- Soil texture, structure and mineralogy influence performance and effectiveness;
- Clay minerals expand when wet, decreasing absorption;
- Pore space decreases as soil moisture increases, restricting wastewater movement;
- Soil testing and analysis (required by Rule 410 IAC 6-8.3) is critical for determining soils suitable for septic systems proper performance at specific locations throughout Brown County;
- “Perk tests” replaced with soil science analysis since the 1990’s;
- Indiana Rule 410 IAC 6-8.3 requires a minimum depth of 24 inches of “aerated soil zone” below septic system absorption trenches;
- Aerated soil is unsaturated so effluent moves slowly through pore spaces allowing time for naturally occurring microbes (the good bugs) to consume the waste;

- Aerobic microbes, critical for proper waste treatment, thrive when they have access to oxygen and can feast on the waste, cleansing the water.

“All Brown County Soils have severe limitations for septic systems.” (The soil information is based on Natural Resources Conservation Service (NRCS) Soil Survey and Purdue University’s Census of Wastewater Disposal in Indiana)

Property Records of BC Homes:

BCHD researched and documented (data from January 2020) approximately 2,896 property records in Jackson and Hamblen Townships of homes with and without records of Septic Systems:

- 1,701 homes have records on file with BCHD (58.7%)
- 1,195 homes without any records on file with BCHD (41.3%)

Age of Septic Systems installed with records on file with BCHD:

New to 10 years old Septic Systems	10 to 20 years old Septic Systems	20 to 30 years old Septic Systems	30 to 40 years old Septic Systems	Over 40 years old Septic Systems	
276 (16%)	399 (23%)	581 (34%)	230 (14%)	215 (13%)	

- Homes with Records: 16% (276/1701) have septic systems newer than 10 years;
- Homes with Records: 23% (399/1701) have septic systems between 10 and 20 years old;
- Homes with Records: 34% (581/1701) have septic systems between 20 and 30 years old;
- Homes with Records: 14% (230/1701) have septic systems between 30 and 40 years old;
- Homes with Records: 13% (215/1701) have septic systems older than 40 years.

As of August, 2020, a total of 3,633 properties have been studied by BCHD with 60% having records on file and 40% without any records on file.

Summary:

- *According to BCHD, approximately 700+/- homes are connected to sanitary sewers;*
- *The remaining 7,700 +/- households rely on some type of on-site wastewater treatment;*
- *Repair, replacement, or new installations of on-site septic treatment systems will continue to increase, not decrease throughout Brown County;*
- *Of 2,896 existing properties studied by BCHD, 445 of all homes with records of septic systems have septic systems older than 30 years and 1,195 homes have no records of septic systems at all!*
- *Many septic systems were installed prior to soil testing requirements;*
- *Brown County soils are classified as “severe” for acceptable septic systems with lateral drainage fields;*
- *US EPA states that the “single most important means of limiting groundwater contamination is to restrict density of septic systems”.*
- *US EPA states that over ½ of water borne disease outbreaks are due to contaminated groundwater and septic systems are the most frequently reported cause;*
- *IDEM lists Bean Blossom Creek and its tributaries as “impaired” due to high levels of E. coli;*
- *ISDH reported 41 cases of enteric disease in the period between 2012 – 2017.*

Basic comparison 1997 Ordinance vs proposed 2021 Draft Ordinance

1997 Septic Ordinance

Article I Definitions: lists 24 definitions

Article II Private Sewage Disposal Systems:

Section 203 incorporates 410 IAC 6-10

Article III: Permits and Inspections:

Annex A: Lists additional requirements

Calls for 24 hour notice for inspections

Article IV Registration of Installers:

Section 403 allows removal for 90 days

Section 404 removes an installer after 1 yr

Requires re-test after 5 years of inactivity

Article V Powers for Inspection:

Allowed if “proper credentials”

Article VI Notices:

Proposed 2021 Draft Ordinance

No definitions listed; adopts 410 IAC 6-8.3 by reference, including all definitions

Up front statement incorporating 410 IAC 6-8.3 as amended

Article I Permits: Provides for “Bedroom Affidavit” to exempt potential bedrooms

Article II Installations:

Additional installation details have been added based on BCHD’s experience in BC

Article III Repair or Replace: New requirements for landscape modifications that require a “septic locate”

Article IV Technology: Added specific reference to accepting Technology New to Indiana (TNI)

Article V Installation Inspections:

Article VI Registration for Septic Contractors:

Section 604 provides a 3-tier contractor removal process and requires \$1,000,000 general liability insurance

Inactivity removed altogether from Draft Ordinance

Taken out of Draft Ordinance

Taken out of Draft Ordinance

Article VII Change-of-Use Inspections:

Article VIII Tourist Homes and B&B’s: Added Tourist Homes bedroom equivalents for septic system sizing requirements

Article IX Notice of Possible Violations: Similar to existing Ordinance 97-875

Article VII Penalties:

\$500 for 1st offense

\$1,000 for 2nd and additional

Article VIII Validity:

Equivalent

Article IX: Amended Ordinance in Force:

Equivalent

Article X: Penalties:

\$500 for 1st offense

\$1,000 for 2nd offense and additional plus legal fees if found guilty

Article XI Administrative Appeal:

Provides for written appeal to the BC Board of Health, including provision for a hearing within 60 days

Article XII Validity:

Equivalent

Article XIII Ordinance in Force:

Equivalent

Proposed Septic Ordinance

A Committee Member's Comments

It is the desire of the Brown County Board of Health to replace the 1997 Ordinance No. 97-875 regarding the construction, maintenance, inspection and operation of onsite sewage (septic) systems in Brown County, Indiana.

In 2018, a group of local residents volunteered to serve on a committee to review the 1997 Ordinance and draft its replacement. It was agreed then and now that an Ordinance is necessary because (i) Brown County land elevations and soils are unique, (ii) there is a high likelihood of contamination of water sources and waterways, (iii) the County's septic records are sparse and insufficient and (iv) maintenance of residential septic systems is not the County's fiscal responsibility. Many other Indiana counties have adopted similar ordinances for the same reasons.

The Ordinance is the product of countless hours of discussion, drafting, editing and public discussion. It was initially prepared piecemeal by subgroups of committee members. As a result, there were some challenges to properly integrate the various Articles in the current version of the Ordinance.

Some residents believe the Ordinance is neither necessary or advisable and have challenged its passage based upon lack of documented evidence. They misunderstand the purpose of the Ordinance. It is intended to protect public health. Proper treatment and disposal of human waste is not an issue for debate. The Ordinance facilitates better understanding, best practices, sound governmental diligence and practicable solutions.

A preamble has been included as part of most every Article of the Ordinance for the express purpose of explaining why the Ordinance contains specific provisions in addition to state law. Great effort was expended to supplement and not simply restate applicable state law for specific reasons particular to Brown County.

Most committee members are not interested in engaging in further public debate about the need for the Ordinance. That ship sailed years ago. Brown County has a septic ordinance for good reasons. It reflects good governance. It promotes public health and enhances quality of life for residents and visitors.

The Brown County Health Department has drafted a set of Standard Operating Procedures for Septic (SOPs). That document (approximately 53 pages) has not been

reviewed by all members of the committee; it being generally agreed that the Health Department's personnel are best-equipped to draft and implement the SOPs.

Based upon known public comments to the Ordinance, the issues (in order of "heat" level) are as follows:

- Need. Some residents insist that there is no proof of a public health issue (i.e., contamination). New data is being collected; however, exhaustive inspections and analysis and further public debate is not necessary to enact the Ordinance. The state has long recognized the need for laws regarding onsite sewage systems and has specifically authorized counties to enact their own ordinances not inconsistent with state law. Some members of the committee researched numerous technical sources and prepared a document entitled *Proposed Septic Ordinance Assessment Information*. Please refer to that document for data supporting the Ordinance.
- Onsite inspections. Obviously, without the ability to conduct onsite inspections of new installations and existing systems, the Board of Health cannot fulfill its duties and responsibilities to Brown County residents. Thus, some mechanism for proper notice prior to entry is needed. The committee defers to applicable Indiana law, specifically, 410 IAC 6-8.3.
- Enforcement. In addition to condemnation, a written procedure for inspection, determination, opportunity to cure, and appeal makes sense. It is not the committee's intention to limit or in any way restrict the Board of Health in fulfilling its duties and responsibilities. It is the committee's thinking and hope that financial penalties may properly motivate affected property owners to take the actions (and expend the monies) necessary to repair or replace their failing septic systems. At the end of the day, most committee members accept condemnation as the ultimate, but certainly not best, solution.
- Due Process. The Ordinance is intended to provide proper notice and opportunity to cure. It also affords appeal rights. Thus, the pre-condemnation process is fairly slow. The goal is repair and remediation, not condemnation.
- Freedom of Choice. Several local residents object to being required to review existing septic locate records and obtain preapprovals. Their

choice. Most committee members do not feel that the provisions of the Ordinance unduly infringe on an individual's property or personal rights. Instead, it can be reasonably agreed that those provisions (and state law) enhance and protect all Brown County residents. (There are tradeoffs and compromises if one accepts the benefits of good government.)

- Past Practices. There is, no doubt, some hostility among some residents based upon prior actions taken by authorized employees of the Board of Health. Objections are based upon a range of arguments and objections involving personal freedom, oppressive government, personal disputes and costs of compliance. It is hard to persuade an individual who is objecting to the Ordinance primarily because he/she doesn't want to pay to fix a failed or failing septic system.
- Local Rule. Interestingly, there has been some objection that Brown County does not (and should not) have the authority to require septic installers to comply with Brown County-specific rules and procedures (See SOPs). Most of the committee members believe that the licensing/permitting provisions of the Ordinance are in the public's best interest (and do not constitute a monopoly for local installers).
- SOPs. The Standard Operating Procedures for Septic are important. However, there was never any substantive discussion among the committee members regarding the SOPs nor was it agreed that the committee's review and approval of same was (or is) a prerequisite for adopting the Ordinance. The Board of Health is quite capable of doing its job after approval of the Ordinance by the county commissioners. It is normal and good business practice to delegate duties and responsibilities and trust the individuals employed by the Health Department. The staff have the requisite professional credentials, education, training and experience. (These people care.)
- Specific Language Issues. The purpose for including the phrase "all as amended from time to time" was intended to remind the reader the applicable Indiana law can change from time to time without the consent or approval of the Brown County Commissioners.

With respect to Section 301, the word “adjacent” was included to recognize that certain landscape modification near the physical structure of the septic system could damage or adversely affect its operating performance. Perhaps a specific radius from the septic tank system should be specified (as opposed to the inspector’s discretion?).

- Other Matters. It is contemplated that septic systems already installed or having been repaired in compliance with then applicable law are “grandfathered” until such time as the system fails.

With respect to Section 803, the issue is not whether the occupancy/use rule will be enforced but whether there is good rationale for the rule.

Simply put, there is.

In the opinion of many committee members, penalties are neither “harmful to honest persons” or “unnecessary.” In fact, it can be reasonably argued that imposition of penalties should be a required first step in mitigation prior to condemnation. The real issue is the amount of an initial penalty and the penalty costs of ongoing non-compliance.

One final comment. In the opinion of many committee members, the Ordinance, if not state law, should include a mandatory inspection and approval process in connection with every real estate sale/purchase transaction (involving family members, too). This requirement would help new owners understand the condition of the property’s septic system and potential repairs needed to ensure it performs in compliance with Indiana law regarding public health.

Respectfully submitted,
Richard M. Hall

Conclusion

One of the major obligations as appointed representatives on the Brown County Board of Health is to *“take any action authorized by statute or rule of the state department of health to control communicable disease (IC 16-20-1-3) and to develop and recommend local ordinances for the protection of the public’s health”**.

After lengthy investigation, study and debate, it is the conclusion of the Brown County Board of Health that enough evidence has been presented to warrant the replacement of the 1997 Ordinance. A committee with representatives from the public, health department and Board met and crafted document attached within.

Recommendation

It is the Brown County Board of Health’s recommendation that the Board of Commissioners of Brown County Indiana unanimously vote to pass the proposed ordinance.

**page 17 - Indiana Association of Local Boards of Health*