

Health board: Septic law will help plug data holes

By **Sara Clifford** - 3/29/17 2:01 PM

“We have to start somewhere.”

That’s the answer Brown County Board of Health member Linda Bauer had to questions about why the new draft Brown County septic ordinance includes a new set of procedures for properties that are being sold.

Health department employees have strong suspicions that there are large numbers of failed septic systems in Brown County, but they don’t have much data to back up those feelings.

The new rules being developed act as a check on whether or not state and local codes are being followed and help to gather better local data. It makes sense to implement those rules at the point of sale because the health department has no other large-scale, systematic opportunity to know where failed or undersized septic systems might be, Bauer said.

The lack of data is for many reasons, Bauer and environmental health specialist John Kennard said. They include inconsistent paper record-keeping practices over several decades; lack of design plans on file for septic systems, some of which never received permits; lack of communication between the building and health departments in past years; and a lack of cooperation from people who know where failed systems are, but won’t tell the health department.

“This was an opportunity and a way to make a start, and the easiest way to start identifying these systems was by sales transfers. That way we’re not intruding on people’s privacy by knocking on doors,” Bauer said.

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ABOVE: Current 2017 draft septic ordinance

Real estate reaction

When selling their homes, owners are supposed to mark a box about whether or not their septic system is working properly on a sales disclosure document.

Bauer said that “99 percent of the time,” the “unknown” box is checked instead of “yes” or “no.” With not all loan companies requiring a septic inspection, that leaves a lot of room for problems for a buyer.

If the buyer or loan company doesn’t insist on a septic inspection, that system might not actually be working, which means thousands of dollars to replace it.

It’s also possible that the home had undergone changes through the years that put too much pressure on the septic system, which could cause it to fail, Bauer said.

The health department doesn’t have records of all home additions and how they correspond to the size of the septic system on the property.

And right now there’s no good way to know if a system is failing with great certainty, because not all home inspectors do septic tests the same way, health board members said.

During a home sale, the cost of replacing or repairing an inadequate system may be able to be wrapped into the cost of a home loan or negotiated in the sale price, Bauer said.

But some local real estate agents say they’re not keen on the idea of having to enforce health board rules, such as making sure the number of bedrooms the home is marketed to have

matches the number of bedrooms the septic system is sized to serve.

Agent Phil Shively with Carpenter Hills O'Brown said he's seen many times when an older home is sold and the current owners had no idea that the septic system was undersized, either because that's the way it was sold to them or they were given permission to build on and no one told them the septic couldn't support the size of the addition.

"The person who is being penalized is the person who owns the house today," he said.

He said agents have always attempted to determine the septic system's size to be helpful, but it isn't required of them.

Kennard said state law already requires the septic system to be large enough to serve the number of bedrooms the home has.

A new provision in the proposed county law allows a person building a new home to declare that even though a house could be perceived as having four bedrooms, for example, the builder/resident will only be using two of those rooms as bedrooms. But there is no provision on an existing home for declaring that only so many potential bedrooms will actually be used as bedrooms.

Bauer argued that the burden is on sellers, not so much on real estate agents.

"We need to help provide transparency, so when buyers purchase a property they know what they're buying," Bauer said.

"Were not asking Realtors to be the septic Nazis. You have something to do with it, but it's a seller issue. They're disclosing what they have to sell. If they don't know, maybe it's time to find out before putting it on the market."

Shively asked what would happen with properties that are for sale by owner, or by an out-of-county agent. Bauer said she hopes the Metropolitan Indiana Board of Realtors will help spread the word to all its agents who work in Brown County that obtaining septic system records may be part of the process.

"You can't regulate honesty," said health board President Jim Zimmerly.

He said the rule changes are about consumer protections for buyers and environmental protections for all residents.

“The primary responsibility of the health board is to provide a healthy environment for people to live,” he said.

“The health department is absolutely not interested in seeing anyone be put out of their home or lose their home because they’ve got a residence that has a system that wouldn’t support their family. ... The last thing you want is to have a home that can’t be lived in.”

Additional arguments

The county’s septic rules haven’t been fully revised in 20 years.

While a few of the proposed revisions apply to properties being sold, many of the rules apply to all properties with septic systems — and they are not all new rules, Bauer said.

For instance, it is already illegal to have any sewage disposal system on your property that is failing to do its job, and that has been in state code for decades.

Brown County Health Board member Cathy Rountree said the county can’t have a less restrictive septic ordinance than the state does.

But members of the public took issue with tighter rules on alternate methods of waste disposal in the new county ordinance.

The county’s proposal does not allow composting toilets, which break down waste organically, or incinerating toilets, which use extreme heat to turn waste into water vapor and ash.

The state does allow them at the discretion of the local board of health.

Even if those were allowed, Rountree said the homeowner would still have to have a septic system to dispose of other wastewater, like from a shower or sink — which doesn’t make using those kinds of toilets cheaper than a traditional septic.

The local ordinance does not allow privies as a primary or permanent waste disposal solution for a home.

The state does allow them, but only in extremely rugged terrain, or in “soil types which do not permit the absorption of wastewaters from septic tank absorption fields,” or because of a lack of water. According to state rules, a privy must be built to very specific standards to prevent flies and other pests from entering any part of it; to contain all waste from coming into contact with the users or any type of water; and to minimize odors inside and out.

The local ordinance does not mention new or experimental waste disposal technologies, but county environmental health specialist Ernie Reed said those could be approved through the state health department if the applicant has data on them from their use in other states.

Property owner Thomas Westgard said he knows people who built homes by the “log cabin rule” — which exempts the builder/occupier from local standards — who are not allowed to live on their property because they did not have what the county deemed to be proper waste disposal.

Bauer asked him if it is appropriate to exempt people because of their financial situation from rules intended to protect public health and safety.

“In my opinion, if someone is living rough and trying to have a place to live instead of living on a sidewalk, yes,” he said. “As a public health issue, it’s far better for them to have some kind of shelter than to put them in no shelter.”

Westgard said that if the health department does give people options to stay in their homes, those should be explained in the ordinance.

Pump and haul standards and the use of a “temporary sewage holding tank” are mentioned in the ordinance rewrite, but routes to financial assistance programs or other ways to remedy a problem are not.

Records, procedures

Brown County Redevelopment Commission Jim Schultz said he believes people should be able to ask questions about the viability of their septic systems without “operating from a position of fear. And I think they do right now because of the vibe going on.”

Russ Herndon, a member of the Brown County Area Plan Commission, said that procedures regarding questionable or failed septic systems need to be written down so they are clearly

communicated and fairly applied.

Health department Office Manager Judy Hess said she gives information to people who inquire about what their options are, but she doesn't often hear from them after that.

She said she has begun working on records and standard operating procedures, and Bauer said the SOPs are where details like what to do if your septic system is failing should be explained instead of in the ordinance.

County commissioner Jerry Pittman asked the board how many actual public health emergencies there have been in the county because of failed septs.

Health board members could think of one eye infection caused by septic water being splashed, and county commissioner Diana Biddle said wells have been contaminated by leeching septs.

Bauer said it's hard to say how many actual causes there have been because of the poor state of the health department's records.

She said holes exist in data, and the data they do have is filed in odd ways, such as under the name of the original property owner. That practice dates back to the days when addresses were "Rural Route 2" instead of an actual street address, she said.

Bauer said the health board will be discussing ways to make records more "public-friendly," and the new point-of-sale procedures in the proposed septic ordinance are part of that process.

"We have to be proactive. We have to start somewhere on a small scale," she said. "There are all kinds of ideal solutions, but if we wait another 20 years again, I just think it's being irresponsible."

Why does ordinance need to be updated?

Brown County Health Board member Linda Bauer, who's also a property appraiser, gave these reasons at the last work session on the new septic ordinance:

- The state ordinance for residential on-site sewage systems was updated in 2012, 2013 and 2014. Brown County's hasn't been completely overhauled since 1997. The county's went through an attempted update in 2012 and 2013, but because of a publishing error, the revisions were deemed invalid and the current county septic ordinance is the 1997 version.
- The local housing market has started to see growth again, Bauer said. House flipping — buying an investment property, fixing it up and selling it for a profit — also has become more popular in the past three to four years, she said. It's important for buyers to understand what it is they're buying so they don't "get a bad taste in their mouth" about buying here. Often, people moving from the city assume they're going to be on sewer and they don't know what a septic system is or how to properly use one, health board members and county commissioners said. "It's just letting them know. It's transparency," Bauer said.
- One big reason of needing to update the local rules is that people are remodeling their basements to include bonus rooms, which may then be advertised as bedrooms, Bauer said. Bauer said as a homeowner, she dealt with a real estate agent who insisted that it was OK to call her office a third bedroom even though she told him she only had a two-bedroom septic system. But if that home would have been sold to a family that used all three rooms as bedrooms, it might have put too much pressure on the system and caused it to fail, she said. That's a situation the health board wants to prevent.
- Only government loans require a full septic inspection beyond looking around the yard for signs of septic failure, Bauer said. "If I don't see anything bubbling up in the grass, I move on, but that doesn't mean it's right," she said. At least 99 percent of home buyers do home inspections to an extent, and home inspectors can inspect septic systems, but often, that's a dye test. Dye tests are "about half accurate," Bauer said; not every inspector does them the same way, and they are not accurate if they are used on a house that is only being lived in part-time. Part of the ordinance change includes a certification test for septic inspectors. Current home inspectors could get certified to do Brown County septic inspections, as could anyone else. Buyers could choose from a list of registered inspectors. "They will know what to look for and have been certified to understand our systems in this county and what's expected of them as opposed to hiring your neighbor who did them 20 years ago," Bauer said. The cost of that inspection would be up to the inspector to set.
- Health board members would love to see all of Brown County on a public sewer system, but that isn't likely to happen for years, and "we have to have a plan today," Bauer said.

Read the current and proposed ordinances under this story link at bcdemocrat.com.

What kind of septic systems are approved here?

The following septic systems are options in Brown County, according to the Brown County Health Department's septic system specifications worksheet.

Subsurface: Gravity trench, Enviro-Septic (Presby), Advanced Enviro-Septic (Presby), pump-assisted trench

Elevated: Enviro-Septic (Presby), Advanced Enviro-Septic (Presby), mound

"TNI" (technology new to Indiana): Secondary treatment drip irrigation, extra soil cover over trenches, "other." Environmental health specialist Ernie Reed said other technologies could be approved for local use by the state health department.

Reed said homeowners who are having systems installed are given all these options as well as the results of their soil analysis — though the homeowner might not know what would be appropriate for their particular site.

Brown County Health Board member Linda Bauer said options were expanded in 1997 — the last time the county septic system was rewritten — to allow septic treatment on small building sites and sites in floodplains.

Another work session planned

The March 14 meeting between the Brown County Commissioners and Brown County Health Board was the second joint work session on the proposed new county septic ordinance. The health board has been working on it for more than a year.

For both meetings, people in the audience — who numbered about a dozen — were told they were not able to comment until the end. They included several members of other government boards, including the county redevelopment commission, area plan commission and regional sewer district, septic system installers and a few residents.

Members of other boards asked at both meetings to have more input into the ordinance before it went to the public hearing stage — the legal step at which the county has to accept public comment. They said the rules for septic systems have a ripple effect on the local economy and they believed their perspectives would be helpful at an earlier stage.

After some debate, the commissioners and health board took a suggestion to have a larger work session, including other boards that wish to be involved. That meeting will be at 1 p.m.

Wednesday, April 5 in the second-floor Salmon Room in the County Office Building.

The ordinance isn't close to being ready to vote on, the county commissioners said.

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