

Unsealed by the Board of Commissioners 05/23/2011.

**SEALED MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MEETING – September 8, 2008**

Pursuant to NCGS 143-318.11 (a) (3) Attorney-Client Privilege, Transylvania County versus Michael D. Baxley and Charlotte Baxley's Training Facility, closed session was entered into. Present were Chairman Chappell, Commissioners Bullock, Guice, Hogsed and Phillips, County Manager Artie Wilson, County Attorney Curtis Potter and Clerk to the Board Trisha McLeod.

County Attorney Curtis Potter updated Commissioners on the status of the lawsuit against the Baxley's Training Facility. A lawsuit was filed approximately two weeks ago and the Baxleys have been served. Mr. Sean Perrin, a litigator with Womble Carlyle Sandridge and Rice, is working on behalf of the County in this matter. Mr. Perrin has scheduled a preliminary injunction hearing in Polk County Superior Court for September 29, 2008. Resident Superior Court Judge Mark Powell will preside over the case. At the hearing Mr. Perrin will present the County's case primarily through affidavits. The Baxley's attorney, Mr. Mack McKeller, will be allowed to make a counter argument against the County's case. The Judge will then either grant or deny the County's motion for a preliminary injunction. Mr. Potter noted that if the injunction is granted, the Judge may stipulate what is allowed and not allowed. In a similar case in Charlotte, the Judge in that matter crafted conditions where a bike track could only operate for certain hours of the day.

Mr. Potter also noted that Attorney Michael Eubanks is representing many citizens in the Cherryfield community in a nuisance action suit. If a nuisance is found in that case, then it must be completely abated. The County is working with Mr. Eubanks to obtain affidavits from the citizens he represents. In response to a question from Commissioner Bullock, Mr. Potter stated that the County's lawsuit and the citizens' lawsuit are based on two different legal theories. The County's theory is that Mr. Baxley violated the police power ordinance enacted by County officials to protect the general health and welfare of its citizens. Mr. Eubanks and his clients believe that Mr. Baxley is doing something that should not be allowed because it violates his clients' personal private rights.

The Manager informed Commissioners that no citations have been issued in the last two weeks nor have there been any noise complaints, although the track has been in operation.

Mr. Potter stated that an attempt at mediation was made between Mr. Eubanks, Mr. McKeller, and their respective clients, but it fell through. Mr. Perrin will deliver the County's affidavits to Mr. McKeller well in advance of the hearing to hopefully open up some dialogue between both parties. Mr. Potter noted that, as a Superior Court case, there will be a mandatory mediation required between the County and the Baxley's.

Chairman Chappell asked how any stipulations imposed by the Judge would work in conjunction with the current Noise Ordinance. The Manager responded said the County would accept any conditions that were reasonable.

Commissioner Bullock asked if the ruling in the County's case could affect Mr. Eubanks' nuisance action suit. Commissioners felt the ruling would have some bearing on their case. Mr. Potter agreed to investigate that matter further.

In response to a question from Commissioner Guice, Mr. Potter stated that Mr. Baxley could not appeal the ruling by the Judge at the initial hearing, but he could appeal the ruling if a trial occurs.

Chairman Chappell asked if additional citations can be issued to Mr. Baxley after the hearing and before a trial process begins. Mr. Potter said Mr. Baxley would have to operate within the conditions set forth by the Judge. If he does not abide by those conditions, then another hearing would occur in which the Judge could hold Mr. Baxley in contempt of court and then decide whether to impose fines or shut down the bike track.

After further discussion, **Chairman Chappell moved to reenter Open Session, seconded by Commissioner Bullock and unanimously carried.**

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan
Clerk to the Board