

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

**SEALED MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MEETING – September 27, 2008**

Pursuant to North Carolina General Statute 143-318.11 (a) (3) Attorney-Client Privilege, to discuss the pending litigation matter of 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 Attorneys David Neumann and Curtis Potter and Clerk to the Board Trisha McLeod. Attorney Sean Perrin with Womble Carlyle Sandridge and Rice participated via conference call.

Attorney Sean Perrin with Womble Carlyle Sandridge and Rice is representing the County in the litigation matter against Michael D. Baxley and Charlotte Baxley's Training Facility. The injunction hearing is scheduled in Polk County Superior Court on Monday, September 29, 2008 with Judge Mark Powell presiding. Mr. Perrin participated in the meeting via conference call. He offered a brief synopsis of the complaint against the Baxley's' Training Facility and then discussed the possible outcomes of the preliminary injunction hearing. He noted that the County is not seeking damages against Mr. or Mrs. Baxley. The County's case claims only that the dirt bike facility operated by the Baxleys violates the County's Noise Ordinance. At the hearing, Mr. Perrin, on behalf of the County, will be asking the court to enjoin the Baxley's for violating the Noise Ordinance.

Mr. Perrin explained that Judge Powell may rule in one of four ways. First, Judge Powell may continue the case. Secondly, the County could possibly lose the case; however Mr. Perrin thinks the County has gathered enough evidence to prove otherwise. Third, the County could win the case meaning that the court would permanently enjoin the Baxley's Training Facility for violating the Noise Ordinance. The County's fourth option is to settle the case. Mr. Perrin believes this option is the most preferable because the County can help dictate the terms of the settlement. He asked for direction from Commissioners on what terms they would be willing to settle the case. Mr. Perrin offered several options to Commissioners. If the Baxleys can comply with certain conditions over a period of time the County could agree to voluntarily dismiss the lawsuit. If the Baxleys do not comply with the terms of the settlement, then the County would pursue the trial and possible permanent injunction. The County's goal in this matter is to abate the noise that is generated by the bike track, not to shut down the bike track. If a settlement is reached, the conditions would be clearly spelled out in a court order.

If Mr. Perrin and Mr. Ed Bleynat, the Baxley's Attorney, reach an agreement prior to the hearing on Monday, then Mr. Perrin would inform the Judge of this and then prepare an order for the Judge's signature and ask that the preliminary injunction hearing be taken off the table. If the Baxleys violate the agreement, then they are in violation of the court order. They will also be charged criminally each time they violate the Noise Ordinance.

After a lengthy discussion of the settlement options, and by consensus, Commissioners instructed Mr. Perrin to offer the following concerns and conditions to Mr. Bleynat for consideration:

1. Limit the number of riders at one given time,
2. Limit the age limit of the riders,
3. Limit the time of operation, and
4. Limit the size of the bikes on the track

Also by consensus, Commissioners agreed that it should be made clear to Mr. Bleynat that all these options should be considered. In other words, Commissioners will not agree to Mr. Baxley choosing which conditions he would prefer. Finally, by consensus, Commissioners agreed that the maximum age limit of the riders should be 12 years old.

Mr. Perrin agreed to email Mr. Bleynat today with this information and forward any response to the Manager and Mr. Potter, who in turn will contact Commissioners.

Commissioner Bullock moved to leave closed session, seconded by Commissioner Hogsed and unanimously carried.

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan
Clerk to the Board