

SEALED MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MEETING – January 12, 2009

Closed Session #1

Occupancy Taxes – Dowden Group

Pursuant to NCGS 143-318.11 (a)(3), Closed Session was entered into. Present were Chairman Chappell, Commissioners Bullock, Hawkins and Hogsed, County Manager Artie Wilson, Finance Director Gay Poor, County Attorney David Neumann and Clerk to the Board Trisha McLeod.

The Manager reported that last year Rodeway Inn and Sunset Motel, both owned by the Dowden Group, became delinquent on the payment of Occupancy Taxes. In July of 2007, they stopped remitting the monthly report and payment altogether. Through the work by the Finance Director, they began making payments in March 2008, which did not include the penalties for their failure to file or make payments. Staff has continued to work with them and now they are behind in their payments once more. Recent contacts from the Finance Director have not resulted in any movement other than an email from them saying they would take care of the payment when they could.

The Manager recommended that the Board instruct the Attorney to draft a letter to them explaining the County has no other choice but to pursue legal action if they fail to respond. The Manager said staff would be willing to negotiate a payment plan with them. The Attorney expressed concern over the payment plan because the customer pays the tax and the hotel owner acts as the trustee over the funds. The hotel owner has fiduciary requirements to submit those payments to the County. They are committing several crimes just by not submitting payment to the County. He said the bottom line is the monies do not belong to them. A payment plan will only condone their actions of using the tax for their own use and it is not fair to other businesses. Commissioners agreed.

Commissioner Bullock asked about the legal remedies the County has to ensure they make the payment. The Attorney said it is important to point out in the letter that the tax has already been paid by the customer and the money does not belong to them and that they are acting as a trustee for the County. Trustees have certain responsibilities to perform properly and honestly. The goal for the County is encourage them to pay the tax, not punish them; however the County will not hesitate to use any legal remedies at its disposal if they fail to cooperate. There are civil and criminal penalties that apply, including financial penalties, charging them with a Class 1 Misdemeanor and other laws that are applicable.

Commissioner Hawkins asked if this information can be shared with the Tourism Development Authority. The Manager said the County can not share specific information about hotels/motels. The Finance Director said the TDA is aware there is a problem, but not of the specifics. Commissioner Hawkins asked if the County has audit authority. The Finance Director replied yes.

After further discussion, Commissioners instructed the Attorney to write a letter demanding payment of the Occupancy Taxes and if the County receives no response, to seek other legal action.

ATTEST:

Jason R. Chappell, Chairman
Board of County Commissioners

Trisha M. Hogan
Clerk to the Board

01/12/2009