

**SEALED MINUTES  
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS  
CLOSED SESSION MEETING – April 13, 2009**

Closed Session #2  
**Baxley Lawsuit**

Pursuant to NCGS 143-318.11 (a) (3) to consult with an attorney reference the lawsuit Transylvania County versus Michael Baxley and Charlotte Baxley, closed session was entered into. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips. Also present were County Manager Artie Wilson, County Attorney David Neumann and Clerk to the Board Trisha McLeod.

The County Attorney and the Manager reported that the civil contempt hearing against Mr. Baxley was heard in Civil Superior Court today. The County claimed that Mr. Baxley should be held in contempt for violating a judge's order not to violate the Noise Ordinance. The Attorney representing the County, Sean Perrin, presented the case for the County. Mr. Baxley's attorney argued that Mr. Baxley is not aware of when he violates the Noise Ordinance, specifically because he was given no warning he was in violation. The judge ruled in favor of Mr. Baxley, dismissing the contempt of court violation, citing that Mr. Baxley was not in willful violation.

The Manager said Mr. Perrin would like Commissioners to consider other remedies in order to prevent this ruling from occurring in the future. These are:

1. Warning issued on 1<sup>st</sup> complaint call if it is determined by the deputy that a noise violation has occurred. If a violation occurs again, the 1<sup>st</sup> warning would prove the violation to be willful.
2. Proceed with civil fine of \$500 per incident for future violations of the Noise Ordinance.
3. Mediation deadline is June 1 and must occur before going to trial on August 3. The Board must authorize staff how to proceed in mediation.
4. Deal with pending criminal offenses.

The Manager said Mr. Perrin will forward his recommendations to him on Tuesday at which time the Manager will forward them to the Board for their consideration.

The Manager further reported that today's hearing was based on compelling affidavits from the officers who issued the citations to Mr. Baxley. He said Mr. Perrin presented a good case, but unfortunately the judge did not agree. The judge did, however, speak sternly with Mr. Baxley about working out a solution with his neighbors.

The Manager asked for the authority to meet with the Sheriff and implement Mr. Perrin's recommendations. After discussion, Commissioners instructed the Manager to wait before meeting with the Sheriff. They would first like to review Mr. Perrin's recommendations before instructing staff on how to proceed.

**Chairman Chappell moved to leave Closed Session, seconded by Commissioner Bullock and unanimously carried.**

ATTEST:

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Mike Hawkins, Chair  
Transylvania County Board of Commissioners

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Trisha M. Hogan  
Clerk to the Board

04/13/2009