

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

**SEALED MINUTES  
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS  
CLOSED SESSION – May 26, 2009**

Pursuant to NCGS 143-318.11 (a) (3), to consult with an attorney in reference to the lawsuit Transylvania County versus Michael Baxley and Charlotte Baxley, closed session was entered into at 9:30 p.m. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Attorney Curtis Potter, County Manager Artie Wilson, and Clerk to the Board Trisha McLeod.

County Attorney Curtis Potter reviewed the discussions that occurred in mediation today between the County and Mr. Baxley. He asked for direction from the Board in terms of the proposal that is on the table in mediation.

Mr. Potter reported that Mr. Baxley has attempted to reduce the noise at the bike track by changing the direction of the track and installing a screening wall on one side of the track. He said Mr. Baxley's goals are to host races and have the ability to run full size bikes.

During mediation, the mediator proposed that the Sheriff view the operation of the bike track during the coming weekend and determine if the two provisions taken by Mr. Baxley had reduced the noise to a level that is in compliance with the Noise Ordinance. However, for legal and other reasons, the Sheriff did not agree to participate. The mediator recommended Commissioners appoint a neutral party to observe the bike track in operation and make the determination. The neutral party could be the mediator, one or two Commissioners, or someone in the community. Mr. Potter noted the County is not allowed to use any information or gather evidence to use in litigation.

The Manager further explained this would be a one day trial. If the Sheriff's Department receives complaints during the trial and it was determined that Mr. Baxley was in violation of the Noise Ordinance, no citation would be issued because both parties agreed to the trial; however it would be explained to Mr. Baxley that the provisions did not reduce the noise level. If the Commissioners agree to the trial, Mr. Potter explained Mr. Baxley would be asked to run the number of bikes at one time he proposed to use in the future. If it is determined that the noise violates the Noise Ordinance, then Mr. Baxley will be asked to reduce the number of bikes until compliance is reached.

Mr. Potter reported that Mr. Baxley's goal is to conduct training on Tuesdays and Thursdays, leading up to races on Fridays, Saturdays and Sundays, with one free weekend each month.

Commissioners discussed the proposed trial offered during mediation and discussed who to appoint as the neutral party. The Manager pointed out the mediator charges \$225 per hour. Commissioners agreed not to use the mediator. Mr. Potter said if the Board is not willing to participate in the trial operation, it may be determined that the provisions Mr. Baxley implemented did not work if he ends up receiving a citation for violating the Noise Ordinance. If Commissioners do agree to participate and the neutral party finds that the noise is not unreasonable, those findings could be used for a settlement prior to litigation. The settlement agreement could specify the number and size of the bikes that can be on the track at one time.

The Manager asked the Board for direction stating that the mediator had to be informed the next day of the Board's decision.

After a lengthy discussion, Commissioners agreed upon the following:

1. Neutral party should have law enforcement experience
2. Ideally, neutral party would not live in Transylvania County (example given was retired Henderson County Sheriff George Erwin)
3. In the mean time, reinforce the Commissioners' thoughts about limiting the number of bikes on the track at one time; request that Mr. Baxley be open to considering this which will be evaluated during the trial
4. During trial, Mr. Baxley would put the maximum number of riders on the track that he would propose to use in the future and the number of riders would be reduced accordingly if still in violation of the Noise Ordinance
5. Neutral party must be agreed to by both sides
6. In the interim, Mr. Baxley will continue to be cited if he violates the Noise Ordinance

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

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Mike Hawkins, Chair  
Transylvania County Board of Commissioners

ATTEST:

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Trisha M. Hogan  
Clerk to the Board