

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

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

Closed Session #1
Baxley Case

Pursuant to NCGS 143-318.11 (a) (3), to consult with an attorney reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility, closed session was entered into at 9:15 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.

Commissioners consulted with County Attorney Curtis Potter about the status of the lawsuit and gave direction to staff on how to proceed with the upcoming trial date.

Mr. Potter reported that he and Sean Perrin, the attorney trying the case, feel the County's case will likely be continued the week of August 3 to the next court calendar in October. The case is ninth on the calendar of thirteen cases scheduled to be heard. He offered Commissioners two options to consider:

1. Prepare motion to request a continuance prior to ten days before the trial date.
2. Request continuance at trial.

Mr. Potter recommended Commissioners authorize Mr. Perrin to request a continuance ten days prior to the trial date. This would prevent the County from incurring additional legal fees from the trial preparation work, specifically if the case is going to be continued anyway. Mr. Potter also requested permission to apply for a preemptory trial setting through the trial court administrator which gives the County special consideration and places the case first on the next court calendar. The preemptory trial setting would also lessen the impact on the Sheriff's Department because Mr. Baxley's attorney, Ed Bleynat, plans to depose all of the deputies who have been involved in the matter.

He and Mr. Perrin do not prefer the second option of requesting a continuance during the trial because there is no guarantee a continuance would be granted and Mr. Perrin would have had to have been prepared to proceed. If the continuance is granted early Mr. Perrin would not have to begin trial preparation and depositions quite so early which in turn saves the County from incurring additional costs. If Mr. Perrin prepares for trial for the August court date and the case automatically gets continued he would preserve his case material for the next trial date; however there would be some additional preparation for the next trial date and therefore some overlapping costs.

Chairman Chappell asked if the request for the continuance guarantees the case will be heard on the next court calendar in October. Mr. Potter said the trial court administrator will decide when the case will be heard; however if the County is granted a preemptory trial setting a more definitive date and time will be set. If the case is not heard in October, the next court calendar is scheduled for December. Mr. Potter also mentioned the possibility of moving the case to another county within this jurisdiction.

07/13/2009

Commissioner Hawkins agreed with Mr. Potter's recommendation. He also suggested that it be conveyed to Mr. Bleynat that the County has attempted to reach an agreement with Mr. Baxley through what the County feels is a reasonable proposal and if the proposal is rejected the County is prepared to go to trial.

Commissioner Hogsed suggested pursuing an earlier trial date than October if the County can establish a preemptory trial setting and furthermore to cease communication with Mr. Bleynat. Commissioners were in agreement.

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

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan
Clerk to the Board