

Unsealed by Board of Commissioners 04/13/2015.

SEALED MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
January 23, 2012 – CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (3) to consult with an attorney reference potential litigation, closed session was entered into at 9:35 p.m. Present were Chairman Hawkins, Commissioners Chapman, Chappell, Hogsed, and Phillips, County Manager Artie Wilson, County Attorney Curtis Potter, Planning and Economic Development Director Mark Burrows, and Clerk to the Board Trisha Hogan.

The Manager explained that two years ago Transylvania County was awarded a Building Reuse Grant through the NC Department of Commerce. Transylvania County subsequently entered into a loan agreement with Gaia Herbs whereby Transylvania County loaned \$116,000 to Gaia Herbs forgivable over a five-year period. In turn, Gaia Herbs agreed to use the grant funds to up-fit a building they were leasing from David Watkins and to remain in the building for a period of at least five years, and to create six jobs. Recently a dispute has occurred between Gaia Herbs and Mr. Watkins, potentially causing Gaia Herbs to default on the loan agreement. If Gaia Herbs defaults on the loan agreement, the County must recover \$92,600 in remaining funds.

Planning and Economic Development Director Mark Burrows described the dispute that may cause Gaia Herbs to default on the loan. Mr. Burrows said it appears that Gaia Herbs owner Ric Scalzo is attempting to find another location, although he is unaware of any available space which meets Mr. Scalzo's requirements. Mr. Scalzo has inquired with Mr. Burrows as to the County's position on this matter should Gaia Herbs default on the loan agreement. Mr. Burrows' response to him was that it would ultimately be the decision of the Board of Commissioners; however, based on the limited information that has been presented Mr. Burrows is not inclined to recommend to the Manager or Commissioners that the County dismisses its interest in this matter.

County Attorney Curtis Potter informed Commissioners that they have a duty to enforce the loan agreement. In terms of remedies, the County has several different options if it determines that a default has occurred and the weight of those options would change depending on information as it is made available and where the landlord stands on the issue. Some of the options are:

1. Sue Gaia Herbs for a money judgment for the amount that remained owed on the sliding scale/yearly reduction rate of the agreement (currently that figure is \$92,600);
2. Claim a lien on the personal property of Gaia Herbs;
3. County to become tenant and try to recoup loss by re-letting the premises and potentially look at value in terms of exercising the option to purchase the property (this is the least favorable option).

The County also has the option of paying the loan back itself.

The lease agreement between Gaia Herbs and Mr. Watkins does stipulate that the tenant has the option to terminate the lease agreement if the landlord fails to make or begin making required repairs within a reasonable period of time not to exceed 30 days. The tenant shall have the option to terminate the lease agreement on 30-days written notice.

The intent of this closed session meeting is to make the Board of Commissioners aware of this situation should Gaia Herbs default on the loan agreement and the potential for legal action. Mr. Burrows assured Commissioners he will continue to work with both Mr. Scalzo and Mr. Watkins to try and resolve this issue and will keep the Manager and Commissioners informed moving forward.

Chairman Hawkins moved to leave closed session, seconded by Commissioner Chapman and unanimously carried.

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan, Clerk to the Board