

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
May 27, 2008 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Tuesday, May 27, 2008 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

Commissioners present were Lynn Bullock, Chairman Jason Chappell, David Guice, Daryle Hogsed and Vice-Chairman Kelvin Phillips. Also present were County Manager Artie Wilson, County Attorneys David Neumann and Curtis Potter, and Clerk to the Board Trisha McLeod.

Media: *Hendersonville Times News*: Leigh Kelley
Transylvania Times: Mark Todd

There were approximately 120 people in the audience.

CALL TO ORDER

Chairman Jason Chappell presiding called the meeting to order at 7:05 p.m.

WELCOME

Chairman Chappell welcomed everyone to the meeting.

PUBLIC HEARING

REVISED NOISE ORDINANCE

Chairman Chappell explained the rules of the Public Hearing. **He declared the Public Hearing open at 7:10 p.m.** Chairman Chappell emphasized to the public that Commissioners had not discussed the proposed revised Noise Ordinance and therefore is not a final product.

The Manager asked the County Attorneys to highlight the elements of the Noise Ordinance before allowing public comment. At the request of Commissioners, Staff worked with the Attorneys to clarify certain areas of the Noise Ordinance.

County Attorney Curtis Potter highlighted the revised elements of the Ordinance. The Ordinance outlines its purpose as to regulate unreasonably loud and disturbing noise, those terms being outlined within the Ordinance. There are eight factors to be considered when determining whether a noise is unreasonably loud and disturbing. Those factors are:

1. Time of day
2. Proximity to residential structures
3. Whether the noise is recurrent, intermittent or constant

4. The volume and intensity
5. Whether the noise has been enhanced in volume or range by any type of mechanical means
6. The nature and zoning of the area
7. Whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes
8. Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof

Mr. Potter listed several acts deemed to be in violation of the Ordinance:

1. Loud, boisterous or raucous language, yelling, or shouting
2. The congregation of certain persons that creates too much noise
3. The keeping, owning, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonable loud disturbing noise continuously or incessantly for a period of 10 minutes or intermittently for a period of 30 minutes or more, thereby causing a noise disturbance
4. The playing of any radio, television or musical instrument in such a way as to constitute a noise violation
5. The intentional sounding of any horn or signal device that is not for a lawful purpose
6. The repair, rebuilding or testing of any motor vehicles, particularly between the hours of 11:00 p.m. and 7:00 a.m. creating unreasonably loud and disturbing noises
7. Operating or permitting the operation of any automobile, motorcycle, dirt bike, go-cart, recreational vehicle, remote control vehicle or any other vehicle so out of repair, so loaded, or operated in such manner as to create loud or unnecessary grating, grinding, rattling, screeching of tires, or other such noises related to motor vehicle use
8. Operating or permitting the operation of any automobile, motorcycle, dirt bike, go-cart, recreational vehicle, remote control vehicle or any other vehicle that engages in jackrabbit starts, spinning tires, racing engines, or other operations that create unreasonably loud or disturbing noise
9. Operating or permitting the operation of any race track or similar facility or establishment upon which any of the foregoing violations is allowed to occur
10. The creation of any excessive noises on public streets adjacent to schools, institutions of learning, libraries or similar facilities
11. The firing, shooting or discharging of any firearm for the sole purpose of making noise or disturbance
12. Knowingly permitting the occurrence of any of the foregoing violations on a person's property

Mr. Potter also highlighted the noises or activities that shall be exempt from the Ordinance:

1. Noise made by dogs while lawfully hunting
2. Noise associated or resulting from the normal operations of a kennel type facility

3. Noise caused by the discharge of firearms by law enforcement personnel
4. Noise coming from the normal operations of aircraft
5. Noise resulting from farm operations
6. Noise associated with any event held in recognition of a community celebration of national, state or county events or public festivals
7. Noise associated with any public or private school activity or camp activity
8. Noise associated with the chimes, whistles or bells of businesses, schools, camps or religious institutions provided they operate for no more than 10 minutes in any hour
9. Non-amplified crowd noise resulting from activities by student, government, camp or community groups
10. Normal sounds associated with customary industrial or manufacturing operations in the normal course of business
11. Construction operations between 7:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends, with some additional requirements
12. Noise from lawnmowers, weed trimmers, edging machines, or other similar yard maintenance machinery

Mr. Potter explained the next section of the Ordinance which establishes what the noise complaint procedure will be and sets forth a number of additional remedies that the current Noise Ordinance does not allow for, including the assessment of a civil penalty or multiple civil penalties as they become necessary. Other remedies include seeking an injunction from a civil court to order someone to abate and cease the noise that is being caused in violation of the ordinance.

Chairman Chappell opened the floor for public comments.

Michael Eubanks: Mr. Eubanks said he lives in the community where the bike track is located and the noise generated by it is a constant source of irritation. Mr. Eubanks said he represents the citizens of that community as their attorney, noting that these citizens feel the peace and quiet of their community has been destroyed. He said he strongly supports the adoption of a fair and reasonable noise ordinance. Mr. Eubanks informed the Board that he along with the residents of the Cherryfield community plan to bring suit against the bike track citing it as a nuisance.

Roger Eades: Mr. Eades said he lives within close proximity of the bike track and he is not bothered by its operation. He noted that the owner has taken steps to control the dust and the track is only operated on weekends. Mr. Eades said it appears to him that people are just against a bike track. He also noted that the Sheriff's Department will be wasting their resources answering noise violation calls.

Bill Mitchell: Mr. Mitchell said he lives in Pisgah Forest where there is a problem with loud barking dogs in his neighborhood. He has worked through mediation with the dog owners and they did not comply with the recommendations. He asked for Commissioners' help by passing the Noise Ordinance.

David Morton: Mr. Morton spoke in opposition to the proposed Noise Ordinance. He said the Ordinance restricts the rights and freedoms of property owners. He noted the proposed Ordinance has too many gray areas. Mr. Morton favors a place where children can ride motorcycles.

Penny McCall: Ms. McCall said kids in this community need to have activities such as riding their bikes. She suggested finding an alternative location for the kids to ride their bikes where the noise does not bother people.

Joey Galloway: Mr. Galloway cited the section of the Ordinance relating to noise coming from farming operations. He said, according to this Ordinance, when he works on his farm, he is violation of the Ordinance which interferes with his ability to put food on his table. Mr. Galloway also referred to the section referring to the discharge of firearms saying that the US Constitution affords him the right to discharge any firearm that he legally owns. Mr. Galloway said he believes the County is rushing this Ordinance because of the bike track issue and that passing new laws is not always the answer.

Tom Chapman: Mr. Chapman spoke in opposition to the proposed Noise Ordinance saying there are too many gray areas. He said the deed to his property indicates it is unrestricted property. Mr. Chapman said Commissioners should not deny kids the opportunity to enjoy riding their bikes. He asked why the same noise was exempt in some areas of the Ordinance. Mr. Chapman said he and his family can not live under these restrictions and it has the potential to clog and choke the court system.

Henry Roess: Mr. Roess spoke in opposition to the Noise Ordinance citing it as too restrictive and broad.

Sue Horn: Ms. Horn stated she strongly supports the Noise Ordinance because of the noise generated by the bike track. Ms. Horn said the operation of the bike track torments people in this community and the owners never sought the approval from the citizens. Ms. Horn encouraged Commissioners to pass the revised Ordinance and asked that the Sheriff's Department and District Attorney issue citations and prosecute the violators to the full extent of the law.

Pete Peters: Mr. Peters said he believes the proposed Ordinance is a good ordinance but it still needs some clarification. He noted several areas within the Ordinance where language changes could be made for better clarification.

Keith Norman: Mr. Norman said he is not affected by the bike track but he will be affected by the revised Noise Ordinance. He commended the track owners for starting a business in the County and for giving kids an opportunity to participate in something positive. Mr. Norman suggested the use of an organization such as ISO to help Commissioners set standards for measuring noise.

John McCall: Mr. McCall spoke in opposition to the revised Noise Ordinance and on behalf of hunters in the County. He said the Sheriff's Department has been dispatched to

his residence reference to a complaint from his neighbor about barking dogs, although the neighbor was aware that he owned dogs before moving to that community. He said he bought this property because it was unrestricted. Mr. McCall said the fact is that dogs bark and they bark at other animals running loose in the community which he has no control over. He asked Commissioners to consider these factors before passing the Noise Ordinance.

Dean Harris: Mr. Harris said he is not affected by the bike track. He encouraged Commissioners to visit the bike track and make their decisions based on facts instead of some people's exaggerations of the noise generated by the track. Mr. Harris said he believes this is simply a tolerance problem that should be resolved among the property owners.

Brian Wilson: Mr. Wilson said he does not live near the bike track but he does enjoy riding bikes. He said the owner has taken measures to control the dust and the noise. Mr. Wilson also said he believes this sport has a positive influence on kids and he asked Commissioners to take that into consideration.

Junior Miller: Mr. Miller spoke on behalf hunters and the kids who enjoy racing at the bike track. He said he hopes the property owners can come to a resolution.

Randy Owen: Mr. Owen stated Commissioners can not address issues by passing new laws and wasting the resources at the Sheriff's Department. Mr. Owen is opposed to the new Ordinance citing it as unconstitutional and restrictive.

Darrell Holder: Mr. Holder spoke in support of the bike track citing it as a positive activity for children. He also informed Commissioners that he intends to build a drag strip in the same community.

Jason Chapman: Mr. Chapman said the US Constitution does not say that a person has the right to not be annoyed or disturbed but rather the right to remove himself from a situation that is annoying or disturbing. He questioned the legality of several areas within the proposed Ordinance noting that it requires individual property owners to be responsible for maintaining their neighbors' preferred lifestyles. Mr. Chapman also noted that laws can not be created specifically to target an individual which he believes is happening here with the bike track. He said he believes there is no way to fairly enforce the Ordinance because violation of it would depend on the preferences of the person making the complaint.

Chase Hooper: Mr. Hooper said his property is unrestricted and he should be able to do what he wants on his property, otherwise he would have moved into a restricted neighborhood. He noted he would be supportive of an ordinance that sets a time frame for when noises would become violations but he would rather see the homeowners resolve this issue without help from the County Commission.

Patty Kearns: Mr. Kearns spoke in support of the bike track noting that the kids never had any intention of creating a countywide fiasco. She said she hopes both sides can come together and reach a compromise.

Mitchell Anders: Mr. Anders spoke in opposition to the proposed Ordinance. He noted that he has been court before because of his dogs and the only thing that came out of the situation was lost work time. Mr. Anders suggested that Commissioners work with the US Forest Service to locate government owned property for locating a bike track.

Terry Fisher: Mr. Fisher said Commissioners can not solve problems by creating new laws and they should allow the property owners to resolve this issue themselves.

Dwayne Jones: Mr. Jones encouraged both groups to reach a compromise. He also challenged Commissioners to state their views about the bike track and the Noise Ordinance before the end of the meeting.

Chris Whitmire: Mr. Whitmire thanked Commissioners for their efforts in trying to address this situation by creating an enforceable Ordinance and maintaining the character of the County. He said he has learned there are plans to grow the bike track into a bigger organization. Mr. Whitmire noted that the owners did not seek his or anyone else's thoughts before opening the bike track stating that if they had, they would have found that most people would have been against it. He encouraged Commissioners to keep the County beautiful and desirable and honor those people who made the County what it is.

Carl McCall: Mr. McCall said he believes the County is trying to take away his freedom to do as he pleases on his own property. He encouraged Commissioners to find a balance and allow the property owners to resolve this issue themselves.

Chairman Chappell called for a break at 9:00 p.m. The meeting reconvened at 9:15 p.m.

Brandon Jones: Mr. Jones said he believes the majority of the native Transylvanians would be opposed to restrictions placed upon them by this Ordinance.

Ms. O'Shields: Ms. O'Shields spoke in opposition to the Noise Ordinance saying that it is wrong to pass the Ordinance because of the bike track situation. She said she believes the bike track has a positive influence on kids.

Keith Chapman: Mr. Chapman spoke in opposition to the Noise Ordinance saying that it is vague and the fines are excessive. He asked how the County can not be held to the same restrictions as the citizens.

Andy Von Cannon: Mr. Von Cannon suggested that those people that enjoy riding bikes come up with an ideal location for their bike track that would have less impact on a community. He also suggested that the citizens in the community decide on a tolerable time for the operation of the track. He said he can not see either side coming to terms unless an outside location is considered.

There being no further comments from the public, **Chairman Chappell declared the Public Hearing closed at 9:30 p.m.**

PUBLIC COMMENT

Dwayne Jones: Mr. Jones commented that governments appear to pass ordinances according to fit people's needs and he believes this is unfair practice because it is misleading to the public.

Stacey Galloway: Mr. Galloway commented that bike racing is a family activity and he enjoys the close proximity of the bike track in the Cherryfield community.

Commissioner Guice encouraged the track owners and residents to find a resolution to this matter.

AGENDA MODIFICATIONS

The Manager reported on the Agenda modifications. He requested to add Item D Resolution Declaring Memorial Day a School Holiday under New Business, moving the Manager's Report to Item E. Commissioners requested to add Item A Discussion of Noise Ordinance under Old Business.

Commissioner Guice moved to approve the Agenda as modified, seconded by Commissioner Hogsed and unanimously approved.

CONSENT AGENDA

Commissioner Phillips moved to approve the Consent Agenda including the amended Facilities Use Requests, seconded by Commissioner Bullock and unanimously approved.

The following items were approved:

MINUTES

The Minutes of the May 12, 2008 regular meeting were approved.

FACILITIES USE REQUESTS

The use of the Silvermont gazebo by the Transylvania Genealogy Group for distribution of the Transylvania Heritage Book on May 28-29, 2008, June 3, 2008, June 5, 2008, June 10, 2008 and June 12, 2008 from 1:00 p.m. to 6:00 p.m. was approved.

The use of the Courthouse gazebo by Salon Allure for a fundraiser for cystic fibrosis on June 14, 2008 from 10:00 a.m. to 5:00 p.m. was approved.

DISCOVERY AND RELEASE REPORT

The Discovery and Release Report for accounting period April 1, 2008 through April 30, 2008 was approved.

PRESENTATIONS/RECOGNITIONS

VETERANS ADMINISTRATION EXPENDITURES IN TRANSYLVANIA COUNTY

Mr. Frank Pearsall, Transylvania County Veterans Services Officer, presented his financial report to Commissioners regarding the amount of funds distributed to the County for veterans. He encouraged Commissioners to refer veterans to his office for assistance. He noted that there were over 58,000 men and women killed in the Vietnam War and since 1975 over 58,000 Vietnam Veterans have committed suicide. He has identified three of them in Transylvania County. Mr. Pearsall said he is available in his office two days a week. He is also available by appointment and makes house calls if necessary. Mr. Pearsall also noted that out of the 892,848 veterans of the current war, 287,790 have filed a disability claim, mostly for post traumatic stress disorder.

Chairman Chappell suggested that Staff prepare a press release advising citizens of services the County provides for veterans in the community. Commissioner Hogsed thanked Mr. Pearsall for his dedication to the veterans in this community.

TRANSYLVANIA COUNTY PROPOSED BUDGET FOR FY 2008-2009

The Manager presented the FY 2008-2009 Budget Message to Commissioners. The County is seeing a \$1 million deficit between the revenues and expenditures for FY 2008-2009. The Manager put forth three options for making up the deficit:

1. Use Fund Balance
2. Tax Increase
3. Use Fund Balance and reduce expenditures.

The Manager recommends using the third option to balance the Budget which would require taking \$500,000 from Fund Balance and reducing expenditures by \$500,000. Expenditures would be reduced by not including the additional \$150,000 for economic development, delaying some capital projects, delaying the purchase of vehicles for the Sheriff's Department and Health Department, and delaying the construction of the new cell at the landfill. He noted that Department Heads were instructed to keep their operational expenses flat.

The Manager has included a 7.2% increase in current spending for Transylvania County Schools. He noted that the total budget increase is 1.6% minus the borrowing of funds for the Public Safety Facility.

The Manager suggested the process for the Budget Workshop as reviewing an overview of the Budget on Friday, reviewing key issues on Monday and Tuesday, and discussing the Fire Departments' Budgets and finalizing the Budget on Wednesday. A public hearing would be scheduled for the second Commissioners' meeting in June. He asked

Commissioners to submit their questions and concerns to Staff. A copy of the proposed Budget will be on file at County Administration and the Library.

OLD BUSINESS

DISCUSSION OF NOISE ORDINANCE

Commissioners had a lengthy discussion about the proposed Noise Ordinance. Overall, they felt the proposal was overreaching and restrictive, although they expressed a need to have a fair and enforceable ordinance. Commissioners also expressed their understanding of both sides of the issue and hopes the citizens will come to a compromise before the County has to take action. Commissioners agreed that the proposed remedies outlined in the Noise Ordinance were appropriate.

The Manager stated that Staff will work with the Attorneys to revise the current Noise Ordinance and make the public aware of those changes. Chairman Chappell directed Commissioners to forward their comments and concerns to the Manager.

NEW BUSINESS

RESOLUTION 21-08 APPROVAL OF TAX EXEMPT LOAN TO VOLUNTEER FIRE DEPARTMENTS BY BOARD OF COMMISSIONERS

Little River Volunteer Fire Department has requested that the Board of Commissioners approve a resolution supporting their intent to enter into a tax exempt loan agreement for the purchase of a fire truck. The Board of Directors estimates the loan amount at \$200,000. A public hearing was held on the proposed purchase of the truck on Monday, May 19 at the Little River Fire Department. No one attended the public hearing. Emergency Services Director David McNeill and Fire Marshal Gerald Grose have been working with the Fire Department regarding the purchase of the new fire truck and they support their intent as well. Staff recommends Commissioners approve the resolution supporting the purchase of the fire truck.

In response to a question from Commissioner Phillips, Fire Marshal Grose noted that Little River Fire Department has approximately two thirds of the funds set aside for the purchase.

Commissioner Guice made a motion to approve Resolution 21-08, seconded by Commissioner Bullock and unanimously approved.

(Resolution 21-08 Approval of Tax Exempt Loan to Volunteer Fire Departments by Board of Commissioners attached as part of these Minutes.)

SECOND PRIMARY

The County has been notified by the State Board of Elections of a second primary for the Democratic nomination for Commissioner of Labor. The Board of Elections and staff is requesting Commissioners to authorize \$33,306 for the second primary. Board of

Elections Director Judy Mathews is working to minimize the cost of the second primary despite the restrictions placed on them by the State Board of Elections.

Commissioner Bullock moved to authorize \$33,306 in funds for the second primary and further to authorize the Chairman to write a letter to state legislators requesting the law be changed to prevent this from occurring again, seconded by Commissioner Phillips and unanimously approved.

BUDGET AMENDMENTS FOR THIRD QUARTER FY 2008

Finance Director Gay Poor reported on the Third Quarter Budget Amendments for FY 2008. During the third quarter of FY 2008, the General Fund budget increased by \$16,277,148. This substantial increase was driven by the transfer of \$16.6 million to the Public Safety Facility Fund. This represented the remainder of the amount that had previously been appropriated and reserved for this purpose.

Almost \$200,000 in other funds appropriated but not used in the prior year were carried forward. Most of this was associated with the Applied Technology Building at Blue Ridge Community College, with \$155,000 remaining in County funds designated for this purpose and \$41,000 made available through the Incubator Grant.

In addition, the County received \$171,000 in other grants and state and federal funding. The largest of these was a pass-through grant from One NC Funds for \$125,000 for Excelsior Packaging Group, Inc. This represented half of the total amount awarded to Excelsior.

Excluding the transfer to the Public Safety Facility, other Fund Balance Appropriations actually reduced the General Fund Budget by \$803,000, thanks to two items. First the \$624,000 surplus originally budgeted as a transfer to the fund balance was eliminated and netted against fund balance appropriations approved during the course of the year. Second, as a result of the Medicaid Relief Swap package, the County's portion of Medicaid costs went down by \$310,000. Partially offsetting these decreases were transfers from other reserves, including \$101,000 in County economic development incentive grants and \$25,000 from the Reserve for the North Carolina Room at the Library.

As part of the bond refunding arrangements, the County received \$99,000 to cover the bond issuance costs. If the proceeds exceed the costs incurred, the excess will be transferred to the School Capital Outlay in the Capital Projects Fund.

The total increase in the FY 2008 General Fund Budget through March 31, 2008 came to \$17,162,968.

Commissioner Guice moved to approve the Budget Amendments for the Third Quarter of FY 2008, seconded by Commissioner Phillips and unanimously approved.

RESOLUTION 22-08 DECLARING MEMORIAL DAY A SCHOOL HOLIDAY

Commissioner Hogsed requested to add this item to the Agenda. Commissioner Hogsed said Memorial Day is a day on which people observe the sacrifices of so many that fought for this Country's freedoms and defend its values. Commissioner Hogsed read Resolution 22-08, Declaring Memorial Day a School Holiday.

Commissioner Guice moved to approve Resolution 22-08 Declaring Memorial Day a School Holiday, seconded by Commissioner Bullock. Commissioners suggested bringing forth this resolution every year until the calendar is changed to include Memorial Day as a school holiday. **The motion passed unanimously.**

Commissioner Guice suggested presenting the resolution to the Board of Education during the Budget Workshops.

(Resolution 22-08 Declaring Memorial Day A School Holiday attached as part of these Minutes.)

MANAGER'S REPORT

The Manager reported the following:

- The Manager reminded Commissioners of the joint meeting with Brevard City Council on Thursday evening at 7:00 p.m. to discuss the ETJ.
- The Manager announced that Budget Workshops would begin on Friday at 5:30 p.m. Dinner will be served to Commissioners at 5:00 p.m.
- Staff is nearing finalizing the agreement on the lease for the property in Rosman.

PUBLIC COMMENT

Dwayne Jones: Mr. Jones commented about the number of calls received by the Sheriff's Department regarding complaints about the bike track. He said it is important to know whether these calls are coming from the same people.

Chase Hooper: Mr. Hooper questioned some of the exemptions in the proposed Noise Ordinance noting this is simply an act to close down the bike track.

Commissioners responded that the intent is not to shut down the operation of the track. They encouraged the citizens in the community and the bike track owners to work together to resolve this matter.

Chris Whitmire: Mr. Whitmire explained the derivation of the school calendar noting with the current holiday and spring break schedule, they only have discretion with a couple of days. He said he hopes Raleigh will some day give local districts more control over their school calendar. Mr. Whitmire also thanked Commissioners for the in depth discussion about the Noise Ordinance and bike track.

Dwayne Jones: Mr. Jones commented that he believes the bike track owners are more willing to compromise than the citizens are.

Chase Hooper: Mr. Hooper stated that neighbors should be allowed to resolve their problems with each other without government involvement.

COMMISSIONERS' COMMENTS

There were no further comments from Commissioners.

ADJOURNMENT

There being no further business to come before the Board, **Commissioner Phillips moved to adjourn, seconded by Commissioner Bullock and unanimously carried.**

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board