

OCT 1 2 2009

HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
APRIL 7, 2008

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J. W. "Kirk" Kirkpatrick, III, Bill L. Upton, and Mary Ann Enloe present.

MEMBERS ABSENT: Commissioner Charles "Skeeter" Curtis

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant county Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Attorney **Reed Hollander** with Nelson Mullins Riley & Scarborough, LLP and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation § 143-318.11(a)(3)


SUBJECT: Litigation Cameron Property

DISCUSSION:

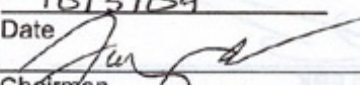
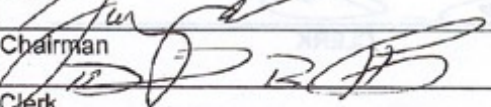
The County has been sued by Brian and Ronald Cameron and wives under the Declaratory Judgment Act regarding the application of the County Erosion Control Ordinance. County Attorney Killian stated that the property is located just off the south end of Camp Branch Road. A recent inspection will be reviewed today by the Erosion Control Board. The lawsuit contends that the property is forestry in nature and is exempt. Marc Pruett, Erosion Control Director, conducted the inspection. If the property is confirmed not to come under the forestry exemption, the County does have the authority to regulate the property. At this time, no injunction has been filed. The State Forestry Service stated that the property is not being regulated by them because it is not forestry. A plat has been recorded showing two lots cut out of the property for development. Attorney Hollander explained that this is a complex case. Attorney Hollander stated that we will file an answer to the Complaint.

OPEN SESSION: No action taken.


CLERK


CHAIRMAN

RELEASED

1015109
Date

Chairman

Clerk

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
OCTOBER 20, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Bill L. Upton, Commissioner Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton

OTHERS PRESENT: County Attorney Leon M. "Chip" Killian, III, Architect PBC + L, Chad Roberson, Attorney Bob Meynardie, Attorney Reed Hollander, Bill Noland, Noland Construction Consulting, LLC, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Cameron

DISCUSSION:

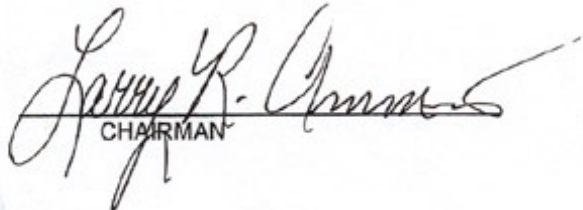
Attorney Reed Hollander stated that the Cameron case is in regards to erosion control. Ron and Bryant Cameron own the Cameron property. There are approximately sixty-six acres valued at approximately \$600,000. Roads have been dug without consulting the Erosion Control office. After Marc Pruett, Erosion Control Director, visited the property, Ron and Bryant Cameron were cited. Ron and Bryant Cameron claim they were performing forestry. Mr. Pruett later returned to the property and another citation resulted. The Cameron's filed a suit against the County for the levying of penalties. Attorney Hollander received a deposition. The County has made two attempts to settle this matter. There is a great deal of disturbance to the property. **A trout stream could be in danger.** The Cameron's claim they were logging the property, but when asked how much money they expected to receive for the logs they replied that they did not know. The Cameron's have spent \$167,000 to build the roads. **They are both developers.** County Attorney Killian explained that the first time the County attempted to settle this dispute was during an extensive conference call. Mr. Hollander stated that the County could waive fines, but the Cameron's rejected that offer. **The assessed fines from the Sediment Control Board are in the amount of \$500,000.** The Cameron's have offered the County \$5,000. The Superior Court will decide if the County had jurisdiction. Chairman Ammons advised that the County's expenses must be covered.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Commissioner Enloe seconded and the motion carried unanimously.



CLERK



CHAIRMAN

BOARD OF COMMISSIONERS
CLOSED SESSION MATTERS
NOVEMBER 2, 2008

RELEASED	
Date	10/15/09
Chairman	<i>[Signature]</i>
Clerk	<i>[Signature]</i>

STAFF PRESENT: County Manager (Chair) to the Board David B. Carter, Assistant County
Manager Mark Harty
ATTORNEYS PRESENT: County Attorney Leon M. "Chip" Jorgensen, III, Richard PBC + L, LLC
Prothonotary and Administrative Assistant Rebecca Meyer

RELEVANT STATUTE: Wis. Stat. § 19.35(1)(a)

SUBJECT: Register - Common

DISCUSSION:

County Attorney Jorgensen stated that a motion for a resolution regarding the Common Case was being
proposed. Some witnesses have been interviewed.

OPEN SESSION:

Commissioner Jorgensen made a motion to return to open session. Commissioner Jorgensen and
the public could not be present.

[Signature]
Chairman

[Signature]
Clerk

RELEASED	
Date	10/15/09
Chairman	<i>[Signature]</i>
Clerk	<i>[Signature]</i>

HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
NOVEMBER 3, 2008

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Commissioners Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey

OTHERS PRESENT: County Attorney Leon M. "Chip" Killian, III, Architect PBC + L, Chad Roberson and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Cameron

DISCUSSION:

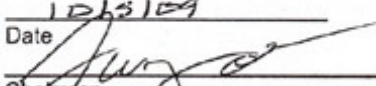
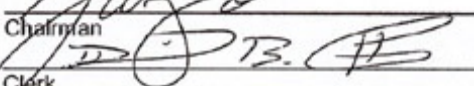
County Attorney Killian stated that a date for a deposition regarding the Cameron case was being arranged. Some witnesses have been interviewed.

OPEN SESSION:

Commissioner Enloe made a motion to return to open session. Commissioner Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	10/31/09
Chairman	
Clerk	

HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MAY 4, 2009

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, III, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Julie Davis, Finance Director, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

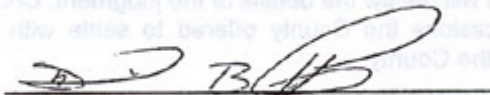
SUBJECT: Litigation - Cameron

DISCUSSION:

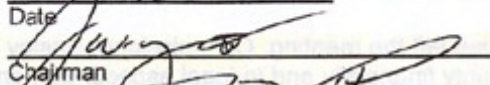
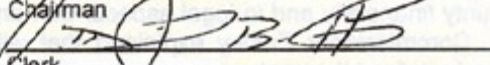
County Attorney Killian stated that the Cameron case was in its third week of trial and he expects that it will finish this week. It is a bench trial.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	10/5/09
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 15, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, County Attorney Leon M. "Chip" Killian, III, Assistant County Manager Marty Stamey, Finance Director Julie Davis, Erosion Control Director Marc Pruett and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: County Attorney Leon M. "Chip" Killian, III

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Cameron

DISCUSSION:

The County had been sued by Brian and Ronald Cameron and wives under the Declaratory Judgment Act regarding the application of the County Erosion Control Ordinance. Marc Pruett, Erosion Control Director, stated that he just learned that Haywood County lost its case. Mr. Pruett expressed his appreciation for those who assisted with various aspects of the case, specifically Nelson Mullins, Riley & Scarborough LLP. Mr. Pruett stated that the State Sedimentation department in Raleigh will review the comments and possibly assist with future litigation in the event that Haywood County chooses to appeal the decision. County Attorney Killian stated that Attorney Reed Hollander led the litigation. It was Attorney Hollander's opinion that the presiding judge, the honorable Laura Bridges, simply did not have an understanding of the case. The County may want to give notice of appeal. Attorney Killian stated that he will review the details of the judgment. County Attorney Killian explained that on two separate occasions the County offered to settle with the Cameron's, after the Cameron's filed the suit against the County.

Mr. Pruett stated that this case could set precedence for others wanting to build a road. In the future, as long as the builder describes the road as being forestry related, there is no way the County could stop them.

David Cotton, County Manager, stated that he would scan the order and send it to the Board members for their review.

Mr. Pruett left the meeting. Commissioner Ensley stated that unless the State intervenes and assists the County financially and in legal aspects with an appeal, he will be against moving forward with an appeal. Commissioner Ensley explained that without support from the State, the County cannot continue to defend themselves.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.

HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JULY 13, 2009

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Erosion Control Director Marc Pruett, and Erosion Control Specialist Jennifer Bradish.

OTHERS PRESENT: Nelson Mullins Riley & Scarborough LLP Attorney Reed Hollander was available via telephone.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Cameron

DISCUSSION:

* Attorney Reed Hollander presented an overview of the case of Brian and Ronald Cameron verses Haywood County. The Department of Environmental and Natural Resources (DENR) and Attorney Hollander agree that the core of this type of case should be a question of intent. The Plaintiffs argued that the road was built for forestry and not development, and the Court agreed. Attorney Hollander expressed the opinion that in the event that the County appeals the case, it is unlikely that Judge Bridge's decision would be reversed since sufficient evidence of the Judges interpretation of the facts was present, and would probably be the deciding factor in the Court of Appeals. Attorney Hollander stated that the County could focus its efforts on appeal on the finding of a due process violation. The County has been approached by attorney Jeff Norris with a global settlement demand of \$475,000. No counter offer has been made at this time. On August 3rd, the motion for attorneys fees is scheduled to be heard by Judge Bridges. The motion asks for reimbursement of attorneys fees of \$237,000 plus costs.

Attorney Hollander explained the position of the insurance company in the second (Section 1983) case. He stated that if the County appeals, the insurance company will pay for the cost of the appeal. He further stated that the insurance company is willing to contribute one-half towards a global settlement up to \$250,000.

Marc Pruett, Erosion Control Director, provided an overview of the State's position and offer of support.


* The Board agreed to file a notice of appeal and proceed with discussions with the insurance company to try to settle the case for \$250,000 or less with the insurance company paying the total amount.

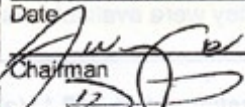
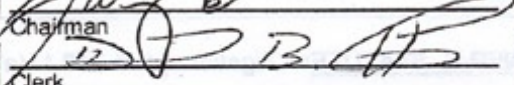
OPEN SESSION:

RAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	10/15/19
Chairman	
Clerk	

Attorney Fred Holman presented an update of the case of Brian and Ronald Cameron versus Raywood County and reviewed the pending motion for attorney fees. Chairman Kilgus stated that if the attorney fees motion would be heard in front of Judge Binger. Attorney Holman stated that the assignment of Judge Binger was handled internally by the court system and that she had been assigned for the hearing.

Commissioner Swanger stated that Ron Cameron asked to meet with him and Commissioner Brian. The meet took place on Friday, July 21st, 2008. Mr. Cameron stated that the purpose of the meeting with Commissioner Brian and Commissioner Swanger was that they were not on the board at the time the suit was made and he felt they should be well informed regarding the case. According to Commissioner Swanger, at that meeting Mr. Cameron said to them that he wanted his \$1.5 million to go away for \$475,000, but there is a room to negotiate. Mr. Cameron further stated that he was willing to spend up to \$1 million to resolve the issue.

Commissioner Curtis inquired as to when Mr. Cameron offered to settle. Attorney Holman stated that after the suit was filed he was approached about a global settlement and that he had a telephone conference with Father's attorney and Mr. Kilgus after the trial. Attorney Holman stated that the settlement amount was \$475,000 which included approximately \$200,000 in attorney fees and costs and \$275,000 which was for attorney fees and costs and another \$200,000 in attorney fees and costs. Mr. Cameron refused to attend the closed session minutes of October 20, 2008 pending Section 1999 case. Mr. Kilgus stated two attempts to settle before trial. The declaratory judgment action was filed on April 7, 2008 by the Camerons against the County. Attorney Kilgus added that there was an offer to settle before the law suit was filed.

Mr. Kilgus left the meeting.

Considering settlement options, the Board discussed the cost of the county's time upholding attorney fees and the expense of the 1999 action in light of future expenditures the Board determined the case could be settled in reasonable parameters.

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
AUGUST 3, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, and Mark S. Swanger present.

MEMBERS ABSENT: L. Kevin Ensley

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Facilities Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Nelson Mullins Riley & Scarborough LLP Attorney Reed Hollander and Commissioner Kevin L. Ensley were available via telephone.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Cameron

DISCUSSION:

Attorney Reed Hollander presented an update of the case of Brian and Ronald Cameron versus Haywood County and reviewed the pending motion for attorney fees. Chairman Kirkpatrick inquired if the attorney fees motion would be heard in front of Judge Bridges. Attorney Hollander stated that the assignment of Judge Bridges was handled internally by the court system and that she had been assigned for the hearing.

Commissioner Swanger stated that Ron Cameron asked to meet with him and Commissioner Ensley. The three of them met on Friday, July 31st, 2009. Mr. Cameron stated that the purpose of the meeting with Commissioner Ensley and Commissioner Swanger was that they were not on the Board at the time the suit was made and he felt they should be well informed regarding the issue. According to Commissioner Swanger, at that meeting Mr. Cameron said to them that he wanted this to "go away for \$475,000, but there is room to negotiate". Mr. Cameron further stated that he was willing to spend up to \$1 million to resolve this issue.

Commissioner Curtis inquired as to when Mr. Cameron offered to settle. Attorney Hollander stated that after the trial he was approached about a global settlement and that he had a telephone conference with Plaintiff's attorneys and Mr. Killian after the trial. Attorney Hollander stated that the settlement demand was \$475,500 which included approximately \$300,000 in attorney fees and costs and \$175,500 extra, apparently for aggravation or maybe pain and suffering or mental anguish in the pending Section 1993 case. Mr. Cotton referred to the closed session minutes of October 20, 2008 stating that the County made two attempts to settle before trial. The declaratory judgment action was filed on April 7, 2008 by the Camerons against the County. Attorney Killian added that there was no offer to settle before the law suit was filed.

Mr. Cotton left the meeting.


Considering settlement options, the Board discussed the cost of the county's time, upcoming attorney fees, and the expense of the 1993 action. In light of future expenditures the Board determined the case could be settled in reasonable parameters.

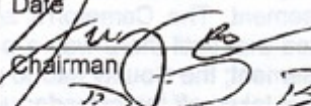
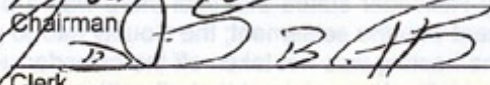
Commissioner Ensley stated his opinion that the Cameron's want to settle. Attorney Hollander explained that the insurance company is willing to contribute one-half towards a global settlement up to \$250,000. After discussion the Board agreed to allow Attorney Hollander authority to offer up to \$100,000 from the County. If the Cameron's accept the settlement, that would cap the County's liability. However, the initial offer should cap the County's obligation at \$75,000 and the County should agree to contribute any additional amount up to the \$100,000 only with prior approval of Chairman Kirkpatrick. Attorney Hollander agreed to attempt to get the insurance company to contribute more than one-half if necessary. An offer to settle for more \$100,000 would require the approval from the full Board.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	10/5/09
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
SEPTEMBER 21, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Nelson Mullins Riley & Scarborough LLP Attorney Reed Hollander was available via telephone.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Cameron

DISCUSSION:

The Board reviewed a settlement agreement and mutual release presented by David Cotton, County Manager. County Attorney Killian stated that Attorney Reed Hollander was the only one who worked on the settlement agreement. The Cameron's agreed on the dollar figure and additional terms. Attorney Hollander stated that until there was a confirmation from the Cameron's that they were in agreement with the settlement; the County had to prepare for the hearing on the plaintiff's motion for fees. The hearing was not taken off the calendar until Thursday before it was scheduled to be heard. Attorney Hollander explained that all settlement negotiations were billed to the pool. Commissioner Curtis asked what the consequences would be in the event that the County did not move forward with the settlement agreement. County Attorney stated that the County would have to pay additional attorney fees. Attorney Hollander confirmed that there would be substantial additional attorney fees.

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*
Commissioner Curtis suggested stating publicly that the roads on the Cameron property do not adhere to the County standards. Attorney Hollander says there is a section of the road toward the bottom that may comply with the County subdivision requirements, but the rest of the roads do not. The two parcels are approximately sixty-six acres. The County's does not have an obligation to inform people that the roads do not meet the standards. When classified as forestry, Attorney Hollander stated that the Cameron's cut and sold some logs on their property for approximately \$5,000 - 7,000.

County Attorney Killian stated that if the County got a new trial they would have a new judge. Attorney Hollander confirmed that the insurance company would not pay the cost of a new trial, but they offered to pay the cost to appeal the case. Chairman Kirkpatrick stated that the insurance company would pay for the rest of the appeal, but if it were tried again they would not pay for the costs. Attorney Hollander explained that if the County won and it gets reversal on appeal the County will not get back the attorney fees, and the Cameron's would proceed in the 1983 civil rights case and seek damages. It would be an ongoing dispute.

Mr. Cotton stated that the settlement amount was \$180,000. The legal fees are \$282,000. The settlement is \$75,000 which includes court cost and attorney fees. The County would receive

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\$105,000 from the insurance company and pay \$5,000 for the deductible. Attorney Hollander stated that if the County went to trial again, the main expense to the County would be attorney fees. Attorney Hollander stated that an appeal could do more damage to the program as a whole. Commissioner Curtis asked if Attorney Hollander had spoken to the Department of Environmental and Natural Resources (DENR) Land Quality. Attorney Hollander confirmed that he spoke to Attorney John Payne for the DENR Land Quality who offered to provide assistance on the appeal, but is of the opinion that the County should not go to appeal. It would be difficult to get the decision of Judge Bridges reversed. Attorney Hollander stated that the big question was if the Cameron's put the roads in for the purpose of forestry. There was enough evidence for Judge Bridges to make her decision. Therefore, there is likelihood that the County would not get the reversal. Attorney Hollander asked if the County wanted to go forward and pursue an appeal. **WHY?**

MEL
NEVILS

Chairman Kirkpatrick stated that it is not the purpose of the roads, but what kind of roads can be built by individuals under North Carolina Forestry regulations. One can overbuild a road. Chairman Kirkpatrick expressed that at no time did anyone ever explain this issue to the County. Chairman Kirkpatrick expressed that the County should have been advised differently regarding the case. Attorney Hollander stated that it is clear that one cannot build subdivision roads and argue that the roads are for forestry purposes. The facts regarding the roads were inconsistent with forestry since the roads appeared to be roads for a subdivision. When the forestry said the roads were for forestry the County backed off, allowing forestry to handle the building of roads. When the Cameron's applied for the subdivision plans, the forestry turned it back over to the County since it was no longer forestry. The Cameron's filed for septic permits and they dug septic pits.

WHO SHOULD
HAVE
EXPLAINED?

Commissioner Curtis stated that Department of Erosion Control is a State program. Regarding the Cameron case, the State felt Haywood County was on solid ground and would win the case. County Attorney Killian confirmed that he also thought it was a good case. Chairman Kirkpatrick stated that at no time was the County told of the pros and cons. There were no negatives about this case. Commissioner Curtis expressed that the County is enforcing the laws of the State and now there are citizens wanting the County to fire people on the Erosion Control Board. Commissioner Curtis stated that the State should come to Haywood County and explain to the citizens why the State led the County to go to court.

SKIP A
LITTLE
BIT...

County Attorney Killian said that the attorneys are trying to represent our clients who are Marc Pruett, and the Erosion Control Board. Chairman Kirkpatrick stated that the County is helping its constituents by having an Erosion Control Board, but without support from the State, the County may want to consider letting the State take over the program.

The Board discussed the settlement. Mr. Cotton passed out the statement to be presented to the media, with full disclosure of total cost associated with the case.

After discussion the Board agreed to \$75,000 and their Liability Insurance Pool will pay \$105,000 for a total settlement of \$180,000. This will settle all matters in controversy with Mr. and Mrs. Ron Cameron and Mr. and Mrs. Brian Cameron in connection with the recently tried Declaratory Judgment action and the pending Office of Administrative Hearings and Section 1983 actions.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.

D. B. B.
CLERK

J. W. R.
CHAIRMAN

RELEASED	
Date	10/15/19
Chairman	<u>J. W. R.</u>
Clerk	<u>D. B. B.</u>

DATE 10/15/19
HAVE
B. B. B.

DATE

[Faint, mostly illegible text from the reverse side of the page is visible through the paper. Some words like "RELEASED", "DATE", "CHAIRMAN", and "CLERK" are clearly visible in the reverse orientation.]

