

NORTH CAROLINA

TRANSYLVANIA COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

22 R 120

2022 SEP 12 P 1:25

IN RE: TRANSYLVANIA COUNTY
COURT FACILITIES

TRANSYLVANIA CO., O.C.C.
BY reh

This matter has come before the undersigned in his capacity as Senior Resident Superior Court Judge for the judicial district which includes Transylvania County, North Carolina,

Regarding the inadequacy of court facilities in Transylvania County,

The undersigned makes certain "findings," better described as observations, relying upon reports and comments of others, observations of the undersigned, and "timeline" information from the official website of Transylvania County,

For the purpose of confirming in writing the long-standing and now pressing need for adequate court facilities in this County, and to confirm the efforts of the Commission of Transylvania County to date, which continue even at the time of the filing of this document.

The court facilities which are considered herein are those which are intended to provide a place for the citizens and residents of this County, as well as other persons who have business in this County, to receive court services as provided or facilitated by court staff, including Clerks of Court, judges, public prosecutors and defenders, probation officers, and others.

Now, therefore, these observations:

The North Carolina General Assembly created Transylvania County on February 15, 1861, from lands previously attributed to neighboring Jackson and Henderson counties;

Leaders in the newly established Transylvania County recognized immediately the need for a suitable building in which to conduct court and other legal proceedings. However, less than three months after the legislature's creation of Transylvania County, confederate troops in South Carolina attacked U.S. troops at Fort Sumter, marking the beginning of the Civil War.

Promptly the following year after the end of the Civil War, Transylvania County commissioners constructed a two-story frame building to serve as a courthouse. **Almost immediately employing a long-term vision, the County leaders then voted in 1874 to replace the wooden structure with a two-story brick structure. The County's website reports that upon its completion this was the first brick building in Brevard. This same building continues to be used for all court and Clerk services in Transylvania County, including for example, all trials, both jury and non-jury, in both civil and criminal matters – misdemeanor and felony charges alike; all hearings related to children – from custody proceedings and delinquency cases to abuse, neglect and dependency hearings, and including criminal cases where the**

alleged victim is a minor; allegations of domestic violence; traffic court; will caveats; and estate and special proceedings matters, as well as their appeal.

The original building likewise houses the elected Clerk of Court and her entire staff, as well as all court documents required by statute to be maintained by that office. The Clerk and her Assistant Clerks of Court conduct hearings on a weekly basis, as a result of the Clerk's status as judge of probate and also as a result of having original jurisdiction in special proceedings.

One hundred years ago, a jail was added to the courthouse. That jail space was later converted and now constitutes the part of the building where the Public Defender and District Attorney maintain their offices and meet with victims, witnesses and clients, and prepare their cases for trial.

The hundred-year-old expansion for the former jail appears to be the last addition to the Transylvania Courthouse.

County stewards have deemed it appropriate to relocate the county offices for property appraisal and tax collection, as well as for the county register of deeds, and have moved all of these county services out of the Transylvania County Courthouse. Only those services provided to the citizens of Transylvania County in connection with the above-mentioned court services as provided by employees of the State of North Carolina continue to be housed in the courthouse building.

County commission members over the past fifteen years have recognized the need for new courthouse facilities, as noted by the County's website.

In 2005, Transylvania County conducted a facility space needs survey for court services, the results of which determined that existing square footage availability in the Transylvania County Courthouse did not meet the square footage needs for courtroom and security, nor for the Clerk of Court, District Attorney and Public Defender functions in the courthouse. The study found that while Transylvania County was experiencing modest population increases, court filings were increasing at a much faster rate than population growth.

During 2005, the commissioners purchased on behalf of the County, two tracts of land totaling just under 25 acres in size, for the construction of a new jail, and Public Safety facility, including Sheriff's Office (referenced here as Public Safety Way). The size of the tracts took into account the possibility of constructing a new courthouse at this location.

In 2006, the North Carolina Rural Courts Commission conducted an inspection of Transylvania County's court system and courthouse building and issued a report that found several deficiencies that needed addressing. The Courts Commission determined that there was lack of available square footage for workspace and record storage for both Judicial and County offices located in the Courthouse, issues related to accessibility for individuals with disabilities and security concerns with regard to comingling of jurors, judicial staff, witnesses, victims,

defendants and other parties. The Court Commission's recommendation in 2006 was the construction of a new separate courthouse facility.

In 2008, according to the County's website, Two citizen-led committees established by the Board of County Commissioners reported their findings to the Board of Commissioners. Committee A studied the impact of moving courthouse functions out of downtown Brevard and conducted several surveys and public hearings concerning possible relocation of court functions out of downtown Brevard. The Committee itself included professionals, courthouse users, members of the business community, and the general public, and it concluded that relocation would not be a concern. Committee B studied the costs and facility needs of construction of new or expanded courthouse facilities with the assistance of Moseley Architects, and as a result of their studies, Committee B made a unanimous recommendation that a new courthouse be constructed adjacent to the Public Safety Facility on Morris Road.

In 2009, the Commission considered whether a split of criminal court and civil court locations would ease space needs and determined that resulting inefficiencies would increase costs to the County, and the Commission revisited this possibility the following year in 2010, and notwithstanding earlier studies, once again in 2010 considered possible addition to the existing courthouse.

By 2012, the departure of all county offices and employees from the courthouse allowed the Clerk of Court's office to be relocated within the building, at which time the Public Defender Office staff were able to move in. The District Attorney offices also now operate in the area at one time occupied by the jail.

In 2014, the Commission approved renovation of the old County Public Library for use as offices for the Commission and other county officials. The Commission considered possible use of their previous office space for courthouse overflow use. The Board of County Commissioners also that year received the results of a study commissioned from Moseley Architects conducted during 2013, organized around expanding the Courthouse location in downtown Brevard. The architect report concluded that to keep the current historic courthouse location would be at a cost of meeting only the next 15 years of needs; in addition, it would not improve on existing parking needs, and would significantly reduce the historic look of the existing courthouse. The study also reported the possibility of latent issues in the 150 year-old structure which might be revealed in the event of an expansion project.

While continuing to review possible expansion of the existing courthouse location, and not ruling out expansion at the existing location, the Commission voted in favor of further study of the possibility of relocating to the Public Safety Way tract.

In 2015, at the request of Transylvania County, an engineering study was conducted after a slab of concrete fell over the Jury Room. Focusing only on the jury room and the Clerk's Civil Division Offices, the study determined that there was significant bending stress of the existing steel beams inside the structure due to age. It recommended discontinuing use of

several rooms in the courthouse and noted that it was possible there were other structural issues in the courthouse not addressed by their limited study.

Also during 2015, the Commission expanded the possibilities by beginning to consider a third location. However, the Commission also considered the findings of the architectural study which concluded that it would not be possible to bring the existing courthouse structure up to current standards – whatever inefficiencies existed in the current structure would remain unless the courthouse was completely demolished and rebuilt.

In 2016 the Commission rejected a proposal by Brevard College to jointly construct a facility, but the Commission rejected this idea, partly out of concern for the joint use of public facilities with that of the private institution of Brevard College, as well as the lack of inclusion of economic development agencies, and, too that the property owners between the existing courthouse and the Brevard College campus had not been willing to sell to the County to allow for construction of a parking deck. Parking at the existing Courthouse has been identified regularly by the Commission as an area of concern.

In early 2018 the Commissioners directed county officials to pursue a loan through the U.S. Department of Agriculture at the then rate of 3.5 % in the amount of the estimated cost of construction of a courthouse facility of \$31,000,000. At the time, this resulted in a projected increase in tax rate of about 2.5 cents per hundred dollars valuation. One source suggested that at the median tax appraised value, this would result in a tax increase from \$811 to about \$853. According to N.C. Department of Revenue figures, in 2019 Transylvania County had a lower property tax rate than all but ten of the one hundred counties in North Carolina. Rural Clay County is among that group of ten, and the undersigned has been privileged to be assigned to the modern courthouse in Hayesville, brought about by foresight of the commissioners and the barely 11,000 citizens who reside there. Many Transylvania County residents are aware that Jackson County (also among those ten counties) looked ahead several years ago to construct a new courthouse facility away from the beautiful and historic structure which dominates the end of the main street in Sylva. The undersigned has found the court facilities in Jackson County to be more than adequate. Neighboring Haywood county acquired sufficient space in Waynesville near the existing courthouse to build a much larger facility which compares well to any courthouse facilities where the undersigned has been assigned. The old courthouse was refurbished and maintained separately, to continue in various uses today.

In March of 2018, the Commissioners voted to retain Mosely Architects to design a new courthouse facility for construction on the Public Safety Way tract. There was discussion at that time in response to questions as to why the courthouse location was not being presented as a referendum to the citizens. County officials determined that referenda of local government units are permitted under North Carolina law only in very specific types of circumstances. Transylvania County does not have the authority ask its citizens to weigh in on the location of court functions. Another way of presenting that issue to the citizens would be to request issuance of general obligations bonds, as with the school system funds. This type of borrowing, it was stated, would require a higher tax increase than required under a USDA loan.

In April and May, 2018, the Commission approved retaining Mosely Architects for a fixed percentage of the construction cost of the new courthouse, to be built on the Public Safety Way property. They also requested of county staff that a 2.5 cent tax increase be included in the 2019 budget, to provide for both new courthouse construction as well as repairing the historic courthouse for its next use. These actions demonstrate the Board's dedication to providing adequate present and future court facilities for its citizens.

At the June 25, 2018 meeting of the Commission all progress came to a halt: the Board voted to suspend any additional work on the courthouse project until further notice. Prior to the vote, the Board had offered the floor to numerous members of the public for comment. A video of this meeting is available for viewing at the County's website. The Commission graciously and patiently waited while they gave the floor to one person after another. Save for a few, comments of those granted time to speak were largely presented with disrespect and disdain. The extensive groundwork, research, involvement of citizens, and vision for Transylvania County met its match in the response to the anticipated 2.5 cent increase in the tax rate and the possible relocation of the courthouse. It is suggested by those who are familiar with costs of construction that this delay will likely cost the County millions of dollars – money that could otherwise have been used for some of the many other important projects, large and small, to which the Commission gives its attention.

In December, 2019, a year and a half later, the Commission asked officials to direct Mosely Architects to consider four different locations for the tentative floorplan of the proposed new courthouse.

In August, 2020, the Commission received the results of the architect's estimates – ranging from \$45 million to keep the present location, to \$36 million to move to Public Safety Way. The other two locations were estimated to cost \$43 million to \$45 million.

Subsequent estimates by architects in 2021 suggested a cost of about \$46.8 million for maintaining the present courthouse location, and about \$38.7 million for Public Safety way. Two other locations have also been examined, resulting in construction cost estimates that range between these two figures.

According to the report by Moseley Architects, interested persons, primarily including courthouse personnel, identify the following general concerns with the existing courthouse:

- Inadequate parking, and no separation of judge, public and staff parking
- No ability to securely transport and move prisoners into the facility
- Aging infrastructure
- Not enough courtrooms for increased caseloads
- Inadequate public screening and queuing spaces

- Mixed movement paths for Judges, public and prisoners – safety and liability concerns
- Varied security and accessibility issues
- Inadequate prisoner holding areas
- No jury pool space
- Inadequate court jury deliberation space
- Inadequate courtroom size other than superior courtroom
- Inadequate conference and attorney breakout space

Similar or additional concerns have been reported to or observed by the undersigned:

- There have been several occasions when pieces of the ceiling have fallen in different areas of the building. The floors appear buckled in the basement. The floors in the clerk's office are sloped, that is, they are not level.
- There is mold in the basement where court documents statutorily required to be maintained are kept. If staff spends more than a few minutes in the basement area, they report coughing, scratchy throats and breathing difficulties. The court file documents are always damp to the touch.
- As to public entrance into the courtroom itself, there is no separation between victims and defendants, they all travel through the narrow hallway and stairwell. As regards the "limited access" entries at the judge's bench side of the courtroom all persons enter the same area. This includes inmates, lawyers, witnesses, staff, and persons with disability who require the elevator.
- The public has to be held outside in all weather, when inmates are being loaded in the transport vehicle.
- There is no dedicated separate area for domestic violence victims, as envisioned by statute.
- Citizens who appear for jury service have inadequate space. In addition, while a jury is deliberating you cannot start picking another jury – parties must therefore likely wait to another term in a future month. There is no jury assembly room and jurors have to stand in the hallway of the clerk's office where all other parties travel or assemble. It is very difficult to make sure that the jury does not see a defendant in custody which

makes for a difficult job for court officers. Jury deliberation toilet space is cramped and not handicapped accessible. The bottom of the door in the women's jury bathroom is at least two inches off of the ground. These toilet spaces are inches from the jury's chairs.

- The elevator is not reliable and several of the staff refuse to use due to it dropping several inches while you are in the elevator. This is the only means for handicapped people to access the Clerk of Court, the courtrooms, the District Attorney, the jury room and the law library.
- There is not adequate storage room for the Clerk of Court, the District Attorney and the Public Defender.
- The Attorneys need an area where they can meet with their clients.
- The lobby area is very cramped and dangerous. A scuffle in the tiny space between the elevator door and the metal detector has resulted in injury to an officer.
- The room temperature cannot be controlled – one thermostat controls three rooms and the heating and cooling unit, even repaired, provides too much cool to one area and too much heat to another. Citizens comment regularly as if court personnel had control.
- The Clerk of Superior Court lacks a hearing room for use by her and one or more assistant clerks. At present, the entire variety of statutory hearings conducted by the Clerk or Assistant Clerk several times each week must take place at the office desk of the elected Clerk. These hearings have included as many as 14 people at one time and includes parties with opposing viewpoints. Safety concerns exist for the clerk as well as the participants.
- The practice of using the lower level space that is referred to as “the small courtroom” was discontinued for several reasons. (This space is not a courtroom, but merely a space with gallery chairs and counsel tables located in close proximity to each other and to the place where the presiding judge sits. District Court dockets exceeded the capacity of the space, and required perhaps half of the participants to be out in the hall creating noise which adversely affects the trials in progress in the main courtroom. It is impossible to create a safe environment for participants and inmates in this small space. Mold issues were significant, especially during certain seasons. Within the last two years, the county has permitted the use of the Election Board large room, if not otherwise in use. Dockets are curtailed, and no civil or child-related hearings can take place there. Resolutions for the benefit of stability in many children's lives are delayed by months as a result of a lack of a second courtroom.
- It is noted by all evaluations that the courthouse, in addition to entry/exit, is not handicapped accessible.

- With the deterioration of components of the building, courthouse personnel's concerns about the asbestos in the building appear legitimate, although county building officials have examined the building with this concern in mind and believe that no problem exists.
- Parking while any court is in session is difficult – for parties, staff, witnesses, jurors, and those seeking the Clerk's assistance with estate, guardianship, cashier, or other matters. This is particularly difficult for older citizens who may be required to walk some distance.
- There was a leak in the old pipes which resulted this year in flooding and water damage in the basement storage area of the courthouse. The Clerk of Superior Court was advised by county officials that she should make the actual arrangements with the restoration contractor. The leaking line was a sewer line and several Clerk's office staff had to assist the Clerk in the basement, moving documents and boxes out of the standing sewer water.
- The legislature has provided an additional District Court judge to our three-county district effective January 1, 2023, due in part to the increasing volume of civil and criminal matters being filed. The new judge is elected by this district. Henderson and Polk counties will be greatly served from five additional days of district court each week. Transylvania County, limited to one existing courtroom, will see much less benefit.

The undersigned has never in his discussions with members of the Commission or Transylvania County officials provided an opinion as to where the courthouse should be located, nor will the undersigned do so.

It is not the province of the judiciary to say where a courthouse should be located, how many square feet it should contain, or how much money should be spent in its construction or maintenance.

It is, however, the responsibility of the undersigned to communicate with the Commission or other county officials when it appears to the undersigned that the court facilities are inadequate.

In a letter written by the undersigned, dated May 5, 2022, and hand-delivered by the undersigned to the County Manager, for communication to the Board of Commissioners, this judge stated that it will be necessary to have a suitable location for the operation of court facilities for Transylvania County, and that the existing facilities are not adequate. As the need has been well-known by all for many years, and we have not yet proceeded with complete renovation of the existing structure or with construction of a new facility no matter where, the undersigned had come to believe as of the date of that letter that neither renovation nor construction was ever

likely to occur, and that rented floor space for court offices and courtrooms was the only option. It was further understood that even if a renovation or construction contract were executed this week, many years would continue to pass before the new facility hosted the first family to receive the Clerk's services following the death of a family member, or the first children whose lives were turned upside down by divorce, or by abuse or other criminal or negligent act were the subject of a future court's focus.

Since the delivery of that letter, as the result of meetings convened by County Manager Laughter, including a "stakeholder" meeting, the undersigned has come to believe two things. First, that county officials have looked for other locations to lease for both short and long-term use, and have found nothing available in the County. The search has included the settings which might have enough floor space, including for example, the former Brevard K-Mart location. (This location is not available for judicial use, in part because the present owner, the Ingles corporation, apparently does not look as fondly on the lengthy criminal dockets as do the merchants on Main Street.) Second, that county officials have not abandoned the idea of providing other, permanent court facilities, and that in fact the Commission is continuing to make progress in that direction, and further, that action by the Board is imminent.

It appears to the undersigned, as well as to anyone reviewing the Courthouse timeline as posted on the official Transylvania County website, that the Commission as comprised from time to time has, for well more than fifteen years, considered and acknowledged the inability of the present historic structure to meet even the present court services needs of our Transylvania County citizens. The present day Transylvania County officials agree with the County's very first board: the condition and adequacy of the courthouse demonstrates the value which the county places on the rights and needs of its citizens.

Given the foregoing history and observations, the following conclusions of law are evoked:

- Our state statutes obligate counties and cities to provide physical facilities for the judicial system operating within their boundaries. (G.S. 7A-302). These facilities must be adequate to serve the functioning of the judiciary within the borders of those political subdivisions. Such adequacy necessarily includes safeguarding the constitutional rights of parties and ascertaining that parties' statutory rights such as handicap access are similarly protected. Our statutes do not pass the duty of providing adequate judicial facilities to the court in case of default of local authorities, however, the court has the inherent authority to direct local authorities to perform that duty.
- Facilities at the historic Transylvania County Courthouse are not adequate for the orderly and efficient administration of justice
- When inaction by those exercising legislative authority threatens fiscally to undermine the integrity of the judiciary, a court may invoke its inherent power to do

what is reasonably necessary for "the orderly and efficient exercise of the administration of justice."

- The only constraints on this judicial power are constitutional. Even in the name of its inherent power, the judiciary may not arrogate a duty reserved by the constitution exclusively to another body, nor may it violate the constitutional rights of persons brought before its tribunals. Furthermore, doing what is "reasonably necessary for the proper administration of justice" means doing no more than is reasonably necessary. The court's exercise of its inherent power must be responsible, even cautious, and in the "spirit of mutual cooperation" among the three branches.
- The board of commissioners shall supervise the maintenance, repair, and use of all county property. The board may issue orders and adopt by ordinance or resolution regulations concerning the use of county property, may designate and redesignate the location of any county department, office, or agency, and may designate and redesignate the site for any county building, including the courthouse. Before it may redesignate the site of the courthouse, the board of commissioners shall cause notice of its intention to do so to be published once at least four weeks before the meeting at which the redesignation is made. (G.S. 153A-169)
- When redesignating the courthouse site, the board must publish notice of its intent to do so once at least four weeks before the meeting at which the redesignation will be made (G.S. 153A-169).
- If the Commission does relocate the courthouse, it must determine whether the variety of special functions presently performed at the existing courthouse location (for example, posting of Notice of Foreclosure, and Petition for Change of Name) will continue to be performed at the old courthouse or moved to the new courthouse. Most likely these functions will be performed at the new courthouse (unless an entirely different location is chosen). If so, G.S. 153A-443 requires the board to adopt an ordinance designating the new courthouse (or any other location) as the place where these functions are to be performed. The ordinance must be published at least once within 30 days after the date of its adoption and posted at the old courthouse for 60 days.
- If a county board of commissioners decides to move the county courthouse, the board must take the following steps:
 1. Publish notice of its intent to relocate the courthouse once at least four weeks before the meeting at which the board will take action on the relocation. (G.S. 153A-169).
 2. During the meeting (the statute doesn't specify what type of meeting, so presumably the board could consider this matter during a regular or special meeting), adopt an ordinance designating the new courthouse as the location for acts and notices required by law to be conducted or posted at the courthouse

(G.S. 153A-443). If the location of the new courthouse is not within the current county seat, it is advisable to designate the new location as the county seat (this could be done in the redesignation ordinance).

3. After the ordinance is adopted, publish it at least once within 30 days after its adoption, and post it for 60 days at the current courthouse location (G.S. 153A-443).

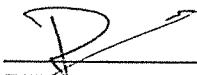
4. If the board has previously designated another location to serve as the place for acts and notices required by law to be conducted or posted at the courthouse, then steps #2 and #3 are not necessary. However, the board should still designate the new courthouse location as the county seat if that new location is not within the current county seat.

The Transylvania County Commission has been acutely aware of the shortcomings of the court facilities for many years, and the Commission remains equally aware of its obligation to provide adequate court facilities. The undersigned has been persuaded that the Commission will soon act conclusively to provide adequate court facilities in whatever way the Commission deems appropriate.

This document is filed and distributed with the belief that notice to all members of the Commission to appear for an evidentiary hearing regarding the adequacy of the existing courthouse facilities need not be forthcoming. However, as stated in the referenced May 5, 2022 letter, regular developments regarding the continued use of our present facilities have reached a point where the undersigned finds it necessary, as a representative of the judicial branch of this State, to again formally request that the Commission take the final steps to cure the long-standing need for adequate court facilities, or, alternatively, promptly provide alternate long-term temporary housing which meets those needs.

Copy of this document shall be given, after filing in the Office of the Clerk of Superior Court, to Ms. Jaime Laughter, Transylvania County Manager, on behalf of the Transylvania County Board of Commissioners, and to The Honorable Jason Chappell, Chair, and filed with the North Carolina Administrative Office of the Courts for review and for uploading to the NC Courts website.

Today is September 9, 2022.



PETER KNIGHT
Senior Resident Superior Court Judge
Judicial District 29B