

**BANNER ELK TOWN COUNCIL**  
**April 12th, 2010**  
**MINUTES**

The Banner Elk Town Council met Monday April 12<sup>th</sup>, 2010 at the Banner Elk Town Hall for the regular scheduled meeting of the Town Council.

Council Members present: Mayor Tate, Mrs. Lyerly, Ms. Draughon, Mr. Tufts, Mr. Phillips and Mr. Hahn.

Staff present: Town Manager John Mejaski, Chief of Police Bill Burleson, Assistant to the Town Manager Cheryl Buchanan, Town Attorney Chelsea Garrett and Steve Smith.

Others present: Mari-Liis Smyth of the Avery Post, Charles and Penny VonCanon, Kevin Holden of the Avery Journal, Toni Cook, Bob Littleton, Bill and Donna Dicks, Doug Jennings, David Jennings, Jack Masters, Neil Horney, Frank Wimbush, Robert Jones, Mike Halus, Ronnie Bunnels, Greg Greene, Paul Lehmann, John Wright.

**Call Meeting to Order**

Mayor Tate called the regular monthly meeting for April 2010 to order at 7:00pm.

**Pledge of Allegiance**

Mayor Tate led those in attendance in the Pledge of Allegiance.

**Invocation**

Councilmember Phillips opened with prayer.

**Public Hearing – Change Water/Sewer Ordinance Leak Adjustment 50.025**

Mayor Tate opened the public hearing. Mr. Mejaski introduced the topic and explained to the audience the need for revision of the ordinance. Mr. Mejaski stated that he had researched the various means of adjusting bills due to leaks and how other municipalities handle the adjustments. Mr. Mejaski stated that the most common approach was to adjust the amount of usage by fifty percent.

There were no comments from the public on the issue of leak adjustments and therefore Mayor Tate closed the public hearing.

**Public Hearing – Zoning Ordinance Change**

Mayor Tate opened the public hearing on zoning ordinance change. Mr. Mejaski introduced the matter. Mr. Mejaski stated that the change being sought here is to have home owners and owner associations bear the burden of maintaining storm water devices such as rain gardens, retention ponds and diversion trenches. The second part of the change to the ordinance would be for staff to approve new signs.

Mike Halus asked if the staff approval is conditional. Mr. Mejaski stated that it would be final approval.

John Wright asked for additional information on retention ponds. Mr. Mejaski stated that the ponds fill with mud and debris from time to time and need cleaning out to remain functional. Mr. Mejaski stated that there is no mechanism to force maintenance on the storm water systems of these types.

An unidentified citizen asked if the Town was looking for a yearly maintenance schedule to be submitted to the Town. Mr. Mejaski stated that he would like to see such a plan in time.

There were no other comments from the public therefore, Mayor Tate closed the public hearing.

### **Approval of the Minutes**

Mayor Tate asked Council for a motion to approve the minutes of the March 8<sup>th</sup> meeting of the Town Council. Ms. Draughon pointed out that on page one under "Approval of the Minutes" the word "contributed" should be "attributed". John Phillips motioned to approve the minutes as corrected. Ms. Draughon seconded the motion. Mayor Tate called for discussion and being none called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Approve the Stated Agenda**

Mayor Tate asked Council to add to the agenda a report to Council by Robert Tufts, Leak Adjustment, Sign permit and Storm water maintenance to be placed on the agenda in that order right after Citizens Concerns. Mrs. Lyerly motioned to approve the agenda with changes. Mr. Tufts agreed and provided a second. Mayor Tate called for discussion and a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Citizens Concerns**

Mr. Frank Wimbush addressed Council with a concern of the old school house proposed development. Mr. Wimbush is concerned that the tone and attitude of the Town is less than supportive of the ideal. Mr. Wimbush stated that the Town should be more supportive of any idea, that the downtown area is declining and this idea will revitalize the downtown area.

Mr. Ted Silver addressed Council, thanking Council for passing a resolution creating the bicycle pedestrian committee. Mr. Silver updated Council on the committees last meeting.

Mr. Paul Lehmann addressed Council on his recent departure from the Planning Board. Mr. Lehmann submitted a letter to Council and asked that it be part of the record.

### **High Country Municipal Association**

Mr. Tufts updated Council on the HCMA meeting recently held in Newland. Tourism Development Authority was on the agenda for regional support. Watauga County TDA is moving in the direction of regional planning. Also on the agenda was reverse 911 discussion and that Avery County now has reverse 911 capability. Also discussed was control of the ABC system and the changes coming from the State level.

There was no action taken by Council.

### **Water Bill Leak Adjustments**

Mayor Tate asked Council for a motion on the matter of changing the Banner Elk Code of Ordinances Section 50.025 (D). Mr. Hahn motioned to change the ordinance to a fifty percent reduction of the water bill in cases of a proven leak. Ms. Draughon made a second. Mayor Tate asked if there was any discussion. Being none Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Changes to the Zoning Ordinance**

The Change to the Banner Elk Zoning Ordinance requiring homeowners and home owners associations maintain catch basins, retention ponds and such other storm water systems was introduced by Mayor Tate. Ms. Draughon motioned to approve the change as presented to the Council. Mrs. Lyerly seconded the motion. Mayor Tate called for discussion on the matter. Being none Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

In regard to the matter of sign approval Mayor Tate explained the current policy of the Town when issuing sign permits. Mayor Tate asked Council for a motion to approve the change that will allow the staff to issue sign permits. Mrs. Lyerly motioned to approve the change. Ms. Draughon seconded the motion. Mayor Tate called for discussion on the matter. Being none Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Public Town Parking; Old Villa Lot, Maria Accetturo**

Ms. Accetturo was not present and therefore the item was tabled to a later date.

### **David Jennings Slide Show Presentation**

Mr. David Jennings addressed Council on the matter of ETJ expansion. Mr. Jennings expressed thanks to Council for allowing him the opportunity to speak. Mr. Jennings offered any Councilmember his time and that they would ride around Banner Elk and take a look at what he was about to show them. Mr. Jennings opposes the Town on its efforts to expand the ETJ. Mr. Jennings believes that the Town does not do a very good job enforcing it's zoning in the corporate limits or the current ETJ. Mr. Jennings showed Council a series of photos taken within the corporate limits of the Town which he believes are zoning infractions. After showing presentation of photographs Mr. Jennings brought up the fact that the Town for some time has been on him to screen and make other changes to his property that is nine tenths of a mile from the corporate limits of the Town. Mr. Jennings pointed out that much interest is taken in his property which is nine tenths of a mile from the limits but very little interest is taken in the zoning violations within the corporate limits. Mr. Jennings went on to stress that the Town needs to clean up and take care of what it has before expanding the ETJ any further. Council took no action.

### **Tax Release**

Mayor Tate asked Council for a motion to release tax bill # 885 tax year 2009 in the amount of four dollars and seventy three cents. Mr. Hahn motioned to approve the tax release. Ms. Draughon seconded the motion. Mayor Tate called for discussion on the matter. Being none Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Change Code of Ordinance Section 94.04 Nuisance**

Mayor Tate introduced the agenda item and turned the floor over to Mr. Mejaski. Mr. Mejaski explained that this was to change the existing language of 94.04 of the Banner Elk Code of Ordinances in order to deal more affectively with problems as they occur. Additions to section 94.04 are listed below.

#### *Additions to existing verbiage*

(C)-Rotten, damaged, dilapidated sheds, outbuildings, portable canopies, garages, or other uninhabited structures which have collapsed or partially collapsed or pose a fire danger or risk to neighborhood children, adjacent property, and adjacent property owners shall be deemed a nuisance.

(D)-A collection of lumber, brick, blocks, nails, and other building materials and building rubbish shall not remain outdoors on a property, in public view, for a period of greater than 30 days.

#### *New verbiage*

(F)-The use of portable screening devices such as tarp, fabric, canvas, nylon, vinyl, plastic, or other non-rigid material to cover or hide the above mentioned collection shall be deemed a nuisance.

(G)-Barns, animal pens and enclosures, dog lots and runs, and other places that house animals which are not kept in a sanitary condition or that emit odors shall be deemed a nuisance.

(H) The emission of pesticides, herbicides and other chemical agents in the Downtown shall be limited to household grade and shall not have emission travel beyond the property owners setback. Airborne chemicals shall not be used in a property owner setback. Emission of odorous air shall be considerate a nuisance.

Mayor Tate asked Council for a motion to set a public hearing on the matter of adding language to section 94.07 of the Banner Elk Code of Ordinances. Mrs. Lyerly motioned to set the date of May 8<sup>th</sup>, 2010 at 7:00pm for public hearing on the matter. Ms. Draughon seconded the motion. Mayor Tate called for discussion on the matter. Being none Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Budget Amendment to Drug Task Force**

Mayor Tate introduced the item to Council and asked the Finance Officer for further details. Mr. Smith stated that the Drug Task Force receives funding from several different sources and that the funds budgeted for expenditures are less than the revenue stream and the amendment is to increase the expenditures side to match the revenue. Mr. Phillips motioned to approve the amendment. Mrs. Lyerly seconded the motion. Mayor Tate called for discussion on the matter. Being none Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Code of Ordinance Public Consumption of Alcohol Section 111.02**

Mayor Tate opened the agenda item by asking Council for a public hearing on the matter of public consumption of alcohol, section 111.02 of the Banner Elk municipal code. Mr. Phillips asked Mayor Tate for discussion on the matter. Mayor Tate allowed Mr. Phillips to continue. Mr. Phillips stated as it is at the moment there is zero tolerance on the matter of public consumption of alcohol within the town. Mr. Phillips also stated that he did not want to open Pandora's box on this issue. Mr. Phillips said that he likes it the way it is, that we are opening ourselves up to "anything goes" if we make a change. Mrs. Lyerly stated that there is a group wanting a street dance and the town manager needs direction and help with this from Council and this allows for permitting of an event. Mrs. Lyerly motioned to set the date of May 8<sup>th</sup>, 2010 at 7:05PM as the date for public hearing on the matter of consuming alcohol in public places by permit. Mr. Tufts seconded being that discussion of the matter had taken place Mayor Tate called for a vote. Ms. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.

### **Budget Discussion**

Mr. Mejaski outlined a few goals for the upcoming budget cycle. Mr. Mejaski stated he would like to scale back on the donation line item. Mr. Mejaski also stated that he was looking for input on capital projects that the Council would like to see accomplished in the next year. Mr. Mejaski stated that he would like to see solar panels placed on the Town Hall building. Council took no action on this matter.

### **Manager's Update**

Mr. Mejaski addressed issues such as re-impact fees, friends of the park, greenway, stream restoration and bark in the park, an upMs. Draughon, Mr. Phillips, Mrs. Lyerly, Mr. Hahn and Mr. Tufts approved. There were none opposed.  
coming event.

### **Closed Session**

Mrs. Lyerly motioned to go into closed session pursuant to N.C.G.S. 143-318.11(a)(5) legal matters discussed with the Town Attorney.

### **Return from Closed Session to Open Session**

Council returned from closed session.

**Adjourn**

At 9:02pm Mr. Phillips motioned to adjourn the April 2010 meeting of the Town Council. Mr. Tufts seconded the motion. Mayor Tate called for a vote of approval. Mrs. Lyerly, Ms. Draughon, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. There were none opposed.

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Mayor Deka Tate

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Steven R. Smith Clerk/Finance Officer

May 8<sup>th</sup>, 2010  
Approved