

**BANNER ELK TOWN COUNCIL  
Special Meeting  
December 21<sup>st</sup>, 2010  
MINUTES**

The Banner Elk Town Council met Tuesday December 21st, 2010 at the Banner Elk Town Hall for the special meeting called by Mayor Pro Tempore Lyerly.

Council Members present: Mayor Pro-Tem Lyerly, Mr. Tufts, Mr. Hahn, Ms. Draughon and Mr. Phillips

Staff present: Town Manager Rick Owen, Chief of Police Bill Burleson, Finance Officer/Town Clerk Steven Smith and Assistant to the Town Manager Cheryl Buchanan.

Others present: Mari-Liis Smyth of the Avery Post, Jamie Shell of the Avery Journal, Bill and Donna Dicks, Penny & Charlie B. VonCanon, Larry Cotton, Ted Silver, Allen Bolick, Jim Swinkola, Deka Tate, Rebecca Owen, Jeff McGahee and Scott Bolyard.

**Call Meeting to Order**

At 7:00pm Mayor Pro Tempore Lyerly called the special meeting for December 2010 to order.

**Pledge of Allegiance**

Mayor Pro Tempore Lyerly led those in attendance in the Pledge of Allegiance.

**Invocation**

Councilmember Tufts opened with prayer.

**Public Hearing – Zoning Ordinance Amendments**

Mayor Pro-Tem Lyerly opened the public hearing on the stated subject matter by asking the town manager to summarize the issue to be discussed. Mr. Owen deferred to Ms. Buchanan. Ms. Buchanan explained the matter to those in attendance. Mr. Hahn asked about real estate for sale signs. Ms. Buchanan stated that they must be sand blasted. Mr. Hahn asked how long may a realtor sign be up and Ms. Buchanan stated that as long as it is sand blasted there is no time limit. Mr. Hahn stated that he wished that a realtor was present so as to get their feeling on this. Mr. Bill Dicks asked Mr. Hahn if he could help in the matter. Mr. Dicks stated that Beech and Sugar Mountain already have sand blasting in their ordinances and that realtors are accustomed to the practice. Mr. Hahn stated that these signs are expensive and felt it would be nice to hear from a realtor. Ms. Buchanan stated that the realtors already have the sand blasted signs. There was also discussion as to the term sand blasting verses routing and carved. Hearing no further comments from the public Mayor Pro-Tem Lyerly closed the public hearing.

### **Public Hearing – Water & Sewer Ordinance Amendment**

Mayor Pro-Tem Lyerly opened the public hearing on the matter as stated. Ms. Lyerly asked the Town Manager to summarize the issue for those in attendance. Mr. Owen stated that Section 50.021 of the Banner Elk Code of Ordinances had been previously changed by the Town Council and change was made in the fee schedule but not in the Code of Ordinances. The change to the fee schedule was made within the process of adopting a budget ordinance. Mr. Owen felt it was necessary to conduct a public hearing as needed in a matter to change an ordinance and have Council adopt the matter formally. Mr. Owen stated that this will bring the Code of Ordinances in line with the actual business practice of the Town.

Hearing no comments from the public the Mayor Pro-Tem closed the public hearing.

### **Approval of the November 2010 Minutes**

Mayor Pro Tempore Lyerly asked Council for a motion to approve the November 2010 minutes. Councilmember Draughon motioned to approve the minutes of the November 2010 regular meeting of the Town Council. Mr. Tufts provided a second to the motion. Ms. Lyerly asked for discussion of the matter and being none asked Council for approval. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Approval of the Stated Agenda**

Mayor Pro Tempore Lyerly asked Council for a motion to approve the stated agenda. Mr. Tufts motioned to approve as stated. Mr. Hahn provided the second and therefore Ms. Lyerly declared the matter open for discussion. Being none Ms. Lyerly closed the discussion and moved the matter forward for a vote of the members. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Citizens Concerns**

Mayor Pro-Tem Lyerly called on Mr. Jim Swinkola of Grandfather Home for Children. Mr. Swinkola thanked Banner Elk for all its support of the children's home and stated that Grandfather Home for Children would very soon start planning for the development of the two hundred acres the home owns that lies across Hickory Nut Road from the main campus. Mr. Swinkola introduced Mr. Scott Bolyard and Mr. Jeff McGahee to the Council as the planners of the future development. Mr. Swinkola stated that the Home wishes to work closely with the town on the project.

### **Resolution & Special Presentation Honoring Former Mayor Deka Tate**

Mayor Pro-Tem Lyerly introduced the next item of concern. Ms. Lyerly stated that she would read a resolution honoring former Mayor Deka Tate. After the reading of Council's resolution Ms. Lyerly read aloud the resolution from the North Carolina League of Manipulates honoring Mayor Tate. Ms. Buchanan also presented Mayor Tate with a gift of an engraved sidewalk brick to be placed in the spot of Ms. Tate's choosing. Ms. Lyerly then asked Council for a motion to approve of the resolution honoring Mayor Deka Tate. Mr. Tufts motioned to approve the resolution. Ms. Draughon seconded the motion. Being no discussion Mayor Pro-Tem called for a vote on the resolution. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The resolution is approved 5 – 0.

### **Adopt Code of Ethics**

Mayor Pro-Tem Lyerly introduced the matter of adopting a code of ethics. A sample code of ethics had been presented to the Council for their review. Mr. Owen asked Council if there were any changes need. Discussion was held to narrow down the language desired by Council. Mr. Hahn motioned to adopt the code of ethics subject to review of the changes and corrections at the next Council meeting. Mr. Tufts provided a second to motion made. Ms. Lyerly asked if there was further discussion on the matter. Being none Ms. Lyerly called for a vote on the policy regarding the Council's code of ethics. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Final Plat Approval Mill Pond Manor**

The matter of final plat approval for the Mill Pond Manor development was put before Council. Ms. Buchanan stated that this is a wonderful development and she hoped that everyone had gotten by at some point to take a look. There was some question as to the rain barrels as to if they are working. It was explained by the developer that there are some fall maintenance that needs to take place such as cleaning of the gutter system. Mr. Tufts motioned to approve the final plat with Ms. Draughon seconding the motion. Ms. Lyerly called for additional discussion on the matter and being none called for a vote to approve the measure. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Resolution to Opt-Out of Development Permit Extensions**

On request of the Mayor Pro-Tem, Mr. Owen opened the matter of the opt-out by explaining that in 2008 the Governor of the our state froze all development permits as to their date of expiration until December 31, 2010 in order to ease the burden of the housing market crash. The Governor again this fall extended that freeze for yet another year or December 31, 2011 with an opt-out for counties and municipalities. The opt-out would start the clock once again on development permits. Council held discussion on the matter of opting-out and what that would mean to the developers and their developments as well as, what is good for the town.

Mr. Tufts motioned for the town to opt-out of the extension on permit duration. Ms. Draughon seconded the motion to opt-out. Ms. Lyerly asked for any further discussion. Being none Ms. Lyerly called for a vote on the motion. Mr. Tufts, Ms. Draughon and Ms. Lyerly were in favor and Mr. Phillips and Mr. Hahn were opposed. The motion to opt-out was approved 3-2.

### **Zoning Ordinance Revisions**

Ms. Draughon motioned to approve the zoning ordinance revisions as presented to Council, (refer to the supporting documents in packet). Mr. Tufts seconded the motion. Ms. Lyerly called for further discussion of the matter and being none called for a vote of the motion. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Water Sewer Ordinance Amendment**

Mr. Tufts motioned to amend section 51.021 to read “the minimum user charge shall apply whether the property is occupied or unoccupied”. Mr. Phillips seconded the motion made by Mr. Tufts. Ms. Lyerly called for further discussion and being none called for a vote on the motion. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Revise Town Fee Schedule – Section 1. Deposits**

Mr. Hahn motioned to approve the change as proposed to Council on the fee schedule. In-town residential customers \$75.00, out-town residential customer \$150.00, in-town commercial customer \$125.00, out-town commercial customer \$250.00, in-town restaurant customer \$500.00 and out-town restaurant customer \$1000.00. Mr. Phillips seconded the motion. Ms. Lyerly called for discussion on the matter and being none called for a vote. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Tax Releases**

Ms. Draughon motioned to release the bill on account #100308 bill # 462 in the amount of \$16.77. Mr. Phillips seconded the motion. Ms. Lyerly called for discussion on the matter and being none called for a vote. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Manager’s Update**

Mr. Owen yielded the floor to Mr. Ted Silver for the monthly bicycle and pedestrian committee report. Mr. Silver update Council on a resent conference he attended in connection and required by the grant received. Mr. Owen updated Council on items such as stream restoration, centennial, website, new school turn lanes, snowflakes, budgeting conference, open house at Town Hall and a thank you to Ms. Lyerly and Mr. Tufts for their open house.

### **Closed Session – NCGS 143-318.11(a)(8) Personnel Matters**

Mr. Phillips motioned to for the Council to go into closed session in accordance with N.C.G.S. 143-318.11(a)(8) for personnel matters. Mr. Hahn seconded the motion. Ms. Lyerly called for discussion on the matter and being none called for a vote. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

In closed session Council reviewed continuing matters related to personnel.

### **Return to Open Session**

Mr. Tufts motioned to return to open session and Ms. Draughon seconded the motion. Ms. Lyerly called for discussion on the matter and being none called for a vote. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

### **Other Business**

Mr. Owen informed Council that LMC had requested to buy a load of bulk deicing salt from the Town. This was due to the fact that contracts for bulk salt must be signed months prior to the winter season and they have never bought bulk salt and therefore could not order any. Council was in agreement to help LMC out in this matter.

**Adjourn**

At 8:45pm Mr. Hahn motioned to adjourn the special meeting of the Town Council. Ms. Draughon seconded the motion. Ms. Lyerly called for discussion on the matter and being none called for a vote. Ms. Draughon, Ms. Lyerly, Mr. Tufts, Mr. Hahn and Mr. Phillips all approved. The motion is approved 5 – 0.

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Mayor Pro Tempore Brenda Lyerly

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Steven R. Smith Finance Officer/Clerk

January 13<sup>th</sup>, 2010  
Approved