

**BANNER ELK TOWN COUNCIL  
AUGUST 8, 2011  
MINUTES**

The Banner Elk Town Council met Monday, August 8, 2011 at 7:00 p.m. at Banner Elk Town Hall for their regular scheduled meeting.

Council Members present: Mayor Pro Tempore Brenda Lyerly, Gail Draughon, Robert Tufts and Bud Hahn.

Staff present: Town Manager Rick Owen, Steve Smith, Chief Bill Burleson, Cheryl Buchanan, and Town Attorney Four Eggers.

Others present: Allen Bolick, Jim Swinkola, Ted Silver, Charlie and Penny VonCanon, Dick Wilson, Cliff Wilson, Don Young, Ray Noles, Tom Fox, Craig Bell, Larry Cotton, Chief of the Banner Elk Volunteer Fire Department, Jamie Shell of the Avery Journal and other interested parties.

**Call Meeting to Order**

At 7:00 p.m. Mayor Pro Tempore Brenda Lyerly called the regular monthly meeting for August 2011 to order.

**Pledge of Allegiance**

Ms. Lyerly led those in attendance in the Pledge of Allegiance.

**Invocation**

Council member Robert Tufts opened with prayer.

**Public Hearing – Grandfather Home for Children Annexation**

Mayor Pro Tem Lyerly introduced Jim Swinkola to the audience. Mr. Swinkola stated that the Board Complex of Grandfather Home for Children gave him the authorization to speak on behalf of the corporation in regards to the annexation. Mr. Swinkola introduced several trustees and staff members. Mr. Swinkola then stated to the audience that he continued to believe that the annexation of the property that was being petitioned was in the best interest not only to Grandfather's ministry but to the Town of Banner Elk as well. Mr. Swinkola stated that one of their goals was to preserve history and that GHFC would be celebrating their 100<sup>th</sup> anniversary in May 2014. If the town annexed Grandfather Home properties, the town would also be annexing several historical properties, including one that was built in 1939. Mr. Swinkola encouraged the town people to drive up through Hickory Nut Gap Road and get a feel for their particular property. GHFC has a quality level that they strive for and they believe they are a good neighbor to the Town of Banner Elk, already upholding several town ordinances. Mr. Swinkola addressed several of the town's concerns, but didn't want these issues to get hung up with the annexation. Water: There was no problem with the water at GHFC. It meets the same standards as the town's. Mr. Swinkola stated that their annual operation cost for water comes just shy of \$12,000. Police protection: GHFC has 28 needy children and 8 staff members who live on the premises. They have capable staff and a security firm that is on duty at night hours to handle the needs of the children. Trails and greenway: Mr. Swinkola stated that it would please him to see Wildcat Lake be connected to the town's existing greenway. Zoning: Mr. Swinkola stated that this was one of the major reasons for signing the petition; to allow one rule book for all the

properties. Taxes: GHFC presently operates as a 501(c)(3). Sewer lines: Mr. Swinkola was willing and able to address these issues, but didn't think there would be a problem. Currently, both the GHFC's wells are metered to provide a usage figure for sewer charges. They will be placing individual meters on each of their buildings which will provide a more accurate accounting of usage, which will impact the amount paid to the town. Grandfather Home for Children has hopes and aspirations for the future. Mr. Swinkola wanted to add the term goodwill to their petition for annexation into the Town of Banner Elk...the value of an entity over and above the value of its assets.

Mayor Pro Tem Lyerly asked for a motion to open the public hearing. Council member Roberts Tufts made the motion and council member Bud Hahn seconded. All were in favor. Mayor Pro Tempore Brenda Lyerly recognized Ted Silver. Mr. Silver of 640 Puddingstone Parkway addressed council and stated that through his brief time as a resident of Banner Elk, he noticed that Grandfather Home for Children was a wonderful and benevolent member of our community. He also stated that he had no particular feeling for or against the annexation, but wanted to express some points of consideration. Mr. Silver stated that the Town of Banner Elk was about 1.9 square miles and that the approximate 400 acres of GHFC was equal to about .624 square miles which would add about 1/3 of the size of the town in terms of square miles and area. The development of the property and its annexation would have an impact on the town now and in the future. He hoped that as the annexation process worked its way through the system that there would be a review of costs and benefits to all the parties. Council member Hahn then addressed the audience and stated that there will be another public hearing. He also stated that in addition to annexation it boils down to a budget issue for council and that this would be a significant step for the town. He stated that the council needs input from its residents on this issue. The public hearing was closed.

#### **Public Hearing – David Burns Annexation**

Mayor Pro Tempore Lyerly asked for a motion to open the public hearing on the David Burns annexation. Council member Hahn motioned and council member Tufts seconded. All were in favor. Mr. Owen stated that this petition for annexation was certified and now was in the public hearing phase. This would be a voluntary and satellite annexation because the property was located just outside of town limits and currently the property has town water and sewer services in front of the property. No comments were made. This public hearing was closed.

#### **Public Hearing – Sign Ordinance Amendment**

Mayor Pro Tempore Lyerly called for a motion to open the public hearing on the sign ordinance amendment. Council member Tufts motioned and council member Hahn seconded. All were in favor. Rick Owen advised council that the amendment was in council's packet and that it had been available to the public since the last meeting in July. He noted that there were many amendments to go over and that it would be difficult to present all of them to the public. Mr. Owen asked if anyone had any questions. Tricia Blackwell stated that she had a comment and Mayor Pro Tempore asked her to the podium. Ms. Blackwell, a resident on Beech Mountain Parkway (ETJ) and silent partner of Visions of Sugar Plums, came to the podium. The for sale sign and going out of business sign were taken down from the property. Ms. Blackwell asked for a waiver that would allow the signs to be reinstated. Mayor Pro Tempore Lyerly told Ms. Blackwell that town council would take her request under advisement. There being no further comments, the public hearing was closed.

#### **Approval of the Minutes**

Mayor Pro Tempore Lyerly asked council for a motion to approve the July 2011 minutes. Council member Draughon motioned to approve the minutes as written. Council member Tufts provided a second. The July minutes passed with all in favor, none opposed.

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

Mayor Pro Tempore Lyerly asked council to approve the August agenda as stated. Ms. Draughon made a motion to approve the agenda and Mr. Tufts seconded the motion. The stated agenda passed with all in favor.

### **Citizen Concerns**

There were no citizen concerns.

### **Grandfather Home for Children Annexation**

Town Manager Rick Owen made a point that the property would be “as is”. Mr. Owen also noted that in regard to the town’s view towards GHFC’s water, it wasn’t a quality issue rather the ability to interconnect the two systems since GHFC’s system is not certified as a community system. Mr. Owen stated that the approval process was underway. Mr. Tufts asked about the time frame for this approval. Mr. Don Young noted that it would take 6-9 months for various items to be certified (i.e. the field, depth of pipes, size of pipes, etc.). Mr. Owen stated that this would put the town outside of the petition time frame. A second petition would have to be made. Mr. Tufts made a recommendation that prior to the second public hearing both parties hammer out the details (i.e. roads, water, sewer, etc.). Mr. Owen stated that the well water was a key component and that the state had been very optimistic about the wells. The process had been time consuming, but the state did not indicate that there was a problem. Mr. Tufts made a motion to set a second public hearing for October 2011. Mr. Hahn seconded. All were in favor.

### **David Burns Annexation**

Mr. Owen stated that everything was in order and that it was up to council to approve the annexation. He also noted that the annexation agreement would include a phrase “with the intent to petition for water and sewer”. Mr. Tufts asked if Mr. Burns intended to pay for the connection between the house and the water main. Council member Hahn made a motion to approve the annexation agreement. Council member Tufts seconded. All were in favor.

### **Sign Ordinance Amendment**

Mayor Pro Tem Lyerly stated that the amendment had been reviewed quite extensively by the planning board and they recommended it. Council member Tufts made a motion to accept the changes to the Section 605 Ordinance as written. Council member Draughon seconded. All were in favor.

### **Paving Projects, Police Department & Greenway Trail**

Mr. Owen addressed council and stated that there were two paving projects in town. The back parking lot at the police department had several issues with drainage. Chief Bill Burleson requested paving 2/3 of the lot, basically the fall line away from the building. He offered to use a portion of the Golf Fund monies. The second request was paving the greenway trail which was currently graveled. Mr. Owen stated that the TDA offered to assist with the expense. The cost was expected to be between \$10,000 and \$15,000 and Mr. Owen believed that the TDA would pay 50% of the cost. He also stated that there was currently a fund set aside for sidewalk work and thought the money could come from this. Mr. Hahn stated that the sidewalk fund was set up strictly for extending the brick sidewalks in town, that it was funded by the TDA, and should not

be used for the greenways. He thought there might be a problem with those individuals who wanted the sidewalk project completed, for instance the area in front of Banner Elk Café and Edge of the World, where a problem existed with right of way. Mr. Tufts asked Rick to research this and look back at prior council minutes. Steve Smith recalled that the sidewalk fund was set up in phases 1 through 5. He believed the money was there before 2006. Rick stated that if council desired to do the paving, council could then determine where the money would come from. Mayor Pro Tem Lyerly stated that if TDA agreed to share half with the town, we would consider doing it. Mayor Pro Tem Lyerly recognized a concerned citizen. He stated that where the Greenway Trail crossed over into Crooked Creek, some kind of cross walk sign was needed to warn oncoming vehicles as well as walkers. Mr. Tufts asked Mr. Owen if these projects were a part of the budgeted paving project. Mr. Owen noted that these were additions to the “real” projects that may be proposed at a later date. He stated that when a contractor is hired, the town would suggest doing add ons to that contract for other items around town. Council member Tufts made a motion to pave the impound lot at the police department, paying 50% of it (approximately 2/3 of the lot, \$9,000). Council member Draughon seconded. All were in favor. Mr. Hahn made a motion to approve the paving of the Greenway Trail subject to 50% being paid by the TDA. Mr. Tufts seconded. All were in favor.

### **Annual Tax Settlement**

Cheryl Buchanan addressed the council. She stated that the tax collector’s total charge was \$950,946.75, the total collected was \$926,004.67, which gave the town a collection rate of 97.3%. She stated that the total outstanding for the fiscal year 2011 was \$24,942.08. Council member Hahn made a motion to approve the resolution approving the tax collector’s annual settlement. Council member Draughon seconded. All were in favor

### **Charge Tax Collector to Collect Taxes**

Mr. Tufts made a motion to approve the charge to collect the 2011 fiscal year taxes. Mr. Hahn seconded. All were in favor.

Mr. Hahn made a motion to approve the resolution directing the tax collector not to collect minimum taxes for the 2011 fiscal year. Mr. Tufts seconded. All were in favor.

### **Bridge Inspection Agreement w/NCDOT**

Mr. Owen stated that the town needs to enter into a formal agreement with the North Carolina Department of Transportation for the inspection of our municipal bridges. This inspection occurs every two years. The town has three options: The town could have certified town staff perform the inspection, which we don’t have. The town could hire a qualified engineering firm to perform the inspection and load rating. The state would then reimburse the town 80% of the cost. Or the town could contract with the state who hires their own engineer who would inspect bridges and would charge the town 20% of the cost upon completion of the work. This inspection would take place in 2012, but the town needs to enter into an agreement now. The town has six bridges. To estimate the cost of the inspections, the state suggests we use 20% of \$2,600 or \$520 per bridge. Mr. Tufts made a motion to approve the inspections agreement with NCDOT. Mr. Hahn seconded. All were in favor.

### **Call for Public Hearing – Zoning of New School Property**

Cheryl Buchanan addressed the council and stated that the new Banner Elk school property was not zoned when it was annexed. She stated that this property did not include the house the county owns. That property was not annexed into the town. Mr. Eggers stated that a public hearing is required for zoning to be considered. Council member Hahn made a motion to set a public hearing at the next meeting to designate zoning as educational for the new Banner Elk School. Council member Tufts seconded. All were in favor for a public hearing at September's meeting.

### **Bicycle Committee Report**

Mayor Pro Tempore Lyerly called upon Mr. Ted Silver, chairman of the Bicycle Pedestrian Committee, to give council an update on the monthly meeting of the BPC which took place on August 4<sup>th</sup>. Mr. Silver reported that milling and resurfacing of Highway 184/194 would begin on August 7 and work would be done at night. He spoke with the engineer in reference to road markings (i.e. crosswalk and signage at the new school). Mr. Owen stated that he was in receipt of an email which stated that it was not their policy to do any markings or signs for schools off the main road, but that he would stay on top of it. Mr. Silver went on to report that the committee talked about that one of the town's goals was the extension of the greenway. He stated that this item has been tabled too long and urged the town to take steps to continue the extension of the greenway behind the Art Cellar. The committee also discussed greenway signage at the trail heads. Mr. Silver requested council to secure estimates and funds for the placement of these signs along the trails incorporating any historical sites along the trails. He also requested council for a sign at the entrance into Banner Elk regarding Lees-McRae cycling championships. Mr. Silver stated that they were also seeking cooperation from the TDA and the chambers of commerce. He also requested a resolution from the town endorsing National Walk to School Day which is October 5<sup>th</sup>. Mr. Tufts stated that the idea for a map of the town was good and that by working with several groups such as the Heritage Foundation, planning board and land use committee, that this could be an overall goal for the town. Mr. Silver noted that the NC Board of Transportation adopted a complete streets policy adopted in July 2009. Mr. Owen addressed Mr. Silver and stated that council's desire was for the greenway to continue and that he and Cheryl would be working more diligently on that goal. When he became town manager, he was made aware of some of the issues with the greenway extension. Since that time, other issues have arisen which further complicate the project.

### **Manager's Update**

Town Manger Rick Owen reported that committee reports were in the councils' packets. Mr. Owen passed out the draft minutes to the planning board meeting for council's review. He also noted that Mr. Smith sent a memo to council regarding the High Country Municipal Association's next meeting to be held on August 18<sup>th</sup>. Mr. Owen stated that he sent council an email regarding the Council of Government dinner at Linville Ridge. He asked council to let Steve and him know if anyone would be attending these events. Mr. Owen also noted that the League of Municipalities' meeting would be on October 22 through October 25.

Mr. Owen stated that at last month's meeting the fire department agreement was discussed. He noted that he was working with the Banner Elk Volunteer Fire Department and Charlie Franklin with the fire commission. Mr. Owen stated that in the past, the town had nothing in writing that showed what monies were given to those entities. What the town did have was a fire protection agreement with the fire department which states that they will provide fire services for the town. This agreement is needed on a yearly basis. Mr. Eggers would review it for the town. The agreement was an automatic renewal, but apparently council had signed it every year. Charlie

Franklin would compile a list of the monies they had received from the town in the past and how the monies were expended. Mr. Owen noted that once council had this information, the town would then be able to come up with some written agreement with the Banner Elk fire department.

Mr. Owen noted that he had previously talked to council about the need for an events policy for the park. Mr. Owen has learned a lot about the events that take place in the park over the summer and now feels that he can better make a recommendation about a policy. He will do this in the upcoming months.

Mr. Owen stated that the request for qualifications for the study of the town's water system was back. Five engineers responded to our request. Mr. Owen asked council if they would like to review those five qualifying engineers to determine who they would like to negotiate with or would council prefer to delegate that to the staff to choose the engineer who was most qualified. Mayor Pro Tem Lyerly stated that Mr. Owen was very qualified to make the decision. Mr. Eggers asked Mr. Owen what was the anticipated amount that would be involved for the cost of the engineers. Mr. Owen stated \$10,000 or less and went on to say that once negotiations began, then it would be determined how much would be spent. Mayor Pro Tem Lyerly asked for a motion. Mr. Hahn made a motion to delegate the selection of a qualified engineer to staff. Mr. Tufts seconded the motion. All were in favor.

Mr. Owen told council that he applied for and was accepted to a school of government course entitled Municipal and County Administration. This course would take place in Chapel Hill and would be offered over seven sessions, over an eight month period, four days at a time starting on a Tuesday afternoon and running through Friday. Mayor Pro Tem Lyerly stated that council did provide Mr. Owen with that directive so he should proceed.

Mr. Owen stated that with Robert Tuft's assistance, he was putting together a donation grant request for non profits. He would email council a draft of this form and asked council to provide him feedback.

Mayor Pro Tem Lyerly asked if there was any other business. She thanked everyone for coming to the meeting.

### **Adjourn**

Council member Hahn made a motion to adjourn the August meeting of the town council. Council member Tufts seconded the motion. Mayor Pro Tem Lyerly called for the vote. All agreed. The meeting adjourned at 8:40 p.m.

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Mayor Pro Tempore Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: September 12, 2011