

**BANNER ELK TOWN COUNCIL**  
**February 13, 2012**  
**MINUTES**

The Banner Elk Town Council met Monday, February 13, 2012 at 7:00 p.m. at Banner Elk Town Hall for their regular scheduled meeting.

Council Members present: Mayor Brenda Lyerly, Allen Bolick, Charlie VonCanon, Gail Draughon, Robert Tufts and David Lecka.

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

Others present: Derek Goddard, Deka Tate, Penny VonCanon, Rebecca Bolick, Dean Ledbetter, Larry Cotton, Rachael Deal, Laurie Vierheller, and other interested parties.

**Call Meeting to Order**

At 7:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for February 2012 to order.

**Pledge of Allegiance**

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

**Invocation**

Council member Robert Tufts opened the meeting with prayer.

Mayor Brenda Lyerly welcomed Boy Scout Troop 807 who are working on their Eagle merit badge. Mr. Lonnie Barns introduced John Perry, the Scout Master. The scouts in attendance were Jamie Carroberry, Seth Hay and Daniel Jones, who are all life scouts.

**Approval of the Minutes**

Mayor Lyerly asked council for a motion to approve the December 2011 minutes. Council member Charlie VonCanon motioned to approve the minutes as written. Council member Draughon provided a second. The December 2011 minutes passed with all in favor and no one opposed.

**Approval of the Stated Agenda**

Mayor Lyerly asked council for a motion to approve the February 2012 agenda as stated. Mr. Tufts made a motion to approve the agenda as stated. Mr. Lecka seconded the motion. The stated agenda passed with all in favor.

**Citizen Concerns**

There were no citizen concerns.

### **NCDOT Presentation, Round-About**

Mr. Dean Ledbetter with the NCDOT addressed council regarding the construction of a turn lane at Orchard Lane and 184. As discussions and planning began on the turn lane, it was determined that the cost of the right of way would be high and in addition, an environmental mitigation issue arose which was a live stream flowing on the hotel frontage. The projected cost for this project was \$1 million.

The DOT then looked at the mini round-about which would require much less right-of-way, the environmental impact would be much lower, the traffic speed would be lower and typically with round-about there are 30% fewer traffic accidents. Another benefit for the mini round-about is that there are splitter islands approaching the circle and that is where DOT would put pedestrian crosswalks.

Mr. Ledbetter received questions from the council:

- Splitter islands: Can trucks run over them?

Mr. Ledbetter stated that the splitter islands are intended to be about 2-3 inches high and yes, the trucks can run over them.

- Is there a mini round-about near Banner Elk that we can see?

Mr. Ledbetter stated that there are none. There are three that are constructed and on the ground. There is one where the design stage is complete and is funded and will be located near Hudson Elementary School (full size). Other proposed mini round-about are in Elkin and Granite Falls.

- How much input will Banner Elk have with the decision on this mini round-about?

Mr. Ledbetter stated that there is a meeting scheduled for this coming Thursday at 11:00. He noted that he is just a traffic engineer and is not part of the decision making process. However, he noted that the division engineer, division maintenance engineer and project engineer will be in attendance to meet with Mr. Owen, along with county and school officials. Funding is set up to do a project at Orchard Lane and 184 and the two options are a mini round-about or do nothing.

- Cost? Who is going to pay for the project (county, state, Banner Elk, DOT)?

Mr. Ledbetter stated that the DOT has this project set up to address this intersection and would bear the cost of construction. He also understood that the county would be responsible for right-of-way costs and pursuing statewide contingency funds.

- How many land owners are involved with the mini round-about?

Mr. Ledbetter stated that the two businesses on each side will be affected. He also noted that he wasn't sure how many parcels are in that location.

- Will the mini round-about handle the traffic flow 20 years from now?

Mr. Ledbetter stated that in 20 years, if circumstances change, DOT would address the situation. If it lasts for 20 years, we would get our money out of it.

- What is the cost differential between a mini round-about and a stop light?

Mr. Ledbetter stated that a traffic signal typically costs \$40,000-\$50,000. However, a traffic signal is not warranted at this location, due to low traffic volume. Another benefit to a round-about is that it keeps traffic moving. There are no cars just sitting, idling, not wasting fuel which saves motorists 30% compared to a traffic signal.

- Could the town choose to have the road striped with the wording “school” across the road?

Mr. Ledbetter stated that the road is only striped when the school property fronts the road.

- Will the mini round-about hamper the culvert repair?

Rick Owen stated that the funds for construction would cover drainage issues associated with the round-about.

- Chief Bill Burluson stated that his concern was the round-about being on the main thoroughfare into Banner Elk. Chief Burluson questioned why the turning lanes were taken off the table and asked Mr. Ledbetter how many property owners were involved that the right-of-way costs were so high. Mr. Ledbetter said that it wasn't just the number of property owners, but the environmental mitigation costs which would cost over \$300,000. There is a spring on the south side of the intersection and the environmental people ruled that as a live stream.

Mr. Owen thanked Mr. Ledbetter for coming to talk to council. Mr. Owen stated to council members that the county commissioners discussed this item last week and the county manager asked them to budget the money for the right of way.

Mr. Ledbetter stated that he didn't feel comfortable about the turning lanes because they create a through lane which creates safety and traffic problems.

He also stated that the DOT budgeted a \$250,000 “small construction project” to help the school fund the turn lanes but the right of way cost would be completely up to the school.

Mr. Owen noted that the Town of Banner Elk was told there would be turn lanes; the town told residents that there would be turn lanes; the school was told there would be turn lanes. He told council that we had to look at the clear justification for the turn lanes: lack of commercial development, lack of residential build out, or the overestimation of traffic numbers. Apple Orchard residents as a POA always wanted a turn lane and thought they were getting a turn lane.

Council member Lecka asked Mr. Ledbetter what the time frame was for the design and construction of the project. Mr. Ledbetter told council that if it is going to be built, the time frame would be the summer of 2012, which is rather ambitious since the round-about hasn't been approved yet. The DOT wants to make a decision soon.

Mr. Tufts questioned Mr. Ledbetter how the round-about would affect bicyclists? Mr. Ledbetter stated that they would “take the lane”, that they would be able to maintain speed especially on a mini round-about. He stated that they aren't as good as an all way stop.

Mr. Owen stated that there would be a meeting at 11:00 on Thursday, February 16<sup>th</sup> at the site at Orchard Lane and invited interested parties to attend.

Mayor Lyerly stated that Banner Elk has many heavy trucks and questioned the longevity of the mini round-about (20 years?). Mr. Ledbetter said there would be a need for maintenance also because of the weather in the area and he noted that snow removal equipment does well around roundabouts.

Mr. Owen noted that he would email council the technical summary provided by Dean Ledbetter along with pictures, descriptions and traffic count.

Mayor Lyerly thanked Mr. Ledbetter for his time and presentation.

### **Funding Request, Avery County Humane Society**

Town Manager Rick Owen addressed council stating that town council budgeted \$10,000 to be made available for making donations throughout the fiscal year. He also provided council a breakdown of donations that the town has made over the past six fiscal years as well as the recipients. He noted that this fiscal year a form was put together to be filled out by requesting agencies so that the town can track funding better.

The Avery County Humane Society was the first firm to fill out the form to make a request and for the town to review. Other agencies that have requested the forms are Lees McRae Summer Theater and The Heritage Foundation.

Mr. VonCanon asked if the spokesperson for the humane society could inform council where they are at this point with construction. Laurie Vierheller of the Avery County Humane Society addressed council stating that construction on New Vale Road in Newland is proceeding and they have about a month to go to move in. They are still working on funding and to date have raised approximately \$3 million dollars and have about \$1 million to go and will be working on obtaining that amount over the next 7 years. Ms. Vierheller stated that they want this to be a community shelter and are asking all municipalities for their involvement and would appreciate the Town of Banner Elk's support. She also noted that they met with the county commissioners and the commissioners have accepted their offer to purchase the property which they needed in order to obtain a loan to finance the project.

Council member VonCanon made a motion to grant the \$300 donation request. Council member Tufts seconded. All were in favor and no one opposed.

### **Sewer Connection Request, Grandfather Home for Children**

Mr. Owen addressed council stating that currently the Town of Banner Elk provides sewer service to GHFC. GHFC wants to build an amphitheater on their property to be used for their centennial celebration. The planning board has already approved the plans for the building. The amphitheater has restrooms in the building which require sewer connection. Since the property is located outside town limits, Mr. Owen believed it needed council approval to allocate additional sewer flow. They will be required to pay impact fees and access fees to the town.

Town attorney, Four Eggers addressed Mayor Lyerly stating that since the building is not in the municipality, the town should approve the connection subject to an agreement to be drafted by the town attorney to govern their connection.

Mr. Tufts addressed council stating that a point we should consider is that several years ago the town agreed on a moratorium that we would not provide any outside sewer or water connections. Is this still in effect? Ms. Draughon stated that it was just for water, not sewer. Mr. Owen stated that presently we have plenty of sewer capacity. He stated that GHFC has other restrooms on the property that would be utilized if this building did not have a restroom. The town would be carrying the flow one way or the other. Mr. Owen is unsure of how the building will be used in the future and how that could affect the flow. Council member Lecka stated that the town's concern was the precedent that we would be setting. Council member VonCanon questioned if the planning board actually issued a zoning permit. Mr. Owen stated that Cheryl Buchanan will not issue a zoning permit until everything is in order, which includes a landscaping plan.

Council member Lecka made a motion to approve the connection contingent upon receiving zoning approval and subject to an agreement written by the Town of Banner Elk's attorney. Council member Bolick seconded. All were in favor. No one opposed.

### **Council Chamber Renovation Update**

Mr. Owen addressed council stating that two years ago council had planned to renovate the council chambers, more of a facelift, new furniture, audio video equipment, etc., but that the project was put on hold. Mr. Owen stated that at December's meeting, he received plans along with price estimates and received council's go ahead to get bids for the project.

Mr. Owen told council that he received three bids which include: carpet, ceiling work, T&G work, electrical work, the physical construction in the council chambers. The other cost would be for a new council table and chairs. Mr. Owen noted that at December's meeting he stated that the town would be spending approximately \$28,000 for the entire project. Mr. Owen's construction estimates along with the table estimates came in more than what he estimated.

Mr. Owen asked council that after seeing the numbers are they still interested in proceeding with the project and would they like to see the three estimates from the contractors? The three construction bids are all under \$30,000. Mr. Owen told council that he would get additional pricing for the council chairs to go with the table and they all agreed. Council member Lecka wanted to know more about the construction side of the room. Mr. Owen went over the architectural plan which focused a lot on the T&G ceiling. Mr. VonCanon agreed with Mr. Bolick in that the chambers needed additional lighting, better circulation for heating and AC, and better wiring for audio and AV. He wasn't bothered by the white ceiling and thought the T&G cost too much. Council members agreed that chairs were not needed for the audience portion of the room. They liked the modular table. Council members had varied feelings about the T&G ceiling and wood species

Attorney Eggers suggested to council that if they take action, they should take action on the furniture separate from the construction due to one of them being a state contract issue and the other being construction below the threshold.

After much discussion, it was agreed by council members that the council chambers does need to be updated. They would like Mr. Owen to do work with the low bidder to research the T&G (type of wood, price of wood, labor/installation cost) and compare costs with or without that type of ceiling.

### **Watershed Storm Water Study Presentation**

Mr. Derek Goddard told council that back in 2007 the Town of Banner Elk applied for a Storm Water Mini Grant to evaluate the town's storm water issues at Shawneehaw Creek and Elk River. He stated that the project was funded just about a year ago and the culmination of the study took place in December 2011. The report is 102 pages which the town manager has and which is also available digitally.

Mr. Goddard told council that the report is a preliminary assessment to get us honed in to the solution. He told council that they went through town and looked at potential projects, ranked them and took the top four ranking projects and dug deeper (feasibility, budget, land owner issues and concerns, cost benefit analysis). Two of the top ranking projects were in the Dogwood Road, Crooked Creek area. What is proposed for that area is to take all the impervious water and contain it in storm water wetlands.

Other projects identified in the top four were the Dr. Al Petty site, directly across from the planned mini round-about. Their plan is to take all the water coming off the site area and create a feature storm water wetland on the Petty property. Mr. Goddard stated that Dr. Petty has already signed an easement intent. He stated that another potential project was on the Banner Elk Elementary School property, improving their storm water management and also stream restoration on their property which will prevent sedimentation from coming into the storm water system.

Mr. VonCanon stated to Mr. Goddard that Banner Elk has seen its share of storm water damage over several years. He asked that on a scale of 1 to 10, how much will his proposals help improve the situation. Mr. Goddard stated that storm water is the number two pollutant here in the mountains and it is a two part issue: a quantity issue and the issue of all the materials contained in the water from the roads (oil, salt, and sediment). Mr. Goddard said that it is a site specific fix that will be seen visually to begin with, but as we develop a network of different projects, there will be a significant improvement as a whole. He also noted that the report addresses 17 sites throughout the entire watershed.

Mr. Lecka asked what were the town's chances of getting grants for these projects. Mr. Goddard stated that if we put together a really good proposal and develop it, the town's chances are good. They actually funded the report. The process is to submit a proposal by February 1<sup>st</sup>. Sometime within the next 6-8 months we would then know if we could proceed with the application.

Council member Tufts made a motion to direct the town manager, Rick Owen, to continue to consult with Blue Ridge Environmental Consultants to pursue watershed storm water grants. Council member VonCanon seconded. All were in favor. No one opposed.

### **PARTF Project Update**

Derek Goddard reported to council that this project is the extension and renovation of the facilities associated with the Tate Evans Park. The value survey is ongoing. The topographic survey is complete. Utilities location: understanding where the water, sewer, electricity and the utilities that we will need for the new facilities is ongoing. Products and specifications: bird watching stations (with an elevated deck), an informational kiosk near the entrance to the park for those entering from the town, wildflower garden, exercise equipment, rock climbing wall, picnic shelter, restroom facilities. He noted that a site map is included in council's packets. Mr. Goddard stated that a key concept of this project is to establish the walking trail which is approximately 800 additional feet and it connects to where the original picnic shelter is. On studying the site map, Mr. Tufts suggested that the picnic tables be turned to face the south versus north. The key features with the shelter itself and the restroom facilities are: planning on 3 stalls in the women's restroom and 2 urinals and 1 stall in the men's restroom, 6 picnic tables and a fireplace/fire pit and grill. Wetland restraint locations: Mr. Goddard noted that one of the biggest issues for the entire site is soil drainage, pointing out the area of the park that remains wet, so a rain garden feature is part of the plan along with an emergency overflow. His focus is to keep all of the features to the periphery of the park area because the park now is a wide open space (140 ft. wide x 300 ft. long). Mr. Owen noted to council that the objects listed on the plan are objects that are required by the grant. Mr. Goddard told council that he wants to make sure that they are headed in the right direction. Mr. VonCanon stated that he would like the barn to remain and be used. He noted that the roof in the barn is low and it would have to be raised to be utilized inside, but it is stable.

Mr. Goddard stated that we can't finalize our grading plan until our site plan is at hand and exact. The next step will be shelter designs, renderings of what the structure will look like and renovating and updating the restrooms in the amphitheater. There will be a design, specifications and bid package. The design package would then be sent out for bids, permitting, final bid documents. Mr. Goddard noted that he is trying to spend the town's money very prudently. Our first goal is to come under the budget amount or at the budget amount. We want to develop a quality shelter and use quality equipment.

Mayor Lyerly thanked Derek for all his work and putting the information together for council.

### **Advertisement of Tax Liens**

Cheryl Buchanan addressed council stating that per the North Carolina statutory requirements (NCGS 105-369) a municipal tax collector is to report unpaid taxes to the governing board at their regular meeting in February. The statute also requires that that tax collector give the taxpayer a 30-day written notice. This will then come back to council in March when the 30 day time period has expired in a form of a final document which will then be reported in our local newspaper that will advertise unpaid taxes. Ms. Buchanan noted that this is a formality and that she needed to inform council of the unpaid taxes for the year 2011. The letters have already

been sent out. Council member Bolick made a motion to move forward and get the unpaid tax listing published. Council member Lecka seconded. All were in favor. No one opposed.

### **Tax Release**

Cheryl Buchanan stated to council that she has two tax releases. Release #1 is a lot in the Silver Springs Farm subdivision. The town has no taxing authority beyond Lot #20 and this is a common area above Lot #20. Avery County has a town code in this common area and we will have to release it. Release #2 is for American Home Mortgage who vacated the property, left Banner Elk in 2006. Ms. Buchanan confirmed with Avery County that SunTrust who replaced American Home Mortgage was listed. The county has already released these tax appeals.

Council member Tufts made a motion to approve to release these tax records. Council member Draughon seconded. All were in favor. No one opposed.

### **Appoint New Signatory for Checks**

With the addition of a new mayor and council members, the town is in need of two additional check signers. Mayor Lyerly stated that finance officer, Steve Smith, recommended that the mayor be an authorized check signer along with council member Bolick and council member VonCanon.

Mr. Lecka made a motion to approve the new signatories. Ms. Draughon seconded. All were in favor. No one opposed.

### **NC Capital Management, Open New Account**

Steve Smith addressed council about a new account. He noted that the town already has an account with NC Capital Management Trust, but it doesn't produce much investment interest for the town. He noted that they have created a new investment vehicle, much like a commercial money market fund. This new account should produce two to three base points above the current account levels, providing the town more interest.

Mr. Lecka made a motion to approve opening the new account. Mr. VonCanon seconded. All were in favor. No one opposed.

### **Approve Audit Contract**

Steve Smith reported to council that this will be the town's second year with our audit agreement with Martin Starnes & Associates. He stated that the town renegotiated with them last year and saw a good savings. The second year also shows that the town will also be saving money. Mayor Lyerly asked town attorney, Four Eggers, if he read the contract. Mr. Eggers stated that he read the contract and that he had no objection to its form.

Council member Draughon made a motion to approve the renewal of the audit contract with Martin Starnes & Associates. Mr. Bolick seconded. All were in favor. No one opposed.

### **Call for Public Hearings**

Cheryl Buchanan addressed council. She stated that the town has two sections that need to be addressed and put forth in a public hearing. In Section 600.2 Colors, the planning board has agreed to simplify this section and strike the words “natural” and “subdued” and to use a color chart as a guideline. In Section 502.3 Roofs, this ordinance came up in a board of adjustment meeting with the discussion being solar panels on flat roofs. At present, they are prohibited. There was much discussion on renewable energy and how it should be incorporated into our ordinance. The planning board had a speaker from ASU and stated that we need to be progressive and encouraged the use of solar panels. It was recommended that the town put specifications on them, that rooftop mechanical, electrical and energy equipment be screened from view of the street. Council member Tufts expressed his concern regarding buildings that face the north side of the road (i.e. Banner Elk Chamber of Commerce). Ms. Buchanan stated that the guideline is just for flat roofs. Council member Bolick made a motion for a public hearing to be held at next month’s meeting. Mr. Lecka seconded. All were in favor, No one opposed.

### **Manager’s Update**

Mr. Owen noted to council that the financial reports, police reports, planning, zoning and tax collection reports were included in council’s packets. Also included were the draft minutes from the planning board’s meeting of February 6. He also noted that Ted Silver dropped off the Bicycle Pedestrian Committee minutes. He asked if there were any questions.

Mr. Owen addressed council. He apologized and thanked council for their patience with him while he was out of work sick.

Mr. Owen stated that he is still working on the grease trap ordinance.

Mr. Owen noted that David Poore has done a lot of work on the water study, the town’s wells and distribution system, but has not met with him yet to go over the completed report. David Poore is now working on the storage system study.

Mr. Owen stated that an email was sent to council regarding a grant opportunity that the town has with the Rural Center. It is a planning grant, a two year planning process if we were to get the grant, in which \$25,000 would be funded to the town to help the town look at the economy of its community and ways the town could stabilize it, using our natural environment to sustain our economy. The town should hear back in April if we have been accepted.

Mr. Owen told council that Charter Communications has notified the town of their yearly increase, which they can do by federal law. It appears to be a 20¢ increase to basic subscribers.

Mr. Owen reported that Thursday, February 16, 2012, at 11:00 a.m., NC DOT will be meeting with county officials at the site of the proposed mini round-about at Orchard Lane. They have invited town officials.

Mr. Owen stated that the High Country Municipal Association's meeting on February 16<sup>th</sup> needs to be rescheduled and they are looking at Thursday, March 8<sup>th</sup> at Seven Devils. They are looking for feedback from the towns if that date is suitable.

Mr. Owen reminded council of the "goals retreat" that was held last year in February. He stated that he would like to hold another goals retreat this year so he can update council on where the staff is with the goals that were set for them and to get more direction to where the town wants to go in the future. In addition, he mentioned that he and Steve started working on the budget and this retreat will help set the pace for the budget. The council agreed to set a tentative date to meet on Saturday, March 3<sup>rd</sup> at 8:30 a.m. and finish at noon.

Mr. Owen brought up the playground equipment at the old elementary school that Brett Gardella offered to the town if the town wants it. Mr. Owen suggested that council take a look at it to see what can be used. Rick also noted that Brett Gardella is interested in a property clean up of the old school to be held in April, mostly at and around the exterior of the building.

Mr. Owen brought to the council's attention a couple of events that will be upcoming. Last year with the centennial, the town held a craft show at the parking lot here at town hall. It was organized by Pat Faye. She would like to do this show again on Saturday, August 4, 2012. She would make a contribution to the town. Fred on Beech Mountain will be having his Crafts on the Green that same weekend and Pat will be coordinating with him to get people to go to both events. Mr. Owen noted that someone approached the town about having a Porsche car rally, which used to be held on Beech Mountain. They need a place to park 60 to 70 cars for people to come look at, etc. Rick asked council's view on having the car rally at town hall's parking lot and Culver Road for a day. Rick stated that it does draw a lot of people. The dates are June 1<sup>st</sup> and 2<sup>nd</sup>. Council member VonCanon stated that a program needs to be set up for these types of events and the town should charge for the convenience of using our bathroom facilities. Mr. Owen stated that this topic has come up on several occasions as to what is the cost of holding an event in town and that this topic needs to be looked into further with council. Mr. Tufts stated that the town should come up with some formal criteria for events being held in town (i.e. charge for restroom use, trash pickup, police usage, etc.).

Mayor Lyerly asked if anyone had any questions for the town manager.

Mr. VonCanon thanked the town for sending the three new members of council to the seminar on Essentials of Municipal Government. The training was for two full days and he thought it was well worth the time.

At 9:30 p.m. council member VonCanon motioned to have council proceed to closed session pursuant NCGS 143-318.11 (a)(3) Attorney-Client Privilege. Council member Bolick seconded. All were in favor.

Mayor Lyerly thanked everyone for coming.

At 10:30 p.m. Mr. Tufts motioned to end the closed session portion of the meeting. Ms. Draughon seconded.

Council returned to open session.

Questions arose as to Avery County following Banner Elk zoning ordinances in regards to the old elementary school, the Business Incubator. Rick Owen informed council that he and Cheryl will work closely to insure that all zoning ordinances are followed.

At 10:45 p.m. Mr. VonCanon made a motion to adjourn the February meeting. Mr. Lecka seconded.

**Adjourn**

The town council meeting adjourned at 10:45 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: March 12, 2012