

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

The Banner Elk Town Council met Monday, August 13, 2012 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

Council Members present: Mayor Brenda Lyerly, Allen Bolick, Charlie VonCanon, Robert Tufts and David Lecka. Gail Draughon arrived at 7:00 p.m.

Staff present: Town Manager Rick Owen, Steve Smith, Lt. Byron Clawson, Cheryl Buchanan and Town Attorney Four Eggers.

Others present: Rebecca Bolick, Ted Silver, Jamie Shell of the Avery Journal and other interested parties.

**Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for August 2012 to order.

**Pledge of Allegiance**

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

**Invocation**

Council member VonCanon opened the meeting with prayer.

**Public Hearing: Zoning Ordinance Amendment**

Mayor Lyerly opened the public hearing and asked Cheryl Buchanan to address council. Ms. Buchanan stated that the planning board recommended adopting the Alternative Energy Ordinance and adding it to the ordinance as Section 315. She asked if anyone had any questions. Mayor Lyerly asked if anyone had any comments or needed additional information. There being no comments, Mayor Lyerly closed the public hearing.

**Public Hearing: Rezoning Banner Manor Mini Storage**

Mayor Lyerly opened the public hearing and asked Cheryl Buchanan to address council. Ms. Buchanan noted that in a request for a conditional use permit, the planning board discovered that the Banner Manor Mini Storage at Silver Springs Farm was inadvertently rezoned as residential. Mr. Meyer is requesting that the town return the property back to the original zoning which is C-2 to match the current use. The planning board and land use planning group agrees with this process. Mr. Tufts asked if there was any response from adjacent land owners. Ms. Buchanan stated that she has had no feedback. Mayor Lyerly asked if there were any additional questions from council members or the audience. There were no further comments. Mayor Lyerly closed the public hearing.

### **Approval of the Minutes**

Mayor Lyerly asked council for a motion to approve the July 2012 minutes. Council member VonCanon motioned to approve the minutes as written. Council member Bolick provided a second. The July 2012 minutes were approved with all in favor and no one opposed.

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

Mayor Lyerly asked council for a motion to approve the August 2012 agenda as written. Council member Tufts made a motion to approve the agenda. Council member Lecka seconded the motion. The agenda passed with all in favor.

### **Citizen Concerns**

There were no citizen concerns.

### **Town Speed Limits**

Mr. Owen updated council members that at last month's meeting we adopted the speed limits that are currently posted on various town streets. He stated his concern over enforcing lower speed limits on town streets other than 35 mph. He noted that the staff checked on getting legislation changed. It would be very difficult if not impossible to do. The staff also had further conversation with DOT and our police department about other ways to enforce safe driving and not just with the use of speed limits. It was determined not to take any further action at this time and use other means to control speeds on town streets. Mr. Owen's other concern were subdivisions where there are multiple streets but one entry point, for example Crooked Creek and Apple Orchard. DOT has a policy where it gives the parameters how you can do a subdivision wide or area wide speed limit with just posting a sign at the entrance. Mayor Lyerly asked about the road by the Mill Pond which goes out to the town's sewer plant and Lees-McRae's wildlife center. A blind curve exists where a speed limit sign or some type of warning sign needs to be posted. Mr. Owen also noted that this issue will spur other conversations in which the town will ask the police to make a recommendation, based on usage and safety, what the speed limit should be. No further action was required.

### **Silver Springs Speed Limit**

Mr. Owen addressed council and stated that the developer of Silver Springs had pointed out that there was no posted speed limit sign in the development except for a sign that he posted stating 19 mph. He requested that the town set the speed at 20 mph for the development. Mr. Owen noted that he did not prepare a resolution to change the speed limit and wanted direction from council members. Mr. Eggers stated that a police power ordinance doesn't require a public hearing. He stated that the town can have one, but is not strictly required. Mr. Eggers noted that an ordinance should be prepared which would require the mayor's signature. Mr. Lecka made a motion to call for a public hearing at the September meeting on this issue. Mr. Tufts seconded the motion. All were in favor. No one opposed

### **Zoning Ordinance Amendment - Energy**

Mayor Lyerly called upon Ms. Buchanan to present this amendment. Ms. Buchanan stated that the alternative energy ordinance covers solar and wind energy. Hydro electric was discussed, but ultimately not considered in the ordinance. She noted that it is a very progressive ordinance. The planning board recommends adopting the Alternative Energy Ordinance and adding it to the ordinance as Section 315. Mr. VonCanon asked Ms. Buchanan that if someone wanted to do hydro electric next week, would the town defer them to the state's guidelines. She stated yes, but this would not have to be noted in the ordinance. Mr. Eggers stated that if there is no regulation of it, it is implied that it would be permitted so long as they comply with all other state and federal rules. The hesitancy for putting this into our regulations is because the state regulations may change over time. Council member Tufts made a motion to approve the zoning ordinance amendment as presented. Council member VonCanon seconded the motion. All were in favor. No one opposed.

### **Rezoning Banner Manor Mini Storage**

Mayor Lyerly called upon Ms. Buchanan. Ms. Buchanan stated that the uses on the Banner Manor Mini Storage property are commercial with no current residential uses. No explanation could be found on why the property was zoned R-2, but this does not match the uses or the fundamental guidelines set out in our Land Use Plan. Therefore, she noted that the property should be correctly rezoned C-2. Council member Bolick made a motion to approve the rezoning as requested. Council member Lecka seconded the motion. All were in favor. No one opposed.

### **Stormwater Vault Project**

Mr. Owen addressed council noting that Derek Goddard with BREC apologized for not being able to attend this evening's meeting. Mr. Owen stated that in each council member's packet was the Stormwater Cleanout Report which Derek Goddard prepared. The town contracted with BREC to have the stormwater vault cleaned out that is located at the historic Banner Elk School. In the report is background information, the remediation, and observations, along with four different recommendations on how to handle the future of the system. The staff recommends Option 4, the replacement of the system and notes that there is no emergency situation for making this decision. Mr. VonCanon stated that how he understands it, we could let it go until problems arise. Mr. Owen agreed and noted that another option would be to straight pipe it over to the wetlands which could result in some long range issues. When looking at the cost of the two, the replacement is the most expensive, but the most practical. Mr. Lecka asked how the town would pay for it. Would the money be taken out of the reserve fund? Mr. Owen stated that it would be the quickest way, but he hopes to look for some grant funds. The vault is not going to stop working. It has a pass through for the water. The water is going into the wetlands, which is still serving the wetlands. Mr. Tufts thought the system was designed to last a long time, designed for the future. He asked if it was the town's fault for not taking care of it. Mr. Owen stated that six months ago he would have said yes, that it wasn't maintained properly, but now looking at the system and seeing the actual live flow of water in the system it is hard to see how it would have been maintained. It was cutting edge when installed, but today and the

technology is totally different. The catch basin where the water comes in is not sufficient. There is a constant flow of water. When big rains come, there is continual water; there is no still time for sediment to fall out of it. It falls out when it gets into the pipes, which are holding out all the water. Mr. VonCanon witnessed the cleanout and talked with the engineer. Repairing is not the way to go. To be good stewards of Banner Elk, we should take out the old and replace with new. Mr. Bolick stated that there is a volume of water that is constant, over and beyond stormwater. Mr. Lecka asked when it was put in. Mr. Owen stated that it was in the early 2000's. Mr. Owen stated that Derek Goddard will give council more insight when he is feeling better. No action is required.

### **Dogwood Stormwater Project**

Mr. Owen stated that this project is a continuation of the lengthy report Derek Goddard, with BREC, gave to council about multiple stormwater projects throughout town, more specifically the one on Dogwood Road that has been discussed and expected over the course of several years that stops stormwater from reaching Crooked Creek. At the top of Dogwood where it turns down, water is running off into Crooked Creek that has been deemed a live stream. Once it is considered live water, the Army Corps of Engineers are very particular on allowing us to move it. What Mr. Goddard proposed was to put a baffle in there to allow the normal flow to go under the baffle into Crooked Creek. But in times of high flow, the water would come over the top of the baffle and would turn and come down a system of pipes and catch basins. The Army Corps of Engineers has looked at this proposal and says that it is okay; that they would approve this option, that if we keep the live stream flowing through Crooked Creek that it maintains the natural environment and would allow us to divert the stormwater to a catch system that we currently have in place. The town would like to obtain the permit to do this work, but we wouldn't necessarily be looking at the money for it right away. This permit would last for three years. To get the plan and permit in place would be positive. I asked Mr. Goddard to prepare a project design cost. It is basically a \$7,000 investment in this future project to try and secure the permits and have Mr. Goddard do the plans. Mr. Bolick stated that there are homeowners in Crooked Creek who have severe stormwater issues and believe this project would be a positive venture. Mr. Eggers addressed Mayor Lyerly and stated that if you wish to contract with BREC, any motion that is made would need to include a waiver of the request for a qualification process. Typically when you hire a surveyor or engineer you should send out a request for qualifications. The statutes allow you to exempt yourself from that as long as you state the factors (i.e. low costs of the amount of services being performed and your past record of working with this company in other related projects.) Council member Tufts asked a question regarding the scope of services, the stabilization for the road shoulder. Mr. Owen stated that it is engineering related, engineering design. Council member Tufts made a motion to move forward with the design, to secure the permit, waive the request for qualification due to the relatively low price for services and the town's past relationship with BREC. Council member VonCanon seconded. All were in favor. No one opposed. Mr. Bolick thanked council on behalf of the homeowners of Crooked Creek.

### **Three Peaks USA Bike Ride**

Mr. Owen noted that the production company that is putting on this bicycle race to be held on September 23rd is requesting a letter of support from the Town of Banner Elk for NCDOT. The company has already contacted the police department. Chief Bill Burleson has reviewed the details of the event and is okay with it. Mr. Owen asked council members to review the bike route and the activities the event will include. Mr. Owen noted that the course will come down Beech Mountain and will turn onto Old Turnpike. The police department will be manning one of the turns at NC 194. Council member Bolick made a motion to approve and support the race using the town roads designated. Council member Lecka seconded. All were in favor. No one opposed.

### **2011 Tax Collectors Settlement Statements**

Cheryl Buchanan addressed council. She stated that each year the town is required by NC General Statutes to give a settlement of taxes billed and collected to the governing body after the new fiscal year begins on July 1<sup>st</sup>. She noted that included in the council's packets were the Annual Settlement statement for fiscal year 2011, a listing of 2011 unpaid real property taxes, a list of underpayments and overpayments for fiscal year 2011-2012, a list of outstanding taxes per contact with each taxpayer, a resolution for approving the tax collector's annual settlement for fiscal year 2011-2012, and reports from the tax collections along with contacts Ms. Buchanan has made with taxpayers and the status of the outstanding taxes due (i.e. what is still owed, payments being made, penalty and interest payments). Mr. Owen asked that council vote individually on each resolution.

1. Council member Tufts made a motion to approve the Small Overpayment of Taxes Received, anything less than \$1.00. Council member VonCanon seconded. All were in favor. No one opposed.
2. Council member VonCanon made a motion to approve the Accounts Receivable Real/Personal Property in the amount of \$52,027.82 as of July 1, 2012. Council member Tufts seconded. All were in favor. No one opposed.
3. Council member Lecka made a motion to approve the Resolution Approving the Tax Collector's Annual Settlement for Fiscal Year 2011-2012 and Prior Years. Council member Bolick seconded. All were in favor. No one opposed.
4. Council member Tufts made a motion to approve the 2012 Charge to the Banner Elk Tax Collector to Collect Taxes for the 2012 Tax Year. Council member Bolick seconded. All were in favor. No one opposed.
5. Council member VonCanon made a motion to approve the Resolution Directing Tax Collector Not to Collect Minimal Taxes for Tax Year 2012. Council member Lecka seconded. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen reported to council that the financial reports, police reports, planning, zoning and tax collection reports were included in their packets along with minutes from the Bicycle and Pedestrian Committee and the High Country ABC Board June meeting minutes. Mr. Owen also included in their packets a letter from Nils Peterson thanking town council for the work he was able to perform on the council chambers.

Mr. Owen stated that as a point of awareness, dogs are and will always be an issue in Banner Elk. The staff has been trying to be more active enforcing the town's ordinance which involves fines. The town has only issued fines to a couple of people, but one person received a ticket twice, the last being \$200. The ticket has not been paid, but Mr. Owen's intention is to collect the \$200. The town has received multiple complaints regarding this particular person. Until Avery County gets an animal control agent or the Humane Society can take in more animals (there is a waiting list), the town is doing its best to keep the ordinance in tact.

Mr. Owen reported that regarding the council's table, three quotes were received. He told council that in the beginning a price for a laminate table cost \$8,100.00. The quotes came in at: \$8,900, \$6,500 and \$5,300. Mr. Owen stated that he talked with each person and discussed the quotes, materials used, etc. making sure all were quoting the same. Mr. Owen asked council how they wanted to proceed, if they wanted to go with the lowest quote, look at the design again because it is a custom design, etc. Mr. Eggers stated that council is not bound to go with the lowest price because the price didn't exceed the threshold. Mr. Owen stated that he called the lowest quoter today to be sure that he was comfortable with his quote. Mr. Owen received references from Linville Ridge and Elk River. His name was given to him by Bob Mann. Mr. Owen asked Bob if he knew of a millwork carpenter and Bob gave him the name and high regards for his workmanship. Bob has seen his work and feels he is well qualified. Council member Tufts noted that we should be responsible and go with the lowest price if the town manager feels the quality is equal. Council member VonCanon made a motion to have our town manager proceed with choosing the person to design and build the council's table based on his surveillance of the three. Council member Bolick seconded. All were in favor. No one opposed.

Mr. Owen reported to council that he did read the Solid Waste Ordinance. It was 233 pages long and a big portion of it was the Avery County Emergency Management Plan. It did spur some conversation between him and High Country Waste Management about recycling. They take their recycling outside of Avery County. Mr. Owen stated that he will email a copy of the ordinance to council members.

Mr. Owen gave an update on the Incubator Ordinance. The planning board has been working on notes and input to give to Brett Gardella and he and the board will be getting together to go over all discussions. The planning board meeting was cancelled last month and was rescheduled for August 28<sup>th</sup> and there will be more discussion on this topic at that meeting.

Mr. Owen reported that the bid opening for the park project was originally scheduled for today (August 13<sup>th</sup>). We had a non mandatory pre-bid meeting last week and had two contractors show up for it. Originally the contractors were bidding “blind” because they had to determine if any soil needed to be removed and replaced. Therefore, the town asked Mr. Goddard to have the soil tested so that everyone will know what is involved. We thus moved the bid opening to September 7<sup>th</sup>. Hopefully, we will get some good bids for the project and be able to move forward.

Mr. Owen noted that the carpet in the chambers isn't right; there are light lines in the carpet. Mr. Owen said that the carpet installer has been out to look at it several times and tried to get them out. The carpet will be replaced.

Mr. Owen reported that the NC League of Municipalities conference is October 21 – 23, 2012 and he will forward everyone a link to the web site. He stated that if any council members were interested in attending to please let him know.

Mr. Owen stated that the High Country Municipal Association is meeting this Thursday, August 16<sup>th</sup> on Beech Mountain and he will forward them a copy of the agenda.

Mayor Lyerly asked about the High Country Council of Government's dinner. Mr. Owen stated that everyone here was planning to attend.

Council member VonCanon gave an update on the lower end of the park. He noted that the natural gas company will be coming tomorrow to re-run a larger gas line through his property to the edge of the lower end of the park, so that when the bid goes out for the picnic shelter, the contractor will be able to hook up.

At 6:50 p.m. council member VonCanon motioned to have council proceed to closed session pursuant to NCGS 143-318.11 (a)(3) Attorney-Client Privilege and pursuant to NCGS 143-318.11(1)(6) Personnel Matters. Council member Lecka seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:05 p.m.

### **Other Business**

During closed session a gentleman had entered the meeting. Mr. Owen had gone out of the meeting to discuss with the man that the council was in closed session. Mr. Owen reported that there was an article in a newspaper about the public hearing for the ordinance on alternative energy that misquoted the time of the public hearing. The individual made a complaint against the town stating that the ordinance was illegal and against state law. Mr. Eggers noted that this individual was probably referring to the statute that can not prohibit when there is solar energy within town limits. Mr. Eggers noted that the first area he and Cheryl started with was what we can and can not regulate and what complies with the statutes. Mr. Tufts asked if Mr. Owen knew

the man. Mr. Owen stated that he was out of Boone and was with Ioncon, Consultation, Conservation, and Construction. The man never contacted us. Mr. Owen stated that the reason he recognized the name was from a blog posting on High Country Press. Mr. Eggers stated that the statute states that we can't prohibit it, but it doesn't say that we can't regulate it. Otherwise, people could put a solar farm anywhere they want to, but it isn't a fair reading of the statute.

At 7:15 p.m. Mr. VonCanon made a motion to adjourn the August meeting. Mr. Bolick seconded. All were in favor

**Adjourn**

The town council meeting adjourned at 7:15 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: September 10, 2012