

BANNER ELK TOWN COUNCIL
August 12, 2013
MINUTES

The Banner Elk Town Council met Monday, August 12, 2013 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

Others present: Derek Goddard, Mike Dunn, Rebecca Bolick, Penny VonCanon, Ted Silver, Jamie Shell and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for August 2013 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.

Approval of the Minutes

Mayor Lyerly asked council for a motion to approve the July 2013 minutes. Council member Bolick motioned to approve and accept the minutes as written. Council member VonCanon seconded the motion. The July 2013 minutes were approved with all in favor and no one opposed.

Approval of the Stated Agenda

Mayor Lyerly asked council if there were any additions or changes to the stated agenda. Council member Draughon made a motion to approve the August agenda as stated. Council member Tufts seconded the motion. The stated agenda passed with all in favor.

Public Comments

There were no public comments

Rezoning Request – Call for Public Hearing

Cheryl Buchanan addressed council. Ms. Buchanan reported that Eddie Chapman is the broker for the buyer and is looking to rezone the strip of property along Culver Road from R-1 to C-1P. She noted that in the council member's packets there is a list of uses permitted in the C-1P and also the conditional uses in this zoning district. The planning board has reviewed the request and is recommending approval of the rezoning. Ms. Buchanan asked for the council to call for a

public hearing at September's meeting. Council member Tufts made a motion to call for a public hearing at next month's meeting for the rezoning of the afore-mentioned piece of property. Council member Lecka seconded. Council member Von Canon stated that he is in favor of changing the zoning, but expressed his concern with the handling of rain water run-off and flooding of the Shawneehaw Creek. He also noted that the mentioned lot is 150 feet deep. Council member VonCanon stated his concerns with off-street parking and access off of Culver Road. Ms. Buchanan noted that staff would not approve any plans unless they complied with the zoning ordinances. Council member Tufts questioned if this same lot was brought up in prior years for rezoning. Ms. Buchanan reported that the Cook heirs came before town about 4-5 years ago and asked it to be changed to C-2. Their motivation was to raise the value of the property so it could be sold. This owner wants to develop the property. Mayor Lyerly asked if there were any other questions. There being no other questions, council members were all in favor. No one opposed.

Zoning Ordinance Text Amendment – Call for Public Hearing

Ms. Buchanan reported to council that the town received a request from the Banner Elk Volunteer Fire Department to pave an area for parking they recently acquired from Avery County. At present this doesn't fit our ordinance. Staff is requesting a change to Table 308-3 to include a footnote to read: *For properties located in the Government Offices Zoning District, whose purpose is dedicated exclusively to the provision of providing emergency or civil services in a governmental capacity, the maximum density allowable in the Town of Banner Elk shall be no more than 95%.* She noted that the fire department will be able to pave their parking lot, but will have to come back to the town requesting the parcel they acquired (which is currently zoned M/E) be changed to G/O. Attorney Eggers stated that this is something the town needs to consider based on potential future cases as well as just this one specific case. Since this is a zoning change, it will affect any future people who would want to develop in town at any other location. Mayor Lyerly asked if the planning board was in agreement. Ms. Buchanan stated yes. Council member Tufts expressed his concern of the 95% for the G/O district. Council member VonCanon asked who held the deed for the new parcel. Is it deeded to the fire department or still in the hands of the county? Mr. Owen noted that he was not sure who owned the fire department property, but that it was combined with the building, whoever owns the building. He has not seen the deed. Council member VonCanon stated that the town needs to find out who the parcel is deeded to before we do anything. He also stated his concern that if that piece of property is ever sold and the town rezoned it to G/O with a density requirement at 95%, would the town have a potential future problem? Attorney Eggers noted that in some municipalities there is a process that deals with a special zoning use that allows certain councils, should they wish to adopt it, to approve site specific development plans and give special zoning permission based on those site specific plans. This would be an ordinance change for the Town of Banner Elk. Mr. Eggers stated that this puts the town council itself much more involved in these procedures instead of the board of adjustment. Mayor Lyerly requested more information regarding this before the public hearing at next month's meeting. Council member Lecka motioned to call for a public hearing at next month's meeting for the zoning ordinance text amendment. Council member Tufts seconded. All were in favor. No one opposed.

Tax Settlement

Cheryl Buchanan reported that state statute mandates that the tax collector provide town council a packet of information supporting their claim of settlement. She noted that the first report in council's packet is the Annual Settlement of Tax Collector for fiscal year ending 2012 that shows what the town charged or billed, along with penalties and interest, totaling \$943,441.72 and the town collected \$967,966.65. The total amount that remains outstanding is \$24,524.93 (a collection rate of 97.5%). Ms. Buchanan stated that the second report is the list of Underpayments and Overpayments. The total overages are \$2,809.48 which will be applied to 2013 taxes. Council member VonCanon motioned to accept the report. Council member Draughon seconded. All were in favor. No one opposed.

Ms. Buchanan presented the Banner Elk Tax Collector's Report for 2012 which is a list of taxes that are outstanding as of July 1, 2013 which totals \$32,037.68. Mayor Lyerly asked for a motion to accept this report. Council member Tufts motioned to accept the tax collector's report. Council member Draughon seconded. All were in favor. No one opposed.

Ms. Buchanan stated that she prepared a report that listed outstanding taxes by year so that council could see the outstanding total for the past ten years. She noted that the DMV tax report was also for council's information. These are billed and collected by the county and the town receives a check each year from the county. Ms. Buchanan reported that each year the town adopts a resolution directing the tax collector not to collect taxes that are \$5.00 or less; thus the reason several are removed. Council member VonCanon asked about the senior exemption. Ms. Buchanan stated that this was done through the county tax assessor and the town gets the report from the county. Ms. Buchanan noted that the Discovery/Release Summary Report is done every year and presented to the auditors at year end. Ms. Buchanan also presented the schedule of privilege licenses showing that the town collected a total of \$2,717.50. These taxes are collected through July. This report shows monies collected at the end of our fiscal year which is June 30. She noted that the taxes due by businesses are assessed by the state. Attorney Eggers addressed the mayor stating that she needs a motion on whether to accept the annual settlement from the tax collectors. Ms. Buchanan stated that a resolution does have to be voted by council approving all the reports that have been presented this evening. Council member VonCanon motioned to approve the resolution. Council member Tufts seconded. All were in favor. No one opposed.

Ms. Buchanan reported that council also needs to approve the 2013 Charge to the Banner Elk Tax Collector which gives her the authority to collect taxes. Council member Bolick motioned to approve the 2013 charge. Council member Tufts seconded. All were in favor. No one opposed.

Ms. Buchanan stated that the final report that needs approval from council is a resolution directing the tax collector not to collect minimal taxes which is a statutory option council has. Council member Tufts motioned to accept the resolution. Council member Lecka seconded. All were in favor. No one opposed.

Board of Elections Contract

Mr. Owen noted that the town doesn't have much of an option. The board has to do our elections. Attorney Eggers stated that this contract basically repeats the statute. The only way the town could do its own election is get a bill from the general assembly and hire an elections director who would work solely for the town. He stated that this would not be cost effective for the town. Council member VonCanon motioned to accept the contract with the Board of Elections. Council member Tufts seconded. All were in favor. No one opposed.

TDA Appointments

Mr. Owen reported that two members of the TDA, Les Broussard and Phillip Dean, have terms that expired in October of 2012. They continue to serve in this capacity without being reappointed. The mayor selects the members of the TDA and the council approves them. He noted that Mayor Lyerly has approved the reappointment of Mr. Broussard and Mr. Dean. Council member VonCanon motioned to approve Mayor Lyerly's appointment of Mr. Broussard and Mr. Dean. Mr. Tufts seconded the motion. All were in favor. No one opposed.

Park Update

Mr. Derek Goddard reported to council that the park expansion project is progressing slowly again due to weather conditions and the recent flooding. The town experienced a year of rainfall in just six months. He noted that the grading portion of the project is almost entirely complete, except for ten punch list items for Eggers Construction to complete their contract. Mr. Goddard spoke with Bill Cook and he assured him that the items would be completed within the next two weeks. Mr. Cook stated that they were waiting for settlement to stop on the surcharge material placed on top of the building pad for the new building. They have monitored this surcharge material over the past several months and it has stopped settling. Mr. Goddard gave Eggers construction the go ahead to remove the surcharge material and deal with the remaining punch list items. Mr. Goddard stated that prior to our last flooding rain, Eggers Construction seeded the park, but since the rain, it has washed away. He noted that one of the reasons for reporting to council is to ask for some additional allocation of funds for bringing in additional top soil and seed. Mr. Owen reported to council that he received a price from Eggers Construction based on an hourly basis per loads of dirt and they are estimating it will cost between \$6-\$8,000 to re-prepare the fill and reseed certain areas. He noted that we don't have much choice but to do this additional work. Mayor Lyerly asked Mr. Owen if he needed a motion and Mr. Owen stated not at this point. Council member Lecka asked if this was the only additional cost the town incurred with the flooding and weather or was there more prior to this. Mr. Owen stated that we had additional town labor but this is the only contractor cost that the town has incurred. Mr. Goddard continued and stated that as far as the building phase, the contract was awarded to Tom Eggers Construction. He has met all his requirements (performance bond, insurance requirements, etc.). He has ordered the timber frame. Mr. Goddard reported that as soon as the surcharge material is removed, concrete will be poured and the timber frame will be constructed. Mr. Eggers stated it should take a month. Council member Bolick stated that people have come to him who walk the park daily and stated that the area by the catch basin has an odor coming from the pond/fill area. Mr. Goddard stated that it should be draining and he will have it checked to be sure. He noted that the problem is that the water table is so high. Every time an area holds water like that it becomes stagnant. It won't be like this once the project is finalized. He believes it is a

temporary condition. Mr. Goddard discussed landscape features that will be placed around the park extension area (rain gardens, boulders, etc.). Mr. Lecka asked that under normal weather conditions will there be standing water in the park extension area. Mr. Goddard stated that there will not be standing water. Mayor Lyerly thanked Mr. Goddard for reporting to council and all the work he is doing.

Highland Drive Repair Work

Mr. Owen handed council a copy of a letter from David Poore with West Consultants regarding the bids received for the Highland Drive culvert repair. Mr. Owen stated that Mr. Poore put together a scope of work for this project with a bid date of last Thursday (August 8th). Three bids were received (Gilliam Construction, M&M Construction and Iron Mountain Construction). Bids were done in two parts: one to repair the existing damaged culvert and the second part was to put in a second culvert to handle the stormwater. There was a substantial difference in all three bids. Mr. Owen noted that the lowest bidder, Gilliam Construction, was comfortable with his price. Mr. Poore was also comfortable with the lowest bid and the work outlined. One lane of traffic will be required to remain open and water and sewer service will be required to be maintained during the course of the project. Mr. Owen is asking council to approve the installation of a second pipe, which is his recommendation along with Mr. Poore's, approve the low bidder and move forward with both parts of the project. Then he will ask Steve Smith to prepare a budget amendment that will be placed before council to approve taking the money out of the capital improvement reserve account. Council member VonCanon made a motion to approve the low bidder, Gilliam Construction (\$25,559.80). Council member Tufts seconded. All were in favor. No one opposed. Mr. Owen stated that since council approved the bid, he plans on sending letters to the homeowners of Highland Drive informing them of the work that will be performed.

Manager's Update

Mr. Owen reported to council that the financial report, police report, planning, zoning and tax collection reports were included in their packets along with a draft of the minutes of meeting from the Banner Elk Planning Board, draft of the minutes of the Banner Elk Preserve America Committee and the minutes of the High Country ABC Board. Mr. Owen asked council if there were any questions.

Mr. Owen reported that High Country Municipal will be meeting this Thursday (8-15-13) at 6:00 p.m. at Beech Mountain Town Hall. He asked that whoever plans to attend let him or Steve know so that we can contact Beech Mountain.

Mr. Owen noted that on Friday, September 6, 2013 the High County Council of Governor's (COG) dinner will be held at Linville Ridge. The RSVP date is August 16th. Mayor Lyerly, Council member Tufts and Bolick stated that they will attend.

Mayor Lyerly noted that Congressman Mark Meadows will be at Mayland Community College at the Sam's Center Auditorium on August 26th in the evening and she is planning to attend.

Mr. Owen reported that Dr. Joseph Nitti, the chiropractor with Back in Action, contacted the mayor and wanted to give the town a large elk head that he has, but has no place for in his home. It has been placed in the band shell and does add some character. Mayor Lyerly commented that it looks good and she likes it.

Mr. Owen noted that Skyline is putting fiber optics around town. We are hearing from the public that the contractors are leaving things behind and Skyline wants to fix any issues that might arise. If anyone hears of anything, let me or the staff know.

Mr. Owen stated that the town offered to assist the University of Tennessee with their Sun Shot Solar Program that they were working on. They applied for a million dollar grant. They notified us a couple of weeks ago that they did not get the grant, but appreciated the town's help. Mr. Owen thanked council for their support and the letter they wrote to the university in favor of the project.

Mr. Owen reported that we have a contractor working on patching several of the roads around town caused by water leaks.

Council member Tufts asked Mr. Owen for an update on the new nursing school at Lees-McRae and the new cell tower.

Mr. Owen reported that the cell tower is going before the board of adjustment and that it is a conditional use permit so town council has no ability to control the course of action. We have a cell tower ordinance which it met. Ms. Buchanan placed it in front of the planning board for their review. They reviewed it and it met the ordinance and will go before the board of adjustment next Monday (8-19-13). They have the FAA approval. Mr. Owen stated that a question came up as to whether the tower would be lighted. It will not. It is under the required height. The tower will be 95 ft. not the 195 ft. that was reported in the paper.

Mr. Owen reported that the planning board has reviewed the plans for the nursing school building, which was not a conditional use, but did require planning board review to make sure it meets all town ordinances. They have not yet paid the fees for or picked up a zoning permit. Construction has not begun. A security fence will be installed around the site.

Council member Bolick asked is there was any update on Dogwood. Mr. Owen stated that he wasn't able to talk to Mr. Goddard before the meeting to get an update. He noted that we are waiting for him to finish the plans and then put them out for bid.

Council member VonCanon had a question concerning cash balances, the sidewalk fund (\$35,842). He noted that we do have a water problem in front of Edge of the World. The town needs to put a curb, gutter and sidewalk in that area or at least put this on the town's agenda. Mr. Owen stated that he would look into it.

At 7:02 p.m. council member VonCanon motioned to have council proceed to closed session pursuant to NCGS 143-318.11. Council member Draughon seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:30 p.m.

Other Business

Mayor Lyerly opened discussion regarding the positions held in town. Council member VonCanon stated that due to signs of the time and the cutbacks the town has to make, he felt that there is no longer a need for the Town of Banner Elk to have a police commissioner. Council member VonCanon made a motion to remove from town the position of police commissioner. Council member Bolick seconded the motion. Mayor Lyerly asked if there was further discussion. Council member Bolick asked if this was a paid position. Mr. Owen noted that is was not. Mayor Lyerly asked if all were in favor of the motion. All were in favor. No one opposed.

Council member Tufts asked Mr. Owen for an update on Nathan Parris, the gentleman doing the micro-brewery. Mr. Owen stated that it is still a “go” and wasn’t sure why he hasn’t opened yet for business. The equipment and containers are there at the location. Council member Bolick noted that they are working feverishly. There are always cars outside and people working. Council member Bolick also noted that if his brewery is called, Flat Top Brewery, it won a first and a second place at the Sugar Mountain Brew Fest.

Council member VonCanon asked Mr. Owen what kind of progress the county is having with the Historic Banner Elk School. Mr. Owen reported that at the last county commissioners meeting they said the county is working on the restrooms next to the gymnasium and adding some additional restrooms. The handicap ramp is in and they are working on the handicap railings. The county awarded the bid for the windows. All new windows will be installed (very similar to the original windows). Brent Gardella came by town hall and reported that the incubator is ready to go. His office, if approved by the commissioners, will be located in the new incubator. Council member Draughon stated that if anyone hopes to get it on the national historical registry it will have to be almost identical to the original building. She doubts it because of the dormers that were added. Council member Bolick asked who would work at getting it on the national registry--the county? Council member Draughon stated that the county could do it, but that she and Cheryl Buchanan started the process of getting the school on the registry before the business incubator started, but the county wasn’t interested in it at the time. Council member VonCanon stated that he has spoken with the contractor who is working on the building and the contractor stated that it is one of the best built buildings that he has ever been in. The floors are secure and structurally sound. Council member Draughon noted that the school was built in 1939. Mr. Owen stated that the contractor compared the school to the Mast General Store; a building that is clearly being utilized. Council member Lecka asked how close the county is in having

businesses set up in the incubator. Mr. Owen stated that several people and businesses are interested and ready to set up. His fear is that Brett Gardella isn't ready. He needs documents: a lease agreement, a set of rules, etc. It could take several months. Council member Draughon noted that work also needs to be done on the landscaping.

There being no other business, at 7:45 p.m. council member VonCanon made a motion to adjourn the August 2013 town council meeting. Council member Lecka seconded. All were in favor.

Adjourn

The town council meeting adjourned at 7:45 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: September 9, 2013