

**BANNER ELK TOWN COUNCIL**  
**April 8, 2013**  
**MINUTES**

The Banner Elk Town Council met Monday, April 8, 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 and David Lecka. Robert Tufts was absent.

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

Others present: Nathan Paris, Jim Swinkola, Zoe Schmidinger, Derek Goddard, Rebecca Bolick, Penny VonCanon, Jamie Shell and other interested parties.

**Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for April 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 March 2013 minutes. She asked if there were any changes. Council member Draughon stated that on page three under Incubator Ordinance Amendment, the wording *under minds our zoning* should read *under cuts our zoning*. Mayor Lyerly asked if there were any other changes. Council member VonCanon motioned to approve the minutes as written with the added change. Council member Bolick seconded the motion. The March 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 VonCanon made a motion to approve the April agenda as stated. Council member Draughon seconded the motion. The stated agenda passed with all in favor.

**Public Comments**

Mayor Lyerly noted that there were two people who will be speaking at this evening's meeting. Mayor Lyerly called upon Jim Swinkola. Mr. Swinkola stated that Grandfather Home is having a party, celebrating 100 years, and everyone is welcome. He noted that the celebration will begin on May 18, will go through the summer and winter and will finish off next fall. He stated that several activities will be taking place during the course of the celebration which will be church related, food related and fun related. He asked if anyone had any questions or comments

to please contact him. Mayor Lyerly thanked Mr. Swinkola and said we appreciate the invitation. Mr. Swinkola noted that Gail deserves the thanks. Mayor Lyerly thanked Ms. Draughon and stated that we are looking forward to the events.

Mayor Lyerly called upon Nathan Paris. Mr. Paris addressed council and stated that he is with the Flat Top Brewing Company. He thanked council members and staff for their support through the county process. He wanted council to know that he is moving forward, that he has leased a space within Banner Elk (old Lecka store) and is still hoping to open in mid-June. Mr. Paris noted that he received his first piece of equipment and that they will start making sample brews within the next couple of weeks. He stated that Mr. Owen had mentioned to him that there might be some committee involvement in trying to get the incubator project moving again towards the side of Banner Elk and he would like to revisit that option should it come back into play. Mr. Paris also noted that he turned in the conditional use permit application to the town and is looking forward to working with the planning board and board of adjustment to get this project moving. Mayor Lyerly thanked Mr. Paris for his interest in being part of Banner Elk.

### **High Country Waste Solutions Contract**

Mayor Lyerly noted to council that the solid waste agreement was in their agenda packet and asked if it met with everyone's approval. Council member Bolick asked Mr. Owen if there were any changes to the agreement. Mr. Owen stated that it was the same format as the previous contract, but that it was reviewed more carefully by the town's attorney. Thus it is more favorable to the town versus the last one. He also noted that Zoe Schmidinger was present in case council had any questions. Mr. Owen proceeded by stating that the contract is written more legally to protect the town and High Country Waste Solutions. It is a three year term contract with one year automatic renewals. The town has a 90-day cancellation period prior to the end of any one of those terms. The only changes that the customer will see immediately is in the commercial pricing which will go up 9% from what they are currently paying, but that the residential pricing will remain the same. High Country Waste will now offer curb side recycling for customers at an additional charge and also two yard waste pick ups per year at no additional cost. Mr. Owen stated that in his opinion, High Country Waste is offering substantial service improvements. He also noted that no increase can occur without final approval by town council. Council member Bolick asked Mr. Owen if he felt, from a pricing standpoint, that they are competitive. Mr. Owen stated that the town performed a study and found that the prices that the residential and commercial customers are paying are still lower than what they were paying to the previous hauler three years ago. Council member VonCanon asked Mr. Owen if the fee collections were handled by High Country Waste. Mr. Owen stated that they did handle it which is a huge savings for the town. Mr. VonCanon also asked if there was anything included in the contract if a customer opted to go with another waste removal company. Mr. Owen stated that if a person is within town limits, they will use High Country Waste (no options). What the town has with High Country Waste is a franchise agreement. GDS and Waste Pro come into town from time to time to pick up construction debris not knowing that the town has a franchise agreement with High Country Waste. Mr. Owen noted that there are two "chain" commercial customers that still have contracts with GDS. Council member VonCanon asked how the recycling will work. Mr. Owen asked Ms. Schmidinger to respond. Zoe Schmidinger said that High Country will provide to residential customers collection of aluminum, glass and paper and

that the customers will be provided a receptacle to place the items in. As for now, recycling will be picked up on a different day than the normal waste until we get enough people signed up. Once we receive 26 customers, the recycling will be picked up on the same day as the trash pick up. Mayor Lyerly asked if they also have the large construction bins. Ms. Schmidinger stated that they do and if needed to call the office especially if you live inside the town limits because you get so many free tons and no hauling fee as opposed to using another waste hauler. Council member Bolick asked about the yard waste pick up. Ms. Schmidinger stated that High Country Waste will pick up twice a year for free and that they are hoping to let customers know via a mailing that goes out with their bills. At this time no dates have been set. Mayor Lyerly asked if there were any further questions. Council member Lecka made a motion to accept the contract as presented. Council member Bolick seconded. Mayor Lyerly stated that the motion carries. Mayor Lyerly thanked Ms. Schmidinger for her service. Ms. Schmidinger thanked council and stated that her company looks forward to servicing the town for another three years.

### **Park Project Update**

Derek Goddard addressed council regarding the park project, specifically the picnic shelter and restroom renovation. He stated that in September 2012 the town accepted two separate bids; one for the site work and the other for the building portion of the project. The site work portion was awarded to M&M Construction and is currently underway. At this time, we are working on trying to get the building portion worked into the budget, trying to save the town some money. Mr. Goddard said that he hasn't been successful and one way to help compensate would be to remove the renovation of the existing restrooms from the current bid on the contract. Mr. Goddard stated that he is hoping to address that portion of the project in a different way (i.e. using town staff to perform the work). Mr. Goddard recommended to council to rebid the project, eliminating the existing bathroom renovation. He stated that in order to get this portion of the project in budget, the town should reject the bids dated September 9, 2012 and authorize the staff to rebid the project by reformatting the contract wording which will eliminate the existing bathroom renovation. Mr. Goddard asked council if they had any questions. Council member Bolick asked if it had to be rebid for just taking out that portion of the contract. Mr. Goddard stated yes. Mr. Owen reported to council that he has talked at length with Mr. Goddard regarding this portion of the project. He noted that at last month's meeting council discussed the same item. The town was hoping to accept the one bid and work with the low bidder to remove some of the items from that bid. Mr. Owen noted that the town can't afford the project the way it is written up now and that the only way the town can afford it would be removing the renovation portion of the project and having the picnic shelter bid as a separate item. Council member VonCanon asked how demanding time-wise is the existing bathroom renovation? Would it be done this summer? Mr. Owen responded that this item has been discussed and that we hoped to do this renovation over the winter months, but due to the weather, it was put on hold. He noted that now that we are into spring, the bathrooms have been reopened to the public so he foresees waiting until the fall to begin the renovations. Mr. Owen feels that the town should get the new shelter built which will have bathrooms, shut down the existing building and begin renovations. He stated that the reason for the renovation is to make it handicap accessible and adding an additional stall on each side to accommodate the number of people the town has in the park during the summer months (i.e. concert series). Council member VonCanon asked what has to be done to the existing bathrooms. Mr. Owen reported that everything that is presently in the

restrooms will be removed because one stall will be added to each side. The stalls that are closest to the walls will be made handicapped accessible, which means widening the stall. All the tile, flooring, plumbing fixtures will be removed. The doorways will be changed so that the doors will be on the outside of the building, pulling out the wall where the doors are presently located. Council member VonCanon made a motion to rebid the new shelter, eliminating the renovation to the existing bathrooms. Council member Bolick seconded. Mayor Lyerly asked if there was any further discussion on this subject. Council member Bolick wanted to clarify that the town is just rebidding the new shelter and asked if we have funds to rebuild the existing structure? Mr. Goddard stated that he is hoping that when we receive the new bids that they will be lower which will allow us to perform the other ourselves. Mr. Owen noted that we know we are over budget, but that we have money in reserve for it, but the question is how over budget are we. We are trying to do everything we can to get it down what we hope to spend. Mayor Lyerly stated that we have a motion and a second and asked if all were in favor. All were in favor. No one opposed.

#### **Rezoning: Call for Public Hearing**

Cheryl Buchanan reported to council that Mr. George Meyer has approached the town about rezoning a piece of property on Old Turnpike Road. She noted that Mr. Meyer purchased the property, a barn originally which has been remodeled, which used to be the Little Bear Rock Shop. Mr. Meyer presently uses the building as a sales office for his Silver Springs Farm Subdivision. She stated that Mr. Meyer would like the town to rezone the property from R-1 to C-2 so he could use the remainder of the remodeled building as rented office space. Ms. Buchanan noted that a corner of this parcel is contiguous with another parcel which Mr. Meyer owns that is zoned C-2 and has the Banner Manor Mini Storage located on it. Ms. Buchanan is asking council to call for a public hearing at the June 2013 meeting. This will give the town enough time to contact the adjoining property owners and advertise the public hearing in the paper. Mayor Lyerly asked if there was a motion. Council member VonCanon made a motion to call for a public hearing on June 10. Council member Draughon seconded the motion. All were in favor. No one opposed.

#### **Amend Setbacks in the Heritage Overlay District- Call for Public Hearing**

Ms. Buchanan reported that the overlay district sits on top of the regular zoning district. The proposed Lees-McRae College School of Nursing and Allied Health project is to be built across from the Hayes Auditorium in the parking lot. During the preliminary review, it was discovered that the front setback for the Medical/Educational zoning district is 35 feet minimum and the front setback for the Heritage Overlay District is 15 feet maximum. She stated that she and Mr. Owen reviewed the project and the proposed layout of this rather large building which would sit only 15 feet from the road. Ms. Buchanan noted that the original 15 feet was a maximum and the 35 feet was a minimum. The planning board is proposing to change the front setback to a 35 feet maximum, allowing for any building to be built from 0-35 feet from the edge of a road or an easement in the Heritage Overlay District. Council member VonCanon asked for clarification stating that the town could take into account the size of the building (width and height) and they can go back to 35 feet max. to make it look better or for a smaller building, smaller footprint, they can bring it forward so it will better fit in with the terrain. Ms. Buchanan stated that is correct. Mayor Lyerly stated that the motion would be to approve or disapprove the request from

the planning board for a public hearing to be at the next town council meeting. Council member Bolick made a motion to call for a public hearing on May 13. Council member Lecka seconded the motion. There was no further discussion. All were in favor. No one opposed.

#### **Amend Sign Ordinance – Call for Public Hearing**

Ms. Buchanan reported to council that two requests were brought before the planning board to consider in regards to materials that can be used on town signs. The first was the use of brass lettering which the town currently does not allow. The second was the use of aluminum posts. The argument was that aluminum is a natural material and that the town's ordinance is worded "*supports constructed from rock, brick, other natural materials, or wood posts*". Another argument was that aluminum is the third most abundant metal found in the earth's crust, therefore it should be considered a natural material. The planning board felt that the use of aluminum doesn't fit the intent of the ordinance and suggests removing the words "other natural materials" from the ordinance. Mayor Lyerly stated that this would require a public hearing at the May meeting. She asked for a motion. Council member VonCannon made a motion to call for a public hearing on May 13. Council member Bolick seconded the motion. There was no further discussion. All were in favor. No one opposed.

#### **Amendment Section 315 Alternative Energy Resources – Call for Public Hearing**

Ms. Buchanan stated that the planning board would like to add a definition to Section 315, Alternative Energy Resources. She noted that there has been some confusion in referencing what constitutes a solar panel or panels. Upon some research she found that a solar panel is a connected assembly of photovoltaic cells. If you look at the Banner Elk Pharmacy, the building holds 16 solar panels. Ms. Buchanan stated that the planning board recommends clarifying Section 315 of the Alternative Energy Ordinance by adding the proposed definition. Council member Bolick made a motion to call for a public hearing on May 13 to amend Section 315. Council member Lecka seconded the motion. There was no further discussion. All were in favor. No one opposed.

#### **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 from the planning board and Preserve America and minutes from the High Country ABC Board. Mr. Owen asked council if there were any questions.

Mr. Owen reminded council to start thinking of dates for the budget workshop. With council member Tufts not present he realizes that selecting a date will not be possible. He noted that his intention is to sit down with Steve and prepare a proposed budget to present to council at next month's meeting. Mr. Owen stated that last year two budget meetings were held on May 29 and June 5. He stated that any time after next month's meeting we will set dates. He asked council members for their opinion. Mayor Lyerly stated that it would be counterproductive to set any dates without Mr. Tufts being present. Council members agreed.

Mr. Owen reported that the new tree ordinance will take effect on May 1. He stated that an article appeared in the newspaper, that it was advertised on the town's water bill, and it will be placed on the town's web site by tomorrow. Mr. Owen noted that Ms. Buchanan has had good communication with local tree cutters.

Mr. Owen noted that the only important item that he would like council to consider is for the town to seek local legislation to allow for the use of utility vehicles on town streets. He reported that Lees-McRae has purchased a utility vehicle that is not street legal. By town law and state law they can't operate it on town roads or state roads within the town. Initially the college was using the vehicle in the center of campus, but it has drifted out onto state roads, which is in clear violation of state law. Mr. Owen reported that the town has had discussions with the college regarding the use of it and unfortunately not using it on town streets is the answer until we come up with a solution to the problem. He noted that there are towns and municipalities all around the state that have received local legislation to allow for the control of utility vehicles and golf carts on town streets and basically what that does is the legislation tells the town that it can allow them by whatever means you choose, even by narrowing it down to certain streets, the type of vehicle, the person permitted to operate the vehicle, etc. Mr. Owen shared with council a document similar to what Beech Mountain used originally and that Seven Devils tacked onto a few years ago. He recommends council to request our local legislators to tack on the Town of Banner Elk onto this law. It would give the town the ability to create its own ordinance, regulating the use of these vehicles. It does not give the citizens the ability to use them, but gives the town the ability to create an ordinance to allow them to be used. Mr. Owen showed council a map regarding the colleges issue. The red lines represent state roads. The thin grey lines represent college maintained roads which the vehicles are allowed to use. The yellow highlighted roads are town maintained roads which the college is requiring access to. Mr. Owen stated that what he proposes, if council proceeds with local legislation, that once the town writes an ordinance that we write it very strictly to allow the access to certain roads that adjoin their campus. Mr. Owen reported that he and Chief Burleson have spoken about this matter and that Byron Clawson is also very aware of the situation. Chief Burleson stated his concerns about a golf cart free for all, but Mr. Owen does not foresee that happening since council controls how the ordinance is written. Mr. Owen noted that if golf carts became an issue they are still locked into their subdivision (i.e. Crooked Creek can not get out of Crooked Creek because there is a state road in front of them.). Banner Elk is basically divided by a state road. What Mr. Owen is requesting this evening is to ask the legislation to add the Town of Banner Elk to this resolution or state law and all this state law does is give council the ability to create its own ordinance and create it however the town wants. Council will dictate what the ordinance says and what it allows. Mayor Lyerly stated that she thinks it is a good idea for the town to have this. Council member VonCanon concurred. Council member VonCanon made a motion to add the Town of Banner Elk to House Bill 295. Council member Lecka seconded the motion. There was no further discussion. All were in favor. No one opposed.

Mayor Lyerly asked if there was any other business.

At 6:44 p.m. council member Von Canon motioned to have council proceed to closed session pursuant to NCGS 143-318.11. Council member Lecka seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:02 p.m.

**Other Business**

There was no other business.

At 7:03 p.m. Council member Lecka made a motion to adjourn the April meeting. Council member Draughon seconded the motion. All were in favor

**Adjourn**

The town council meeting adjourned at 7:03 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: May 13, 2013