

# BANNER ELK TOWN COUNCIL

August 10, 2015  
MINUTES

The Banner Elk Town Council met Monday, August 10, 2015 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

## **Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for August 2015 to order.

## **Pledge of Allegiance**

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

## **Invocation**

Council Member Bolick opened the meeting with prayer.

## **Public Hearing (Amend the Zoning Ordinance – Section 600 Signs)**

Mayor Lyerly opened the Public Hearing to Amend the Zoning Ordinance Section 600 Signs. Ms. Buchanan addressed Council stating that this amendment is regarding the electronic changeable sign request by Lees-McRae College which Council tabled at July's meeting. She stated that the Planning Board met on August 3<sup>rd</sup> and after discussion tabled any changes to this amendment because of the concerns relating to the brightness of the sign. The Planning Board is requesting from the sign company a demonstration on the brightness of a 5,000 NIT light and the brightness of a 350 NIT light. Ms. Buchanan noted that the Board is hoping that following this demonstration all aspects of this amendment will be clear and the change to the ordinance can be approved. Mayor Lyerly asked if anyone had any questions regarding this zoning ordinance. There being no further questions or comments, Mayor Lyerly closed the Public Hearing at 6:03 p.m.

## **Public Hearing (Amend the Zoning Ordinance – Zoning/Design Aesthetics Control)**

Mayor Lyerly opened the Public Hearing to Amend the Zoning Ordinance Zoning/Design Aesthetics Control. Ms. Buchanan reported that this amendment is regarding Senate Bill 25 which was signed into law on June 19, 2015. She reported that the phrase "*building design elements*" means *exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms.* Ms. Buchanan noted that for Council's information, this bill states that the Town can no longer regulate one or two family dwellings within the Town or the ETJ. However, this bill does not affect POA standards or the Historic Overlay District; they are exempt. Mayor Lyerly asked if anyone in the audience or Council Members had any comments. Mrs. VonCanon questioned the Town's view shed overlay. Ms.

Buchanan noted that the Town is striking the reference to the view shed overlay in the ordinance. Council Member VonCanon asked what area is covered in the Historic Overlay District. Ms. Buchanan described all the areas in this district. Mayor Lyerly asked if there were any other comments or questions. Mayor Lyerly closed the Public Hearing at 6:06 p.m.

### **Approval of the Minutes**

Mayor Lyerly reported that there were no minutes available to approve.

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

Mayor Lyerly asked if there was a motion to approve the August agenda. Council Member Dunn motioned to approve the agenda as written. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Public Comments**

Mayor Lyerly noted that no one signed up for public comments.

### **Amend Zoning Ordinance – Section 600 Signs**

Mayor Lyerly stated that we just learned at the Public Hearing that the Planning Board has tabled this zoning amendment until further information is obtained. Therefore, Mayor Lyerly tabled Agenda Item #1.

### **Amend Zoning Ordinance - Zoning/Design Aesthetics Control**

Mayor Lyerly asked if there was a motion to amend this zoning ordinance to include the new state law SB-25. Council Member VonCanon motioned to amend the zoning ordinance. Council Member Lecka seconded. All were in favor. No one opposed.

### **Call for Public Hearing: Amend Zoning Ordinance – Create Civic Zoning District**

Cheryl Buchanan reported to Council that the Planning Board is looking into a new zoning district that would allow a government entity to own and operate a property for profit while maintaining the property for historic purposes. The Board is looking at 2-3 pieces of property that would fit in this district; one being the Historic Banner Elk School. Council Member Tufts motioned to call for a Public Hearing at September's Council meeting to amend the zoning ordinance to create a Civic Zoning District at September's Council meeting. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

### **Call for Public Hearing - Rezoning of Historic School Property**

Mayor Lyerly reported that Agenda Item #4 will be tabled until the next meeting and that Attorney Eggers will explain why. Attorney Eggers stated that Council will hold a public hearing to create the zoning district at its next meeting for a possible decision on this item. Since the civic zoning district does not exist, it would be premature to call for a public hearing for placing this property into the non-existing zoning district. Mr. Eggers noted that it would be best to table this item until immediately after the action on the civic zoning district at Council's next meeting.

### **Memorandum of Understanding – Friends of Historic Banner Elk School**

Rick Owen addressed Council. He noted that Council has previously approved Mayor Lyerly entering into an agreement with the Friends of the Historic Banner Elk School which was satisfied by our attorney. This memorandum describes and formalizes a relationship between the Historic Banner Elk School and the Town of Banner Elk. Mr. Owen noted that after Council's previous approval several changes were made to the memorandum which describes the relationship more formally. He stated that Ted Silver, President of Friends of Historic Banner Elk School and the committee have approved the memorandum and is asking for Council's approval. Council Member VonCanon motioned to approve the Memorandum of Understanding. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Discuss Project Management for the Historic Banner Elk School**

Mr. Owen reported that at last month's meeting, Fred Schmitt addressed council at the public comment session regarding the possibility of creating a project management position to assist in pulling the school project together. Mr. Owen noted that Council asked the Mayor to contact Mr. Schmitt and discuss his involvement with the school project in a project management capacity. Following the Mayor's meeting with Mr. Schmitt, Mr. Schmitt said that he is willing to work on a volunteer interim basis as project manager. Mr. Owen stated that Mr. Schmitt met with several Council Members and Town staff, who provided him with several documents related to the project. From those documents, Mr. Schmitt prepared a draft *Project Management Plan for the Historic Banner Elk School* which is included in Council's agenda packets. He noted that Mr. Schmitt was not able to attend this evening's meeting but asked that Council review his plan to see if he is headed in the right direction, if he is under reaching or over reaching, etc. in regards to this project. Mayor Lyerly stated that she found the draft to be an excellent plan and that Mr. Schmitt covered everything very well. She asked Council their opinions. Council Member VonCanon asked if Attorney Eggers had looked over the draft. Attorney Eggers noted that he has reviewed the document and stated that it was a guiding document rather than a binding document that Council needed to vote upon. The Town just needs a consensus on which direction Council wants to proceed. Whatever is produced as a result of this draft will have to come back before Council for action. Council Member Tufts asked why certain parts of the draft were highlighted. Mr. Owen stated the highlighted items were key components in Mr. Schmitt's plan that should be focused upon right away. Mr. Owen also noted that Mr. Schmitt wants to be recognized by Council that he will be volunteering to be an interim project manager who will be speaking on behalf of Town Council and the Town. Council Member Tufts motioned to appoint Fred Schmitt as Interim Project Manager of the Historic Banner Elk School Project. Council Member Dunn seconded the motion. Mayor Lyerly asked if there were any questions. Council Member Bolick asked if Council was giving him the authority to make decisions (i.e. rentals). Mr. Owen noted that the draft document that is in Council's packets will come back to Council for approval. He stated that Council is giving Mr. Schmitt the authority to have conversations about the future of the building and of the project. There being no further comments, all were in favor of the motion. No one opposed.

### **Historic Banner Elk School Project Updates**

Mr. Owen reported that there will be an Avery Chamber Art Show on the school grounds this weekend. In addition, there will be beer and wine tasting at the show, which is allowed per the Town's permit process. Mr. Owen stated that Art on the Greene will be held over the Labor Day weekend. Council Member Tufts added that there are many vendors that signed up for the event, but it won't be as big as over the 4<sup>th</sup> of July, but it will be a good income producing event for the Town. Mr. Owen asked Council Member Bolick to report on the golf tournament. Council Member Bolick reported that Roy Krege is working aggressively on getting vendors to sign up for the event. He noted that currently there are 34 people that have signed up, 16 people we are holding spots for, 20 people in which we have mailed forms to and hole sponsors are still coming in. There are quite a few silent auction items that have been received. Council Member Bolick stated that the first and second place prizes are covered along with the luncheon. He asked Council's direction in deciding what type of format the tournament should be: Captain's Choice or Best Ball. Council Members agreed that the tournament should be Captain's Choice. Mayor Lyerly noted that at the Avery Chamber Art Show there will also be a live band.

### **Solicitation of Donations at Stop Light**

Mr. Owen reported that historically the Town has allowed groups to collect donations at the stop light in Banner Elk. The permit was issued by the Police Department and anyone could get one. After doing some research, the staff found a state statute that dictates how the Town can allow solicitation. The requirements are found in G.S. §20-175, which is included in Council's packets. The statute requires that the group obtain a permit (provide an application) and obtain general liability insurance in the amount of \$2,000,000. Mr. Owen stated that he wanted to inform Council that the Town will follow the state statute and groups or individuals will have to meet the necessary requirements. Council Member Dunn asked if there is a way to communicate that a permit has been issued. Mr. Owen stated that he could inform Council of any permits being issued, but the Police Department will continue to issue the permits and will know if anyone hasn't met the requirements. Mr. Owen reported that the Town has not charged a fee for this permit even though State statute does allow us to charge. Mayor Lyerly stated that since a group will have to pay for the insurance, perhaps the Town should not charge a permit fee. Council Member Tufts stated that his concern was safety. Mr. Owen reported that he has spoken with the Town's insurance company regarding the Town's role in the permit process. The company has provided the Town with certain guidelines on how involved the Town should be. The Town will issue a revised permit based on the State statute and its requirements. Attorney Eggers stated that unless Council has a strong position against this or some direction requirement for the staff, no formal action is required by Council. Mayor Lyerly asked Council if everyone agreed in the direction that Mr. Owen provided. All members agreed.

### **Tax Settlement**

Cheryl Buchanan addressed Council. She presented the first statement, the Annual Settlement of Tax Collector and reported that the Town collected \$1,062,594.23 in taxes, the total outstanding was \$38,132.73 and the Town's collection rate is 96.5%. Council Member Lecka motioned to approve the Annual Settlement statement. Council Member Tufts seconded the motion. All were in favor. No one opposed.

Ms. Buchanan presented the Resolution Approving the Tax Collector's Annual Settlement for Fiscal Year 2014-2015 and Prior Years. Council Member VonCanon motioned to approve the resolution. Council Member Bolick seconded the motion. All were in favor. No one opposed.

Ms. Buchanan presented the Banner Elk Tax Collector's Report for 2014 Small Overpayment of Taxes Received Pursuit to NCGS §105-357 (c). The total for underpayments was \$.75 and the total for overpayments was \$.53. Council Member Tufts motioned to accept this statement. Council Member Bolick seconded the motion. All were in favor. No one opposed.

Ms. Buchanan presented the 2014 Accounts Receivable Real and Personal Property Statement. She noted that the amount not collected was \$38,132.73. Council Member Bolick motioned to accept this statement. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Ms. Buchanan presented the 2015 Charge to the Banner Elk Tax Collector in which Council authorizes her to collect the taxes set forth in the filed tax records. Council Member Bolick motioned to accept the statement. Council Member Tufts seconded the motion. All were in favor. No one opposed.

Cheryl Buchanan presented the Resolution Directing Tax Collector Not To Collect Minimal Taxes for Tax Year 2015. She noted that anything less than \$5.00 will not be billed or collected. Council Member VonCanon motioned to accept the resolution. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen reported that included in Council Member's packet were the police report, planning, zoning and tax collection report. Also included were a draft copy of the August 2015 Planning Board Meeting Minutes and the June 2015 High Country ABC Board Meeting Minutes along with their Budget Amendment. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen presented to Council two contracts which require the mayor's signature. They are both automatic renewal contracts, but both parties like them re-signed each year. The first is with the Board of Elections which states that they will hold Town Council elections and the Town will cover any expenses relating to this event. He noted that it renews automatically every two years. However, they would like Council's approval. Attorney Eggers stated that per state statute, the Town is required to cover any expense related to holding this election. Mr. Owen presented the second contract with the Banner Elk Volunteer Fire Department. This is a yearly renewal. They too would like an executed copy for their files. Mr. Owen noted that this contract states that the volunteer fire department will provide protection to the Town within Town limits. This is a requirement for insurance purposes. Council Member Bolick motioned to approve the Board of Election Contract. Council Member Tufts seconded the motion. All were in favor. No one opposed. Council Member VonCanon motioned to approve the contract with the Banner Elk Volunteer Fire Department. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Mr. Owen reported that because of the vandalism that has occurred at the park, discussions began regarding Town policy in keeping people out of the park during the hours the park is closed. Mr. Owen reported that there are rules, but there is nothing in writing that gives the police department authority to oversee park hours and that the Town should have an ordinance to include the park and its facilities. Attorney Eggers noted preferably there should be something included in the Town's Code of Ordinances governing the rules of the park, which would give law enforcement the automatic right to enforce the hours, removing anyone from the park during the closed hours, warning and charge anyone with trespassing, etc. Mayor Lyerly asked if this would require a public hearing and how should Council proceed. Mr. Eggers noted that it would not require a public hearing. He also stated that a document will have to be drafted to be included in the Town's Code of Ordinances which Council can adopt at a later date. This evening Council can make a motion to set forth the park hours which would provide direction to the police department. Council Member Bolick motioned for the Town to set forth the park hours from dawn until dusk and granting the police department the authority enforce those hours. Council Member Tufts seconded the motion. Council Member Dunn asked if the Town needed to post signs indicating the park hours. Attorney Eggers stated that there is nothing wrong with posting a sign, but the word of the law enforcement officer is enough to ask someone to leave. If the person refuses to leave, the officer could take further action. Council Member Tufts asked if the Town needed to be more specific with the terms dawn and dusk. Discussions continued regarding signage and park hours. Council Member Bolick amended his first motion to replace the word dawn with 6:00 a.m. and dusk with 10:00 p.m. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

At 6:50 p.m. Council Member VonCanon made a motion for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member Tufts seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:53 p.m.

### **Other Business**

Council Member Bolick reported that the Lending Library Committee discussed changing the name of "lending library" and is asking Council's advice. He reported that the committee has solicited bids for new carpeting, painting, heating and AC, lighting, shelving, etc. and approximately knows what everything will cost. Council Member Bolick stated that they are in the process of meeting with the donors and once the money comes in, does he need to come before Council and seek its direction and advice or can the Committee move forward using the money for the Lending Library. Mayor Lyerly asked if this should go before Fred Schmitt, the Project Manager. Council Members agreed that the Project Manager and the Town Manager should oversee this part of the project, keep Council updated on the monies coming in and monies going out (items that are being done). Mr. Owen stated that Council needs to be aware that this space is a committed long term obligation. The fixtures will be long term along with the operation of the space. This space will not be a tenant issue but a Town issue or a committee issue. Discussions continued regarding a lease with the Lending Library or "committee", the amount of money being put into that space and the money coming in, price estimates for each

item (carpet, paint, heating/AC, electrical, furniture, etc.), donations, improvements to Town property, etc. Attorney Eggers noted that funds are private and don't require the Town to process them. The use of those funds on Town property have to be approved by the Town. The funds themselves are not tax dollars and don't have to go through the process. He stated that the statute requires bidding on amounts above \$30,000 however there is a lower threshold policy which the Town has for what it does for its bidding processes. The Town has to agree to accept any donation and accept how they are being used. Mr. Eggers stated that currently there is no formal written lease so it could be done and it could be changed in a month, a year or whatever the Town determines. Donations such as books which are donated to the Town become Town property

Council Member Bolick noted that in regards to the golf tournament they are in need of sponsors.

Council Member Tufts asked if the park hours would include the greenways. Mr. Owen stated that he will need Council's feedback in drafting the ordinance for the park hours. He noted that his concern is the park, its shelters and bathrooms. There were discussions on locking the bathrooms in the park and the recent vandalism that occurred in the park. Attorney Eggers reported that there is a new state statute which addresses graffiti and fining individuals. A third time reoccurring offence is a felony

There being no further business, at 8:15 p.m. Council Member Bolick motioned to adjourn the August 2015 Town Council meeting. Council Member Lecka seconded the motion. All were in favor.

**Adjourn**

The Town Council meeting adjourned at 8:15 p.m.

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Mayor Brenda Lyerly

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Attested

Approved: October 12, 2015