

BANNER ELK TOWN COUNCIL

**August 11, 2014
MINUTES**

The Banner Elk Town Council met Monday, August 11, 2014, at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

Others present: Penny VonCanon, Ted Silver, Mari-liis Smyth, Tom McMurray, William Mauney, Bill Berry, Leo Nowack, Gary Brown, and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for August 2014 to order.

Pledge of Allegiance

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

Invocation

Council Member VonCanon opened the meeting with prayer.

Public Hearing – Request for Rezoning Elk Creek

Mayor Lyerly opened the public hearing. Cheryl Buchanan reported to Council that the owner/developer of the property has requested the rezoning of the bottom section of the property in order to support multi-family. She stated that included in council's packet was Table 308-1 Uses by District and asked council to note the similarities and differences between R-1 and R-2 along with the allowances in each (highlighted items). Ms. Buchanan asked that while council considers the rezoning to also look at the uses and potential uses in R-2. She noted that no plans are available yet for the project.

Mayor Lyerly opened the floor for public comments on the request for rezoning.

Mr. William Mauney addressed council. He stated that he is the President of the POA in Mariposa which is located next to Elk Creek. He stated that his property is in a flood plain along with Elk Creek. The grading and landscaping that was done at Elk Creek has caused additional water issues at Mariposa. Mr. Mauney noted that much of this area serves as an extended dry protection basin and according to the town's ordinances it temporarily stores incoming storm water, traps suspended pollutants, reduces peak discharge from the site and protects the area around it. Mr. Mauney stated that he is against the rezoning and that the Town should leave the

property as R-1 which allows better protection of the flood plains and other environmentally sensitive land such as wetlands and streams.

Mr. Bill Berry addressed council. He stated that he also lives in Mariposa. Mr. Berry also opposes the rezoning of the property to R-2. He hopes council will do what is best for the community and its people not for the additional tax revenue that will be generated from the additional homes built within the area. Mr. Berry stated that he would never approve a plan, an idea, or a thought unless he knew what the final product was supposed to be.

Mr. Leo Nowack addressed council. He stated that he is President of Bear Run Townhomes. He noted that he also opposes the rezoning. When you increase the density of a property with roads, driveways, parking lots, etc. it adds to the flooding issues that already exist. Rezoning this property will create major problems.

Mari-liis Smyth addressed council. She stated that the rezoning may be necessary because it already exists in actuality.

Mr. Gary Brown addressed council. He stated that his biggest fear is having a failed and unfinished development in his back yard.

Rick Owen stated that he wants to make sure council members have the copy of a letter written by Dr. Samuel D. Evans, who could not attend the public hearing, but wanted the letter to be of record of his concerns and reasons for being against the rezoning.

Ms. B. R. Hoffman addressed council. She stated that she is a resident of Bear Run. She noted that she disagrees with the statement that because there are townhouses already in the area the zoning must be changed. The townhomes were built and it was not changed. It was an error from the onset. Ms. Hoffman said that she is not opposed to development in the area, but is opposed to multi-family.

There being no further comments, Mayor Lyerly declared the public hearing closed and thanked everyone for their comments and support.

Approval of the Minutes

Mayor Lyerly asked Council for a motion to approve the July 2014 town council minutes and the May 22, 2014 budget workshop minutes. Council Member VonCanon motioned to approve the council minutes and budget workshop minutes as written. Council Member Dunn seconded the motion. The July 2014 town council minutes and the May budget workshop 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 agenda as stated. Council Member Dunn motioned to approve the agenda. Council Member Lecka seconded. All were in favor. No one opposed.

Public Comments

There were no public comments.

Elk Creek Rezoning

Cheryl Buchanan stated that she understands the concerns of the public, but right now the Town is only looking at rezoning the piece of property to R-2. The problems that exists and the issues expressed this evening will be addressed by the Planning Board and Board of Adjustment once design/construction plans are presented. The Town will review the State's findings on the 401 Permit (stormwater) and the 404 Permit (wetlands) and will make sure the developer complies. Mayor Lyerly asked council if they had a chance to review the Planning Board's discussions at their July 8th meeting and if any council member had any comments or questions. Council Member VonCanon stated that even after listening to comments by the Planning Board and Town Council he is still confused as to whether we should change this property from R-1 to R-2 and should send it back to the Planning Board for further research concerning the issues expressed this evening by the public. Council Member Lecka agreed with Council member VonCanon. He stated that he has mixed emotions especially after listening to the voices of our citizens this evening. Anything that affects one's property is a concern. He can't vote until these issues are resolved. Mayor Lyerly recognized Mr. David Ramsey. Mr. Ramsey is the engineer for the development and a resident of Banner Elk. He stated that the land was developed incorrectly to begin with and the current owner, who purchased it from the bank, wants to make a good and consolidated move towards making improvements to the property. Mr. Ramsey stated that there has been communication problems between the state and himself regarding the drainage, but it will get resolved and the drainage issues will be improved. He also noted that he can't legally submit the plans because it is planned for multi-family and it is only zoned for R-1 (single family). Council member Bolick stated that after listening to our citizens' opinions it is evident that we have deep concerns concerning this issue and we should not rush through the process. He requests that this issue be sent back to the Planning Board for due action. Mayor Lyerly stated that the motion this evening will be the rezoning of the Elk Creek property to R-2, look at the staff recommendations and make a determination. Mr. Owen noted that council is not obligated to vote on this item this evening. If you do vote and vote this down, the developer cannot come back for another year to make another request for the rezoning. If no action is taken this evening, this item will remain "alive" for 60 days. Council member Tufts noted that he served on the Planning Board for a number of years and understands the importance of rezoning properties, but also understands the process and deciding the best use for a particular piece of property. Council member Tufts stated that currently Meriposa is zoned R-2, the front part of Bear Run is zoned commercial and Elk Creek is R-1. It would make sense that some of it, the front part be zoned R-2 and further up on the hill where there is a steeper grade should remain R-1. He also noted that there still remains questions regarding the bridge, ingress/egress and the State permits. He is supportive of no action being taken this evening and awaits the needed information from the State and the Planning Board. Council Member Dunn

agreed with Council Member Tufts especially as it pertains to what action and determination comes from the State. Our action this evening may be premature based on what the State decides. Council Member Bolick motioned to table this item and send it back to the Planning Board for further action. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Annual Tax Settlement

Cheryl Buchanan addressed council. She directed council members to the first report the *Annual Settlement of Tax Collector*. It is different from last year in that it is broken down to Current Year and Prior Years. And as indicated, the Town has collected more than half of the prior year's taxes. Ms. Buchanan went over the List of Underpayments and Overpayments for Fiscal Year 2013-2014. She noted that there were two resolutions that needed approval: *Resolution Approving the Tax Collector's Annual Settlement for Fiscal year 2013-2014 and Prior Years* and the *Resolution Directing Tax Collector Not to Collect Minimal Taxes for Tax Year 2014*. The final document that needed approval is the 2014 Charge to the Banner Elk Tax Collector which authorizes the collection of taxes. Council Member VonCanon motioned to accept the Annual Tax Settlement Statement. Council Member Tufts seconded the motion. All were in favor. No one opposed. Council Member Lecka motioned to approve the Resolution Approving the Tax Collector's Annual Settlement. Council Member Dunn seconded. All were in favor. No one opposed. Council Member VonCanon motioned to accept the tax collector not to collect minimum taxes. Council Member Bolick seconded. All were in favor. No one opposed. Council Member Dunn motioned for the tax collector to proceed with collecting the 2014 taxes. Council Member Tufts seconded. All were in favor. No one opposed.

Consider Planning Board Member Appointment

Mayor Lyerly introduced BR Hoffman. The mayor stated that she has known BR for a number of years. She sees her as a very competent person and would make an excellent appointment to the Planning Board as an in-town member. Council Member Bolick motioned to approve Ms. Hoffman as a new in-town member of the Planning Board and waive the second reading. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Lease Agreement with Chamber of Commerce

Mr. Owen reported to council that this item has been discussed at the past two council meetings. He noted that Item #12 has been removed from the lease per council's request at the last meeting and that public notice has been given of council's intent to enter into a lease with the Banner Elk Chamber of Commerce. Council Member Tufts asked if there was any public comment. Mr. Owen stated that there was none. Council Member Tufts made a motion to approve the lease. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Projects Update

Dogwood Road Stormwater Project. Mr. Owen reported that this project is complete. He noted that there was a provision in the contract for additional stone once the asphalt was removed and the condition of the subsurface/substrate was revealed. Mr. Owen passed out a letter from Derek Goddard with Blue Ridge Environmental Consultants which further explains the reason for Change Order #2. The cost for the additional gravel is \$16,000. Mr. Owen stated that the money

will come out of the Capital Reserve Fund. Council Member Bolick noted that the homeowners in Crooked Creek were very pleased. He also stated that the Town should learn from this project in regards to future projects (i.e. test part of the road before we proceed with budgeting and the funding of the project).

Park Expansion. Mr. Owen reported that all the elements of the project are complete. The Town is in the process of scheduling an inspection of the project which will then lead to the disbursement of the grant funds which is \$213,500. Council Member Tufts asked about the stone ring. Mr. Owen stated that it was originally placed for the climbing wall but later discovered that it wasn't the best location for the climbing wall. The stone ring was part of the grading plan. It could be removed or it could be used for a picnic table, future exercise equipment, or other ideas council members may have.

Greenway Trail Extension. Mr. Owen reported that the Town has two potential expansions that the Town is working on with Ted Silver's committee. One is the sidewalk extension from the Mill Pond to the caboose. The Town has a consensus from property owners to enter into easement agreements. The second part is the trail coming from Wildcat Lake to the Mill Pond. Grandfather Home has given the Town a tentative approval that they are interested in the project. Mr. Owen stated that he also met with Dr. Buxton and discussed the best way to get through the college's athletic fields to meet Grandfather Home. Mr. Owen reported that there are two components to this project. The Town has been working with Destination by Design. Mr. Owen stated that Destination by Design performed the consulting work for the project from the Mill Pond to Best Western. He has asked them for their cost in doing the engineering for this project, options and their vision in proceeding with the greenway trail extension. Mr. Owen reported that he received a contract from them for \$6,500 to provide this service. The second project from the Mill Pond to the Caboose is a more realistic project if funding is available. Mr. Owen has also asked Destination by Design to give the Town a price to engineer and design the entire project which would include surveying, deeds and bid-ready documents for construction. The price came in at \$18,200. The tract is 850 feet from the caboose to the Mill Pond, across the road to connect the boardwalk which is currently in place. It also includes design work going up Banner Road to connect to the sidewalk just past Mill Pond Manor. Mr. Owen stated that once we get the easements, the Town will have to decide how to get the money to get this project off the ground. The bigger picture is the actual cost of construction and the estimate came in at approximately \$80,000 which takes into consideration the roadway and flood plain. Mr. Owen perceives it as a \$100,000 project.

Manager's Update

Mr. Owen reported that included in Council Member's packets were the financial report, police report, planning, zoning and tax collection report. Also included is a copy of the Planning Board Workshop minutes of July 7, 2014, the Planning Board Special Meeting minutes of July 8, 2014, the High Country ABC Board Meeting minutes for June 13, 2014 and for June 28, 2014. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen reminded council that the High Country Municipal meeting is Thursday, August 14th on Beech Mountain. The High Country Council of Governments' dinner is August 29th. The NC League of Municipalities' annual meeting is October 11-14 and the deadline for registration is September 19th.

Mr. Owen reported that he has been working with Chief Clawson and Mr. Eggers regarding the collection of money at the traffic light in Banner Elk. It appears that we may be able to allow it, but there are some restrictions, guidelines and steps that people will have to go through (i.e. obtaining insurance).

Mr. Owen stated that during the budget process we discussed the purchase of a F450 dump truck. Council decided to buy the F450 truck using some of the Town's savings as opposed to financing. The cost is \$44,500. Mr. Owen is asking for a consensus from council to approve the purchase of the truck using a portion of the Town's savings. All council members agreed on the purchase.

Mr. Owen report that during our last meeting in closed session, council discussed a resolution for the naming of the amphitheater. There are two components: a consensus from the council to name the amphitheater after the Robbins family. There is also a resolution, but it was not voted upon. Mr. Owen stated that the Town wants to present the resolution to the Robbins family but needs formal action from council to pass the resolution. Council Member Tufts made a motion to adopt the resolution recognizing the generosity of the Robbins family. Council Member Lecka seconded the motion. All were in favor. No one opposed.

At 7:15 p.m. Council Member Bolick motioned 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 8:18 p.m.

Other Business

Mayor Lyerly thanked Allen and Rebecca Bolick for donating the hand-made quilt that they won at auction to the Town which is now hanging in council's chambers. Council Member Bolick noted that because it is a handmade work of art of historical Banner Elk, he and his wife wanted it to be a part of the Town's council chambers.

Council Member Tufts thanked everyone for their help and donations for the staff picnic held in July.

Mayor Lyerly offered her and the entire council's condolences to Robert Tufts and his family on the loss of his youngest sister.

There being no further business, at 8:22 p.m. Council Member Lecka motioned to adjourn the August 2014 Town Council meeting. Council Member Tufts seconded the motion. All were in favor.

Adjourn

The Town Council meeting adjourned at 8:22 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: September 8, 2014