

**BANNER ELK TOWN COUNCIL**  
**August 12, 2019**  
**MINUTES**

The Banner Elk Town Council met Monday, August 12, 2019 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

**Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular monthly meeting of August 2019 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 - Timing of Permits**

At 6:01 p.m. Mayor Lyerly asked for a motion to open the public hearing on the Timing of Permits. Council Member Tufts motioned to open the public hearing. Council Member Dunn seconded the motion. All were in favor. No one opposed. Cheryl Buchanan reported that there were sections of the zoning ordinance that were unclear and needed clarification. She asked Attorney Eggers to address these issues. She noted that the sections that were affected and will be amended are Sections 1002, zoning permit and 1110, expiration of permits. Mayor Lyerly asked if there were any questions or comments. There were none. Mayor Lyerly closed the public hearing at 6:03 p.m.

**Public Hearing – Telecommunications Tower Ordinance**

At 6:03 p.m. Council Member Tufts opened the public hearing on the Telecommunications Tower Ordinance. Council Member VonCanon seconded the motion. All were in favor. No one opposed. Cheryl Buchanan reported that this ordinance amendment is a major rewrite and adds extensive information and guidelines to the Town's existing ordinance. She noted that because of state legislation which was passed in late 2017, the Town will now conform with state statutes dealing specifically with small cell technology. Ms. Buchanan noted that the amendment encourages several goals for the Town (i.e. the use of existing structures as opposed to building new, protecting the aesthetics of the Town, etc.). Mayor Lyerly asked if there were any questions. Bill Stevenson questioned Section 6, 1 (g) specifically referring to certification from a NC Registered Engineer. Council Member Tufts asked if he was wanting the entire section (g) to be deleted. Mr. Stevenson noted that he would like the portion *unless a North Carolina Registered Engineer certifies that the fall zone of the tower or wireless support structure facility and appurtenances will be within the proposed area of enclosure*. Mr. Stevenson also questioned the reference of a North Carolina

Registered Engineer certification in Section 6, 1 (h) regarding setback distance. He also recommended adding in Section 6 a statement making it a requirement for a Federal Environmental Assessment or Impact Study of the proposed telecommunication tower geographic area be submitted to the Town before receiving a conditional use permit. Council Member Tufts had a question on page 10 (Council Packet page 23); Section 5 (C) (2) (n) referring to the fall zone which is determined by an engineer's certified recommendation. He asked Mr. Stevenson if this too is what he is referring to. Mr. Stevenson replied yes and further explained his views. Attorney Eggers noted that in regard to the Environment Impact Study, the Town is excluded from requiring one of these. Under the Federal Environmental Impact Study it specifically specifies what projects trigger that requirement and 160A-400.52 (c) limits the Town's consideration to public safety, land development and zoning issues. Attorney Eggers stated that the Town wants to avoid imposing something that is not well grounded in fact, such as a telecommunications tower. Council Member Tufts questioned, under the same section, *The tower site shall be located 200 feet from any property line.* He asked for clarification as to the site (base of the tower or the fence around it). Attorney Eggers stated that it certainly would be appropriate to address this as being 200 feet from the base of the tower or from the fence enclosure; making it clearer where you are measuring 200 feet to the property line from. He noted that it would be Council's discretion which of the two options to choose; changing site to fence or base. Council further discussed the options. At 6:29 p.m. Mayor Lyerly closed the public hearing.

### **Public Hearing – Recreational Vehicle Park Ordinance**

At 6:29 Council Member Lecka motioned to call for a public hearing on the Recreational Vehicle Park Ordinance. Council Member Dunn seconded the motion. All were in favor. No one opposed. Cheryl Buchanan reported that the Planning Board revised the proposed ordinance that was brought before Town Council last month addressing additional issues and concerns. She noted that a spreadsheet is included in Council's packets which shares ordinances of other areas in North Carolina and out of state addressing such issues as trash pick-up, parking, campfires, etc. Ms. Buchanan highlighted items in the Town Ordinance Section 926 Recreational Vehicle Park. She noted that if a parcel in question has no services from the Town (water and sewer) two RV's per acre would be permitted. If a parcel has one utility system from the Town, three RV's would be permitted and if it had both Town water and sewer 5 RV's would be allowed per acre or 11 per 2 acres. Ms. Buchanan stated that on a 5 acre minimum tract, as written in the ordinance, you could potentially have 27 RV's. Mayor Lyerly asked if there were any comments from the audience. Mr. Larry Cotton addressed his concern with the ability for an RV to turn onto Banner Creek Road. He believes that road would not be accessible and the RVs would have to come into Town to turn around. Ms. Buchanan noted that RVs are 8-1/2 ft. wide and the longest is 30 ft. long and didn't see any problem for an RV to make the turn. Mr. Owen noted that DOT will approve any driveway connections made and noted that an RV park could be anywhere but the discussion is about this one parcel in particular located off of Banner Creek Road. There was further discussion about keeping records and registering each RV, owner's name, license plate number, etc. Mr. Stevenson questioned the cost water and sewer from the Town for that area. Mr. Owen noted that it would be the responsibility of the developer. Nancy Stevenson asked the location of the site. Ms. Buchanan described it being off of Banner Creek Road. There was further discussion about the enforcement of this ordinance and the responsibility of the developer. Attorney Eggers stated that the ordinance does allow \$100 a day civil penalty for violations of this ordinance that can be accessed both to the property owner and RV owner as well as injunctively through a court order and possibly by contempt if they violate the order. He noted that these are remedies available to the Town. Mr. Stevenson brought up a scenario of a fire in an RV and the owner just walks away.

He questioned the Town's recourse. Attorney Eggers noted that it is also in violation of a criminal law to leave a fire unattended. He noted that it is a misdemeanor that the Banner Elk Police Department can charge for leaving an open fire unattended. If that fire should escape its confines and damage property or result in serious injury. Both of these could result in felony charges. Council Member Tufts questioned (1) (e) Streets. He asked why the entrance to the park need to be 45 feet wide. There was discussion about the size of the RVs, turnaround allowance, etc. Attorney Eggers stated that under the subdivision ordinance and building code, it does require generally a 45 ft. right-of-way for major subdivisions. Generally, that is in reference to ladder trucks and fire trucks and a 45 ft. turn would give them ample room. Cheryl Buchanan noted that in that same section, there is a reference to road grades cannot exceed 6%. She stated that she spoke with Attorney Eggers and that part will be deleted. She also stated that the gravel streets are specific and it is a NCDOT acceptable material for road. She doesn't believe it should be deleted. There was discussion about paving versus gravel. Attorney Eggers noted in regard to these two points just mentioned, 6% grade would be difficult to justify without some specific findings. He recommended specifying a grade consistent with the Town's subdivision ordinance which is up to 15%. Council Members agreed on 15%. Attorney Eggers noted that with the matter of gravel or paving, it would certainly fall within the area of aesthetics of what Council withes to see and therefore, it would be at the discretion of Council what they deem appropriate. Council Members agreed on asphalt paving. There was further discussion about concrete versus asphalt pads. At 6:55 p.m. Mayor Lyerly closed the public hearing.

#### **Approval of the Regular Meeting Minutes**

Mayor Lyerly asked for a motion to approve or amend the July 8, 2019 Regular Meeting Minutes. Council Member Lecka motioned to approve the minutes as written. Council Member Tufts seconded the motion. All were in favor. No one opposed.

#### **Approval of Special Meeting Minutes**

Mayor Lyerly asked for a motion to approve or amend the July 29, 2019 Special Meeting Minutes of Town Council. Council Member VonCanon motioned to approve the special meeting minutes as written. Council Member Dunn seconded the motion. All were in favor. No one opposed.

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

Mayor Lyerly asked for a motion to approve or amend the stated agenda. Council Member Lecka motioned to approve the stated agenda. Council Member Dunn seconded the motion. All were in favor. No one opposed.

#### **Public Comments**

Mayor Lyerly presented the Proclamation Declaring August 30 and 31 Christmas in August. Mayor Lyerly read the proclamation. Council Member Bolick asked if the Banner Elk Chamber of Commerce was aware of this. Mayor noted that Jo-Ann McMurray knows as well as several other businesses. Brochures are being distributed and the Town will help to promote this event. Council Member Dunn motioned to approve the proclamation. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Consider Ordinance Amendment -Timing of Permits**

Mayor Lyerly stated that the details of this ordinance amendment were presented at the public hearing. She asked if there were further comments or questions and if not, asked for a motion. Council Member Tufts motioned to approve the ordinance amendment. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

### **Consider Ordinance Amendment -Telecommunications Towers**

Council Member Tufts questioned the minimum lot size. Council's attention was directed to page 16 of the ordinance amendment, 4 (b). There was discussion regarding *the enclosed fencing area around the tower shall be not less than 200 feet* and the size of the lot of at least 4 acres. Attorney Eggers stated that the design of these towers is such that they have apparently, stress points which an engineer has testified to a hearing before on this issue. It is designed so that if it falls due to high winds, heavy ice, it won't fall straight, but will break up in sections. He noted that the minimum lot size would potentially assume that a tower has a smaller fall zone in a fenced in area can theoretically could take in a 4-acre track. However, if they do not engineer their tower such as that and have a straight fall line of 80 feet, they would be required to have a larger area because of the most restrictive regulation controls. There was further discussion about 4 (b) and the 200 feet and if the ordinance was "legal". Attorney Eggers stated that it is rationally related to the Town's needs and as long as Council sees the need for the buffers and preserving the aesthetics in Banner Elk in such a way, he believes it is defensible. Council Member Bolick questioned striking *North Carolina Registered Engineer certified*, found on page 13-14 of the ordinance which was also a topic in the public hearing. Attorney Eggers provided more legal input in regard to engineering certification. After continued discussion regarding the 200 ft. setback from the base of tower versus the fence line, Council Member VonCanon motioned to approve the ordinance amendment as rewritten. Attorney Eggers stated that he would like everyone to be consistent with the motion. He referenced page 10 of the ordinance (n). The original version was from the fence line. However, if that setback wishes to run from the base of the tower, either option is within Council's discretion. Attorney Eggers stressed that everyone needs to be consistent with this issue and how the Town applies it. Council Member Tufts asked for more clarification. Attorney Eggers noted that under (n), instead of stating *site*, it would say *from the fence enclosure* which would be consistent with the earlier reference. Council Member VonCanon amended his motion to approve the rewritten ordinance to include the setback of 200 feet from the fence enclosure (p10 (n)). Council Member Lecka seconded the motion. All were in favor. No one opposed.

### **Consider Ordinance Amendment – Recreational Vehicle Parks**

Attorney Eggers reported that there are two items that need to be addressed: the 6% grade; believes the consensus was 15% and the question as to whether the roads in the park should be paved or gravel. Council Member Lecka thanked Cheryl Buchanan and Attorney Eggers for their work with this ordinance and other Council Members who provided their input. Council Member Lecka motioned to approve the ordinance amendment with the two adjustments in Section (1) (e); 15% grade and paved streets. Council Member Tufts seconded the motion. Council Member Dunn stated that he intends to vote "nay" because of his concern for forcing a business owner to pave for access to his property could open up a can of worms for other business owners and property owners within the Town that do not have paved roads into their establishments or homes. Council Members Bolick, VonCanon, Lecka and Tufts voted in favor of the motion. Council Member Dunn was opposed. Mayor Lyerly noted that the motion carries with the majority.

### **Property Swap Related to Utility Easements**

Mr. Owen stated that Council is familiar with this project which has been ongoing for several years. He noted that the Town entered into an agreement with William C. Gentry a number of years ago for the construction of a water tank on his property in association with a utility easement and road access to that water tank. Mr. Owen reported that at the time, Mr. Gentry just acquired the property and there was some question as to where the tank and easements would be so the Town entered into a written agreement at the time to construct the project and then after the fact, would come back and have the easements deeded to the Town. In exchange the Town would deed over some rights that the Town had to some old well sites and an old water tank that were on his property. Mr. Owen noted that he and Attorney Eggers have been working on these deeds for 8-1/2 years and we now have deeds that are appropriate for this transfer of land. Mr. Owen referenced copies of the plat, resolution, statute and deeds included in Council's packet. Council Member VonCanon questioned the Town access to this property. Mr. Owen noted that this property was originally owned by the hospital and the Town had easements then to the well (listed Parcel One). What Mr. Gentry is giving to the Town is easement from that Parcel One to the water tank. The Town already has an easement from the State Road from the Mill Pond all the way to Parcel One, which is the well on top of the hill. It is an easement for access for repair, maintenance and access to the Town's facilities. Attorney Eggers noted that it took much additional surveying, but Mr. Gentry has agreed to this. The papers are in the hands of Mr. Gentry's attorney and if Council approves the transaction Mayor Lyerly can sign the resolution, attested by Ms. Buchanan, the Town Clerk, have the plat recorded and get it all finalized. Attorney Eggers noted that in order to swap property of a private individual, Council must first advertise (which has been completed) to give notice to the public Council's intent to take this action. Council also needs a finding that the property the Town is receiving is worth at least as much or if not greater than the property the Town is giving away. Attorney Eggers noted that in this case, the Town Manager has researched and has come up with an equivalent value of \$25,000 for the two parcels. Council Member Lecka motioned to approve the Resolution of the Town of Banner Elk to Exchange Property Pursuant to N. C. General Statute §160A-271. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **2018 Tax Collectors Settlement Statement**

Cheryl Buchanan summarized the Annual Settlement of Tax Collector (taxes charged and taxes collected for both the current and prior years). She noted that the total taxes outstanding for the current year is \$8,291.95. Ms. Buchanan stated that the tax collector is required by State Statute to give an accounting of the completed tax year to Town Council.

Ms. Buchanan presented to Council the Resolution Approving the Tax Collector's Annual Settlement for Fiscal Year 2018-2019 and Prior Years. Mayor Lyerly asked for a motion to approve the resolution. Council Member Tufts motioned to approve the resolution. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Cheryl Buchanan stated that she is required to report to Council the List of “Underpayments and Overpayments” for Fiscal Year 2018-2019. She noted the total overages of \$910.62. \$910.00 is actually a prepayment for 2019. She went over the underpayments and asked Council to approve the Charge to the Banner Elk Tax Collector to collect the taxes for 2019. Mayor Lyerly asked for a motion. Council Member Tufts motioned to accept the Charge to the Banner Elk Tax Collector. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Cheryl Buchanan presented to Council the Resolution Directing Tax Collector Not To Collect Minimal Taxes For Tax Year 2019. She noted that “minimal” refers to all personal and real property taxes less that \$5.00. Mayor Lyerly asked for a motion. Council Member Tufts motioned to approve the resolution. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **2020 Census Information**

Cheryl Buchanan reported that the upcoming 2020 Census will be conducted on-line. The US Government said it will save them a lot of money in sending out workers and printing out the forms. If they don’t get a response from an address, then they will send out Census workers to try to obtain the information directly. Ms. Buchanan noted that she felt that many people in the area may not have access to the internet so suggested to the Town Manager that the Town set up a computer in Town Hall and make it available to such people. She noted that notices will be sent out to Banner Elk citizens.

### **Consider Budget Amendment**

Mr. Owen stated that he is requesting a budget amendment relating to the Cultural Arts Center in the Historic Banner Elk School. He noted that Council Member Bolick reported on a drainage project from the front of the main school building to the back of the Learning Center that he was working toward completing. He received the money from a grant that was received in the prior year budget. Mr. Owen noted that these funds have been held in reserve and did not have them budgeted for this fiscal year. He is asking Council to budget these funds at this time out of the Fund Balance into Maintenance and Repairs under the Historic Banner Elk School in the amount of \$10,000. Council Member VonCanon motioned to approve Budget Amendment #20190812. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Consider Equipment Loan**

Mr. Owen reported that the Town Council has in this year’s budget an equipment purchase (street sweeper) in the amount of \$261,000.00. In the budget we had planned to finance \$100,000 of that amount. He noted that the Town has already received the street sweeper much earlier than we anticipated. Mr. Owen stated that the Town sought proposals for the \$100,000 loan. It would be reimbursable to the Town for the expenditure incurred. Out of the proposals received, BB&T was the lowest rate proposal. He noted that it is a 4-year term, 4 annual payments at 2.62% interest. If Council sees fit to accept this proposal from BB&T, there is an attached resolution approving financing terms which he asked Council to approve. Then they will be able to prepare the document for signing by the Mayor. Council Member Lecka motioned to approve financing terms. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

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

Council Member Bolick reported that Room #11, which is rented by Avery Community Yoga, is complete and they are holding classes. All the rooms in the school are complete.

Mr. Owen reported that the drainage project, which Council did a budget amendment for, is complete. There is just some fine tuning to complete (i.e. planting grass seed). He noted that it is working. Mayor Lyerly asked about the drainage issue where the Woolly Worm stage is set up. Mr. Owen stated that Derrick Goddard is working on that and hopes that by the first of September he will have something for the Town to review. Mr. Goddard reported that there is extensive fill work that needs to be done in that area, but Mr. Owen noted that intent is to construct a temporary fix for the pad to be fixed to carry the stage for this year's festival.

Council Member Tufts reported that Art on the Greene will be held Labor Day weekend. Set up will begin on Friday August 30<sup>th</sup> and the shows will be on Saturday and Sunday from 10:00 a.m. until 5:00 p.m. He noted that the vendor list is full.

Mayor Lyerly asked about the signs welcoming back Lees Mc-Rae students. Mr. Owen noted that this was a direct effect of Town Council from last year. The Town purchased the signs last year and are being reused this year.

Mr. Owen reported that the Town is in the planning process for the Community Picnic in September. He noted that it was held last year in conjunction with Lees-McRae and it was great success. Mr. Owen stated that funding for the event will be a topic in the future. He noted that last year the Town allocated a bit under \$2,000 and the TDA put in \$1,500 towards this project. He stated that the cost for the entire event will cost approximately \$15,000, which includes bands. Mr. Owen reported that he already committed to two costs; one for the stage and the other for the sound. The Town covered these two costs last year. Mr. Owen reviewed several of the costs from last year (i.e. inflatables, the bands, etc.) and there was discussion on the Town's level of participation for this event. There was also discussion regarding events held at Lees-McRae (i.e. long family weekend, movie out on the lawn at Lees-McRae, homecoming) and the possibility of the Town partnering with the college with any of these events.

Mr. Owen stated that the High Country Council of Government's dinner will be held on Friday, September 6<sup>th</sup> and to let him or Nancy know if any Council Members will be attending.

Mr. Owen noted that the Town received a request from Mt. Calvary Baptist Church about their upcoming event "Kidfest". They would like to hold the event at the Historic Banner Elk School. This event will also be opened to the public free of charge. It will be held on Saturday, September 21<sup>st</sup> in the afternoon and they will have inflatables, food and children activities. He stated that it will not be a revenue generating event. There was discussion about a rental fee being charged to use the property. Attorney Eggers noted that the Town could charge a different fee to a non-profit as opposed to a for-profit entity, but in the future the Town would need to treat similarly situated non-profits the same as you would treat similarly for-profits the same. We can't look at what the event

is. We just have to look so there is neutral criteria. Attorney Eggers noted that one of the items Chief Hodges and he will be presenting to Council is a special events ordinance. People would need to advise the police department of their event so that special steps can be taken depending on the size of the crowd the event may attract. There was further discussion about the term non-profit, non-revenue generating events, narrowing down certain criteria and restrictions, the Town partnering with certain events, etc. Council Members agreed to approve the event.

Mr. Owen asked Council to discuss with the Mayor in asking her to write a letter to DOT about the needed road repairs from the School of Nursing building to the Town limits at Elk River. He noted that a formal action request from Council and bringing it to the attention of someone at DOT would have a better effect. Council Members agreed that this item needed to be addressed.

**Manager's Update**

Mr. Owen distributed to Council the police report and the Financial Summary Report for one month ending 7/31/19 and noted that included in Council Member's packets are the planning, zoning and tax collection reports. He stated that if there were any questions regarding these reports to let him or the staff know. Mr. Owen noted that also included in their packets is a copy of the Planning Board Meeting Minutes of August 5, 2019.

There being no further business, Mayor Lyerly asked for a motion to adjourn August's meeting.

At 8:20 p.m. Council Member Bolick motioned to adjourn the August 2019 Town Council meeting. Council Member Lecka seconded the motion. All were in favor. No one opposed.

**Adjourn**

The Banner Elk Town Council meeting adjourned at 8:20 p.m.

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Mayor Brenda Lyerly

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Attested

Approved: September 9, 2019