

**BANNER ELK TOWN COUNCIL MEETING  
NOVEMBER 13, 2023  
MINUTES**

The Banner Elk Town Council met on Monday, November 13, 2023, at 6:00 p.m.

Council Members present: Mayor Brenda Lyerly, Charles VonCanon, Mike Dunn, Robert Tufts and, David Lecka

Staff present: Town Manager Rick Owen, Attorney Four Eggers, Public Service Director Justin Hodges, and Police Chief Kevin Hodges.

**Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular Town Council meeting of November 13, 2023, to order.

**Pledge of Allegiance**

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

**Invocation**

Council Member Charles VonCanon opened the meeting with prayer.

**Approval of October 9, 2023, Minutes**

Mayor Lyerly asked the Council to review and approve the minutes from the October 9th regular meeting. With no changes made, Councilman Dunn motioned to approve the minutes as presented with a second by Councilman Tufts. All were in favor of the motion.

**Approval of Stated Agenda**

Mayor Lyerly asked if there was a motion to approve the stated agenda. Councilman Dunn motioned to approve the agenda as stated and was seconded by Councilman VonCanon. The motion passed unanimously.

**Public Comment**

There were no persons signed up for public comment.

**Annexation Request, Banner Lowe 1, LLC- 1858-1552-2667**

Town Manager Rick Owen informed the Council that the petitioner and property owner making the request for this annexation would like to ask to have the discussion tabled to allow more time to discuss certain questions related to water availability.

With no further discussion or questions, Councilman Tufts motioned to table the discussion for 60 days and was seconded by Councilman Dunn. The motion passed unanimously.

**Annexation Request, 1697 Balm Highway- 1869-0303-1241**

Town Manager Rick Owen reminded the Council that this request was for a non-contiguous annexation for sewer services. He explained that the property has a failing septic system. The owner would like to connect to the Towns system. The owner will be responsible for the cost of a sewer line extension to the property for connection to the Town system. He stated that the Clerk certified the petition and asked the Council to call for a public hearing if they wanted to move forward.

With no comments or questions, Councilman Dunn motioned to call for a public hearing and was seconded by Councilman VonCanon. The motion passed unanimously.

### **Consider Ordinance Amendment- Unsafe and Hazardous Buildings**

Town Manager Rick Owen informed the Council that this request was for an ordinance that would allow for the Town to regulate unsafe and hazardous buildings by means of condemnation or civil penalties. He further stated that the Planning Board recommends the ordinance with clarification that the penalty is defined as \$300 per violation and each day is a new violation. Town Manager Rick Owen stated that the next step would be for the Council to call for a public hearing.

With no comments or questions, Councilman VonCanon motioned to call for a public hearing and was seconded by Councilman Tufts. The motion passed unanimously.

### **Approve New Checking Account**

Town Manager Rick Owen explained to the Council that this request is to open a checking account for the Historic Banner Elk School site project for accounting purposes. He explained that by opening the account with First National Bank it would allow loan proceeds to be directly deposited and expended from that account since the loan for the project is with First National Bank.

With no questions or comments, Councilman Dunn motioned to approve the opening of a checking account and was seconded by Councilman Lecka. The motion passed unanimously.

### **Historic Banner Elk School Update**

Town Manager Rick Owen updated the Council with the continuing work on the project. He explained that the Phase 1 drainage was all installed and completed, the survey for the curb and gutter will be completed within the week, the concrete pouring will be the following week and the binder coat of asphalt will be the last week in November or first week in December if the weather holds. He explained that the electrical conduit will be completed during this phase as well. He stated that there is no motion needed from Council and that he will regularly update them as the project continues.

### **Attorney Eggers Request for Resolution to act in Litigation Matters**

Town Attorney Four Eggers addressed the Council with legal housekeeping item that has arisen from a recent NC Supreme Court ruling. He asked the Council to approve a resolution that would allow for Mr. Eggers to handle litigation on behalf of the Town as their attorney. On October 20, 2023 the North Carolina Supreme Court issued a decision in the *Town of Midland v. Harrell*. In that case, the Court concluded that a Town Council must pass a Resolution authorizing the filing of a lawsuit on behalf of the Town. The Court also stated that this authority may be delegated by Resolution or Ordinance. The attached Resolution helps avoid jurisdictional challenges to enforcement actions brought on behalf of the Town and other matters which may require Court action. The Town Council ultimately retains the authority to determine whether the Town pursues any matter in litigation.

With no comments or questions, Councilman VonCanon motioned to pass the resolution and was seconded by Councilman Lecka. The motion passed unanimously.

### **Manager Updates**

Town Manager Rick Owen provided staff updates in the packets for Council and the following updates:

- The Council was informed that the High Country Council of Governments has requested the Towns in Avery County nominate a representative for the Rural Transportation Planning Agency. Mayor Lyerly is the current representative, and her term is expiring. After discussion, Mayor Lyerly was willing to continue to serve if the other towns agreed.
- Manager Owen informed the Council that the franchise agreement for trash pick in Town with Republic Services will expire at the end of February. They will have been providing that service for the last 5 years. He explained that another independent company would also like to provide services within the Town and that both companies would like to address the Council regarding trash service. The Council briefly discussed the process and thoughts on making changes and franchise vs open market. Fred Schmitt of Crooked Creek asked if the public would have any input on the decision. Attorney Four Eggers stated that a public hearing would be required if changes were made.

**Other Business**

Mayor Lyerly thanked Public Services and the Police Department for their work leading up to and during the Woolly Worm festival.

With no further business, Councilman Tufts motioned to adjourn and was seconded by Councilman Dunn. The meeting adjourned at 6:31 pm.

Approved: \_\_\_\_\_  
Mayor Brenda Lyerly

Attested: \_\_\_\_\_