

**BANNER ELK TOWN COUNCIL**  
**December 10, 2012**  
**MINUTES**

The Banner Elk Town Council met Monday December 10, 2012 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

Others present: Rebecca Bolick, Tim Cook, Paula Hodges, Mr. Wooten and other interested parties.

Mayor Lyerly noted to everyone that she was given the gavel that was used by Councilmember VonCanon's father when he was mayor of Banner Elk. She stated that she was thrilled to be able to use it and thanked Councilmember VonCanon.

**Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for December 2012 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 November minutes. Council member Bolick motioned to approve the minutes as written. Council member VonCanon provided a second. The November 2012 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 December 2012 agenda as written. Council member Tufts made a motion to approve the agenda as written. Council member Lecka seconded the motion. The agenda passed with all in favor.

**Public Comments**

There were no public comments.

Mayor Lyerly shared with council a letter and drawing she received from a young girl, Brook Lynn Buchanan, who is a 4<sup>th</sup> grader at Lingerfeldt Elementary School in Gastonia. The girl noted that in her AIG class she chose Banner Elk to do research on because the town had such exciting attractions. She also designed a bumper sticker showing things of interest in Banner Elk. Mayor Lyerly wanted to share it with the town.

### **Special Presentation**

Timothy Cook with Martin Starnes & Associates introduced himself to council as the one who worked on the audit for the year ending June 2011 for the Town of Banner Elk. He stated that in his unqualified opinion, a clean opinion, that he had no disagreements with town management on any issues. He commended Steve Smith's fine work and cooperation during the audit. In summary he stated that the general fund cash was about \$600,000, the general fund revenues were \$1.5 million and expenditures were close to the same. Mr. Cook noted that the audit is a year round process and that he and Steve are in contact throughout the year if any questions arise. He stated that in January they will begin planning risk assessment for the upcoming year. In August and September 2012 he sat down with Steve and went over records, read the board minutes to stay in tune with the town throughout the year. He presented to council a summary of the general fund, the town's revenue and expenses as compared to the prior year. Mr. Cook stated that there are five classifications of the fund balance: balance expendable (not in cash form), restricted, committed fund balance, assigned fund balance and unassigned fund balance. He went over the way the brief calculation on how they pioneer the available fund balance, which are the resources that the town has available to them in terms of spending power: the total fund balance less what is not liquid and less the amounts that are statutes. He noted that the total available fund balance increased by \$75,000. The numbers of the available fund balance calculation also increased this year. Council member Tufts asked what was stabilization by state statute? Mr. Cook stated that it is restricted by the state. It is what you have in your receivables. It is not a liquid asset and not a current financial resource. Steve Smith responded that it used to be called "reserved by state statute" which is the same thing. Mr. Cook noted it is what you can not liquidate now. He also noted that the available fund balance is a percentage of your expenditures. It is a good gauge on the health of the town. The state recommends that you have 8% of available fund balance. He noted that from the report, council will see that it too went up this year, which is a good sign. Mr. Cook stated that the report showed the top three revenues for the town and that the vast majority of the revenue is property tax which is 60%. The report also showed the top expenditures for the town. Public safety represents 48%, other government expenditures represent 31% and transportation is 13%. Council member Lecka asked how Banner Elk compared to other similar size municipalities. Mr. Cook stated that if we look at the available fund balance rating percentage which is at 37%. Most similar size municipalities are around the 60% range, so Banner Elk is a little below, but that is dependent on the town's best show process: what value is forwarded, debt forwarded and what kind of buffer the town has in regards to the fiscal climate. Mr. Owen added and concurred by Mr. Cook that the 37% figure does not include the capital reserve amount that the town holds, so that in case of a catastrophic event, the capital reserve funds are available to the town. Mayor thanked Mr. Cook for coming to the meeting and thanked him for all his work on this project.

### **Change Order for Park Project**

Mr. Owen presented to council members the change order, which was recommended to the town in order to give the town some cost savings in the contract for grading. He noted that the town has worked with the contractor to come up with several items that town staff could do which would remove him from his contract. There are three items: the seeding of the field after it has been graded, erosion control which is basically silt fencing around the project site and the stone at the construction entrance, at the entrance and exit points at both sides of the creek. All three of these are very environmentally intense projects. Mr. Owen noted that Derek Goddard is working closely with the town to oversee the staff in making sure these items are done properly. Mr. Goddard feels that over a couple of week's time, the silt fencing can be in place. Mr. Owen stated that the plan is to have the change order approved to have these items removed from the contract, signed by the mayor and presented to the contractor which will give him a notice to proceed with the project. Mr. Owen asked that we approve the change order. Council member Tufts asked if it was pending Four Eggers review. Mr. Eggers stated that he has reviewed the change order. However, he stated that as long as the erosion control and seeding is covered, that Derek Goddard will be the supervising factor of the erosion control. Council member VonCanon made a motion to approve the change order. Council member Draughon seconded. All were in favor. No one opposed.

### **Run for Wildlife**

Mr. Owen stated that Shannon Wooten, General Manager of the Best Western, presented this event to him and Chief Bureson. It would be a fund raiser, sponsored by Best Western, to raise funds for the Wildlife Center at Lees-McRae. Mr. Owen noted to council that there was an Official Cue Sheet and a map in their packet. Mr. Wooten was recognized, the father of Shannon Wooten. He noted that his daughter not only wants to raise money for the wildlife rehabilitation center at Lees-McRae, but to promote tourism in Banner Elk in a month that is normally slow. The date is April 13<sup>th</sup>. He also noted that in order to get approval from the DOT to have this half-mile marathon, we have to get letters of endorsement/commitment from municipalities that would be affected by the marathon. He went over the race route with council members showing that it will begin at Sugar Mountain. Council member Lecka asked how many participants will there be? He stated that this was the first year for the event, but noted that they spoke with several people who put on these events and they told us to expect approximately 100-150 people the first year and from that we would hope to get 75 from out of town. Council member Bolick suggested that they contact the Charlotte Observer because the paper does list these types of events. Mayor thanked Mr. Wooten for coming and presenting this event to council. Council member Tufts made a motion to approve this event. Council member Lecka seconded. All were in favor. No one opposed.

### **Plat Approval**

Cheryl Buchanan reported to council that Jim Rebham, owner and developer of Elk River Heights, approached the town about subdividing Lot #3 into two even halves and allowing them to be absorbed into Lot #2 and an adjoining parcel which was not part of the subdivision. She stated that his original approval was for four lots, the number of lots that can be served within the

town's subdivision guidelines. Ms. Buchanan stated that she checked with Mr. Eggers to see if the town could perform this administratively and he felt we could. She noted that Mr. Rebham has returned to the town requesting that Lot #4 be subdivided into two 1/2 acre lots with a developer in the background desiring to purchase one of the 1/2 acre lots. Lot #4 does meet the minimum lot requirement within our subdivision guideline ordinance. She noted that this has gone before the planning board and the planning board recommends the approval of the plat. Councilmember Bolick asked if what was before us is Lot #1 and #2 and Lot #4A and 4B. Ms. Buchanan agreed. Mr. Eggers commented that with it being a new division of a lot, it is not a minor division and that for that reason it has to come back to council for a final review and approval. Council member Tufts made a motion to approve the amendment for the final plat for Elk River Heights. Council member Bolick seconded. All were in favor. No one opposed.

### **Tax Release**

Cheryl Buchanan reported to council that the county has re-evaluated a piece of property under the name Coinmach Corporation. The county has released \$37.24 and has authorized the town to do a release as well. She noted that the county has forwarded her the necessary paperwork. She is asking council to approve the tax release which will leave the county \$55.24. Council member VonCanon made a motion to approve the tax release. Council member Draughon seconded. All were in favor. No one opposed.

### **ABC Store Travel Policy**

Mr. Owen reported to council that the reason this item is being presented is because of a recent change at the state level requiring the knowledge of what is going on in ABC stores. He noted that the state is asking for a yearly approval of ABC stores personnel travel policies, which he included in council's packet. Mr. Owen stated his concern is that if council makes a change to the current policy, the other two boards have to make the same change. All three boards have to agree. Mr. Bolick stated that in looking at the travel policy, he didn't see a requirement for prior approval to travel and he didn't see a limitation to room rates. He felt that a limit or guideline needed to be set. He also noted that there are limits imposed, but no limitation or specification of approval prior to travel. Mayor Lyerly stated that since Ms. Brewer will be doing much more travel, this item needs to be worked out. Mr. Bolick stated that there should also be a limitation to mileage before you can stay over night. Typically the number is set by an organization (75 miles). Mayor Lyerly asked who signs off on Ms. Brewer's travel. Mr. Owen stated that he presumed it was the ABC Board. There is a line item budgeted for travel. Mr. Eggers asked that when the board travels, who approves their travel? Mr. Owen asked if council wanted him to relay these questions to the other managers and to Ms. Brewer. Council member Tufts asked when their fiscal year ends? Mr. Owen stated that he will report back to council at January's meeting. No action was taken.

### **Chief's Retirement**

Mayor Lyerly stated that she presumes that everyone has heard that the town's police chief will be retiring. Mr. Owen noted he wanted to make the announcement public, even though no one from the press was present at this evening's meeting. He reported that Chief Burleson's retirement date is April 1, 2013 and that the Chief gave the town a letter of retirement notice. Mayor stated that the town and citizens will certainly miss him and that the town appreciates all

his years of service. She also stated that the Banner Elk Police Department has grown professionally under his guidance and stressed again that Chief Burleson will be missed. Chief Burleson thanked her and council, stating that it has been a privilege. Council member Tufts asked if he will be involved in finding a replacement. Chief Burleson said he will be glad to help. Mr. Owen stated that he will have future discussions with council on how to go about getting a replacement for the chief as well as seeking legal advice from Mr. Eggers. No action was taken.

### **Personnel Policy Amendment**

Mr. Owen addressed council concerning an issue which may require further discussion in the future. At present, the town has a policy in the personnel policy which requires the town to pay health insurance for retirees after 25 years of service until the age of 65. Mr. Owen stated that it was a large obligation for the town depending on how many employees retired over time. Mr. Owen researched the policy. He wasn't sure if council was aware of the policy and how it was adopted. He reported that on May 12, 2008, a company had been contracted with the town to do a pay rate study for the town which covered pay rate personnel and classification of employees. Part of the study made recommendations to changes in the personnel policy. One of the changes was an insurance offering to employees. John Majeski was town manager for a few months when the policy was adopted by the council. Upon reading the town council minutes Mr. Owen found that it was vaguely written and there was no indication that it was actually adopted. It wasn't written into the policy as formally as he felt it should be so the policy he had on his desk when he arrived did not include it. Mr. Owen questioned if it was adopted. In 2012, Mr. Smith while he was interim town manager, asked council to clarify the adoption of this part of the policy. Mr. Owen went back and listened to the tape of the minutes. It was extremely clear from listening to the minutes that council adopted this policy and intended to adopt the policy back in 2008, so it is in force. The town currently has two employees that it affects who have 25 years of service with the town. Mr. Owen stated that his concern is for the town's financial obligation. The audit shows the future costs for the town. The town also has an actuary study done every three years which tells us how much the town should be setting aside every year for this policy. Currently we are \$55,000 short of what we're supposed to be putting back. This year it was \$18,900 that they say we should be budgeting to facilitate this plan going forward. Mr. Owen asked Mr. Smith to run some numbers. If we keep the employees we have now at the ages we have, in twenty-five years there will be about \$700,000 of future costs to the town of insurance benefits that is given to today's health insurance costs. Another concern is that our current insurance carrier won't allow us to insure retirees on our group policy. If the town stays with them, we will have to purchase a personal policy for the retiree going forward. Mr. Owen wanted to bring this to council's attention because it is a financial issue and a future budgeting issue. Mr. Owen noted that Chief Burleson has been vested for two years now and Earl Turbyfill is also vested. Seventeen years is the next current years of service that an employee has. Council member VonCanon stated that we should indeed take care of our employees and give them incentives to come on board and stay as long as they wish, but on the other hand, the number that Mr. Owen shared with council will have an impact on the budget and the town taxpayers and it will affect other amenities that we might be able to offer the town in a broader aspect. Mayor Lyerly asked Rick if he knew of any other towns in the area that insured their employees after retirement and his response was not in our area. Mr. Owen reported that some

counties do. Chief Burleson noted that Boone and Blowing Rock did and thinks they still do. Mr. Bolick stated that at the Senior Center, there is a person that works with retirees and their insurance needs. He suggests that the town should consider offering employees the use of an insurance consultant. Each employee can sit down with the consultant and look at their individual insurance needs and requirements based on what the town can and can not offer. He feels that if we remove this policy we should offer our employees some type of guidance and help so they can move forward. Mr. Owen agreed with council member Bolick and stated that looking at health care reform today, the town may have some issues to reconsider as far as how viable it will be for the town to offer health insurance, etc. The market might be cheaper but will the town be able to afford it. He stated that the future is unknown for any employer trying to insure their staff. Mayor Lyerly stated that if the town is already \$55,000 behind, it surely is not going to get any better. Mr. Owen stated that his recommendation is to remove the benefit from the personnel policy. He felt that it was the easiest solution to the problem. It is not going to get any cheaper. Council member VonCanon made a motion to approve removing the retirement benefit from the personnel policy at this time but to continue to monitor the situation along with tax revenues and that when a new employee comes on board provide for them consulting services for retirement planning. Council member Bolick seconded. Mayor Lyerly asked if there was further discussion. Council member Draughon asked how many employees would be affected. Mr. Owen stated that Chief Burleson and Mr. Turbyfill were the only two vested and three employees currently have 17 years of service with the town. Mr. Owen reiterated that the personnel policy can be changed and amended. It is a policy which is a set of guidelines, but not a set of rules that have to be followed and the council should never feel as if they can't adjust the policy to fit the time. Council member Draughon stated that she felt bad because she voted for it that it was Hugh Montgomery's "baby". Mr. Smith stated that the company that was contracted for this study did no real analysis to tell us what the town would be facing in 5, 10, 20 years from now. If the company had shown you that, he feels that council would have in fact questioned the policy. Mr. Owen stated that he listened to both meeting tapes and that there was no financial discussion and no talks about future costs. It was the sign of the times. Business was good and the town was in good financial standing. Now is a much better time to change the policy before we have a group of retiring employees who we can't pay. Council member VonCanon stated his concern about the reevaluations and feels that they will be going way down and that property tax income is going to be down. The town's funds will be down. There being no further discussion, Mayor Lyerly asked who were in favor of the motion. All were in favor. No one opposed.

Mr. Owen brought up one other point of interest. He noted that there was a second component that should be included in council member Von Canon's motion or a second motion. He referred them to the boxed area under the policy section "retirement". Mr. Owen would like to eliminate the sentence "Town will allow employees retiring with 10 years of town service to remain on the town's health policy by paying the full premium." He stated that it doesn't affect the town financially, but it is not something our current carrier allows and probably future carriers won't allow. Mayor Lyerly called for a second motion to make it clear. Council member Lecka made a motion to remove that portion of the retirement policy. Council member Tufts seconded. All were in favor. No one opposed.

### **Funding Request Process**

Mr. Owen reported that at last month's meeting he was going to send to council for their review the form that was used last year for funding requests. The only comments he received were regarding the date on the form. Mr. Owen also received a question regarding the signature page which obligates people to turn in a report after they received funds at the end of the fiscal year stating how the money was spent and the benefit. These were never received. The town did receive letters of appreciation. Mr. Owen noted that he looked at several other counties and the forms they used. There were instances referencing funding non-profits and setting them up as a 501-3C. Mayor Lyerly asked council their thoughts. Council member Bolick stated that he had a suggestion and referred council to page four. He stated that the wording "identify all funding sources" should be placed in bold print. Council member Tufts also recommended to include a sentence that if more room is needed to use a separate page. Mr. Eggers noted that as a governmental entity the town can only fund things that would be non-profit, educational, or charitable. The town could not fund a struggling business or help someone out privately. Mr. Owen recommends approving the form and the funding request process and set a date for receiving requests. Council member Lecka suggested getting the notices out earlier and making May 1<sup>st</sup> the deadline. Mayor Lyerly asked to whom would the town send notifications? Mr. Owen recommends that the town send the notices to the people that requested funds in prior years. Council member Tufts asked whether it is necessary for the town to notify people. If people are looking for money, they should approach the town. Council members agreed that groups or organizations should approach the town. Mayor Lyerly stated that the town is not obligated to give all of the people reasons why we didn't accept their request. The town has x amount of dollars and can only give out x amount. She noted that council members are so kind and that it is tough to turn someone down. She also felt that the selected groups shouldn't have to be announced at a meeting. Mr. Eggers stated that distribution of town funds requires council approval. The recommendation can come from the town manager, but ultimately the final decision has to be made by council. Council member Tufts stated that once Mr. Owen makes a recommendation, discussions can be made prior to the meeting so that at the meeting an announcement can be made. Mr. Owen agreed but asked that the deadline be moved to March 1st and recommended not giving an award date and that the town will notify the organization as the process continues. Council member VonCanon made a motion to set March 1<sup>st</sup> the deadline for receipt of funding request applications. Council member Tufts seconded. Council members Tufts, Bolick, VonCanon and Lecka were in favor. Council member Draughon was opposed. The motion carried.

### **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 minutes from the High Country ABC Board. He also noted that if there were any questions for staff to let him know.

Mr. Owen reported that the town has two paving projects that will be done in the spring. They were supposed to take place back in October but because of the snow and other weather related conditions, the paving company asked that they be postponed until spring.

Mr. Owen brought up the subject of the guard rail at the Mill Pond that was discussed at last month's meeting. He told council that he spoke with Dean Ledbetter with DOT several times.

The last email he received, Mr. Ledbetter stated that a guard rail could not be placed there because of the depth of the culverts and the amount of dirt between the culvert and the top of the road. The end caps that go into the guard rails require a minimum of 75 ft. in length. Their conclusion was that there will be no guard rail placed there and that the 25 mph speed limit should help prevent any future issues. Mr. Owen stated that Chief Burleson drafted a letter to DOT and that letter will be forwarded to them along with a letter from the mayor and himself. Even with all the emails, Mr. Ledbetter's response was that it was still not feasible. Chief Burleson asked if a type of bridge sign on the concrete part can be located before the culvert. A total of four vehicles have been in the pond itself and several others missed the pond. Mr. Owen stated that he would suggest this to Mr. Ledbetter.

Mr. Owen reported that the Army Corp of Engineers has approved the Dogwood Project, separating the storm water from the creek water, a Crooked Creek project. They have sent the town a letter of approval so he will be sitting down with Derek Goddard to start discussing the design of the project and how much of the project can be performed by town staff over time as opposed to hiring someone to do it.

Mr. Owen noted that last year there was a Christmas employee luncheon. Council approved to have the event catered. He was hoping to have this event again this year to be held on December 21<sup>st</sup> and would like council's approval. Mayor Lyerly stated that it was an excellent idea and noted that she would attend. Everyone agreed to have the catered luncheon at 12:00 p.m.

Mr. Owen gave an update on the council table. He stated that he spoke with Mark Bolles this afternoon and he will have a color sample for us next week. Mr. Owen said he will let everyone know when it is available to view. Mark stated that the table is coming along and that he had to order some special molding for the front of it. Mr. Owen is planning a trip to Mark's shop to look at it.

Mr. Owen stated that he had a request from Grandfather Home. Their centennial is coming up. Council member Draughon is on that committee. They approached town asking to be able to place centennial banners throughout the town. Mayor Lyerly stated that the town should since we did the same for Lees-McRae. Council member VonCanon asked who would put them up. Mr. Owen noted that staff would put them up. It is a safety issue and he would prefer staff doing it and maintaining them. Council member Draughon noted that Grandfather Home is just requesting four banners and the time period is longer. They are also having a capital campaign in 2013 so the banners would run from April 13 through October 14. Council member Tufts asked why it was going all the way through to October. Council member Draughon stated that it was through October 2014. Council member Tufts noted that the banners will be up for 17 months. Council member Lecka asked where the banners would be placed. Council member Draughon noted that one would be located right as you come into town and that the banners will be made of a better grade of fabric because they will hang in campus when the event has ended. Council member Draughon noted that Grandfather Home has been working on this project for six years. There will be constant activities for a year and a half.

Mr. Owen also noted to council that the town's seasonal banners are getting slim in number because of their deterioration and age. He wants to put the banners on the sidewalk lights vs. on the light poles. They would be easier to maintain, smaller in size and more uniform throughout town.

Mr. Owen had nothing else to report

Council member Tufts asked a question referring back to the planning board meeting where the subject of a micro brewery came up. He asked how the conversation went. Mr. Owen reported that the planning board was very receptive to it. Cheryl Buchanan will be putting together, for their next meeting, an ordinance proposal to add to the ordinance an in-town micro brewery, not just for the incubator and will also include distilleries. Council member Bolick added that wine tasting will also be added to the incubator and for any other place in town.

Mayor Lyerly asked if there was any other business.

At 7:45 p.m. council member Bolick motioned to have council proceed to closed session pursuant to NCGS 143-318.11 (a)(3) Attorney-Client matters. Council member Lecka seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 8:00 p.m.

### **Other Business**

- Chief Burluson's replacement. Mr. Owen noted that it was the responsibility of the town manager to hire town employees, but obviously this position is very important and wants council to be completely involved. Mr. Owen expressed his thoughts along with the feelings of a couple of council members that we want Chief Burluson to be involved in the hiring process along with Mayor Lyerly. The town will set a date to begin advertising and following the deadline the three of us will review applications and determine how broad we need this interview process to go. Mr. Owen feels that there will be a lot of local interest in this position. Mr. Owen wants the feedback of council. In January the town will begin advertising and in February review the applicants. Mr. Owen stated that we needed to determine how and to what extent we want to advertise for this position. He noted that there is a statewide Chief's Association that has a web site where we can advertise. He also stated that we will advertise on the town's web site and The NC League of Municipalities. Mayor Lyerly stated that she felt the town should advertise within NC only. Council members maintained that there are many qualified personnel within our area and state. Mr. Owen stated that he and the Chief will write up an advertisement and will make it more NC specific and regional which will include a set of criteria that is required by the town. Mr. Owen noted that he will have additional information for council at their next meeting.

- Council member VonCanon asked what the status was regarding the roof on the police department's building. Mr. Owen reported that Parker Roofing is contracted to do the work and they will also be re-roofing the Historical Banner Elk School. He didn't have a start date, but

Tony Parker's price came in the lowest. Mr. Owen also noted that he gave the town an additional five percent discount since they were also contracted doing the school. Mr. Owen is hoping that there will be enough leftover metal to re-roof the picnic shelter in the park.

At 8:20 p.m. Council member VonCanon made a motion to adjourn the December meeting. Council member Draughon seconded. All were in favor

**Adjourn**

The town council meeting adjourned at 8:20 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: January 14, 2013