

BANNER ELK TOWN COUNCIL

December 9, 2013

MINUTES

The Banner Elk Town Council met Monday, December 9, 2013 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

Others present: Judge Lyerly, Brandon Spares of Martin Starnes, Penny VonCanon, Rebecca Bolick, Gail Draughon, Mr. & Mrs. Bill Stevenson and other interested parties.

Call Meeting to Order

At 6:00 p.m., Mayor Lyerly stated that the meeting will begin with the oath of office to the newly appointed council members. Mike Dunn and Robert Tufts took the oath of office under the direction of Judge Lyerly. Mayor Lyerly was sworn in as Mayor of Banner Elk by Judge Lyerly.

Pledge of Allegiance

Mayor Brenda Lyerly called the regular monthly meeting for December 2013 to order by leading those in attendance with the Pledge of Allegiance.

Invocation

Council member VonCanon opened the meeting with prayer.

Public Hearing: Zoning Ordinance Amendment – Add Section 316 Food Trucks

Mayor Lyerly called the public hearing to order. Cheryl Buchanan stated that this is a new section to our ordinance. She noted that it has been advertised in the local papers and has been available at Town Hall. Mayor Lyerly asked if council members had any questions or comments. Council member Dunn questioned the terms of sales made in Avery County and specifically Banner Elk. North Carolina gets its 6.75% and the county gets its percentage based on location and sale. Does the town have a way of knowing how much of the sale took place in Banner Elk so that we will get our small percentage portion of that sale? Ms. Buchanan stated that it would be determined between the county and the NC Department of Revenue, but personally is not sure what weight and measures they have in place. Attorney Eggers noted that any vendor is required to get a permit to do business in the Town and that will be evidence to pay our sales tax. Council member VonCanon questioned #5 “all food trucks shall be connected to a permanent power source”. He noted that the way it reads all food trucks must be connected to power, yet there may be instances where they don’t require a power source. He thought this

needs to be rephrased. Attorney Eggers suggested that the phrase “*if outside power is required for operation*” be added. There being no further questions or comments, Mayor Lyerly closed the public hearing.

Public Hearing: Zoning Ordinance Amendment – Wireless Communication Ordinance

Mayor Lyerly opened the public hearing. Cheryl Buchanan noted that this ordinance has been in existence since 2001 and has not been addressed since then. In October 2013 there were changes to the state statutes along with a new application that came to town that caused the town to reevaluate this ordinance and address several issues. The Planning Board, with the counsel of Mr. Eggers, has made certain changes and updates which is before council this evening. Ms. Buchanan noted that it is not a finished product. The town will look at this ordinance again. Mayor Lyerly asked if there were any questions or comments. Mr. Bill Stevenson, resident of Silver Springs’ development, addressed council. His concern was Section 4r Tower Height. He asked why the 80 feet did not include the antenna. Ms. Buchanan noted that in the prior ordinance the height was 100 feet and the board reduced it 20 feet. Mr. Stevenson questioned Section 5(C)(2)(i). He felt there was inconsistency with the terms property, property lines and the now leased property. He felt it should be more specific. Mr. Stevenson felt that what is written in this ordinance and what is interpreted in the ordinance is not in harmony. Mr. Stevenson also questioned Section 5(C)(2)n. He noted that the term “setback” is not defined under Section 4 “Definitions”. He felt it should be defined so that there would be no misunderstanding. Council member Tufts asked Ms. Buchanan if there was a common definition under the NC Code for setback. Ms. Buchanan stated that she is sure there is and that it is a common and understood definition. The goal this evening is to adopt this ordinance and readdress these issues at another time. Mr. Stevenson also questioned in that same section the definition of tree height at maturity. He felt that this too needs clarification. He also wanted clarification on “the proposed tower design leads” in Section 6(A)(f). He asked what it meant. Ms. Buchanan stated that it was a specific part of a tower design. Mr. Stevenson also questioned the wording in Section 6 (A)(s). What about the surrounding area as a field. How can a structure be designed to blend into a field? He reiterated that the wording is not clear. He noted that in Section 6(B)(b) the phrase “reasonably screen the tower from view” is vague. What is reasonable? Mr. Stevenson stated that in Section 10 “Removal of Abandoned Towers” the phrase “which it ceases to be in active use” needs to be clarified. If a phrase was added to it such as “for which the CUP was initially awarded”, this would make the wording more definitive. Mr. Stevenson reported that the Town is heading in the right direction with this ordinance, but there still needs to be some fine tuning. He is glad that the Town is moving forward and getting something done. Something is better than nothing. Mayor Lyerly thanked Mr. Stevenson for all of his comments which will be taken into consideration. Mayor Lyerly asked if there was any further discussion. Council member VonCanon stated to Ms. Buchanan that on Page 5, letter j, the remaining sentence following “*The term*” is not there. Ms. Buchanan stated that she will go back and look into what already exists under the ordinance. Ms. Buchanan stated as a follow-up to Mr. Stevenson’s concerns, she stated that this ordinance is for Banner Elk and not just for this particular cell tower application. She noted that the purpose of the board of adjustment is to interpret the town’s ordinances and how it applies to the town per each situation for the betterment of the town. There being no further comments or questions, Mayor Lyerly closed the public hearing.

Approval of the Minutes

Mayor Lyerly asked council for a motion to approve the November 2013 minutes. Council member Lecka motioned to approve and accept the minutes as submitted. Council member VonCanon seconded the motion. The November 2013 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 stated agenda. Council member VonCanon motioned to approve the agenda as stated. Council member Tufts seconded. All were in favor. No one opposed.

Public Comments

There were no public comments

Selection of Mayor Pro Tempore

Mayor Lyerly reported that at the first regular meeting following a general election in which council members are elected, the council elects a Mayor Pro Tempore. Mayor Lyerly asked for a motion to appoint a nominee. Council member Lecka made a motion nominating Mr. VonCanon. Mayor Lyerly asked if there was a second. Council member Bolick seconded the motion. All were in favor. No one opposed.

Presentation to Gail Draughon

Mayor Lyerly read the Resolution Recognizing Gail Draughon Former Council Member for Her Accomplishments. Council members along with the audience applauded at Ms. Draughon's accomplishments. Mayor Lyerly presented Ms. Draughon a copy of the resolution along with a plaque for outstanding dedication and service to the Town of Banner Elk from 2005 to 2013. Ms. Draughon thanked everyone and stated that serving on town council has been a very rewarding experience. She has learned so much about the town and its people. Mayor Lyerly along with council members wished her well.

Audit Presentation

Steve Smith stated that Brandon Spears with Martin Starnes is joining us this evening to present the audit report for the year ending June 2013. He noted that the audit went well and was sent to the LGC on a timely basis. Mr. Spears reported that Martin Starnes issued an unmodified opinion which means that we give reasonable assurance that the financial statements are free from any material misstatements or any misappropriation of assets. He thanked Steve, Rick and the staff for their cooperation with the audit and thanked council for giving Martin Starnes the opportunity to work for the town. Mr. Spears noted that during the current year there was an implementation of a change in government accounting standards. This was more of a verbiage change. The term assets and liability was changed to deferred inflows and outflows (not a huge change with the numbers). Also changed in the financial statement was net assets to net position. He reported that the general fund cash was about \$720,000 for the year and general fund revenues was \$1.6 million. Mr. Spears noted on the bar graph in comparison to last year, a slight increase in revenues and a moderate decrease in overall expenditures. He noted that due to the changes in the government accounting standards, the only concern is with deferred inflows.

Instead of tax receivables being a liability they are now characterized as deferred inflow. In the future, anything after 2 months is deferred inflow. The calculation of available fund balance is used to compare the town to other comparable units around the state. Mr. Spears used bar graphs and pie graphs to show the prior year income and expense comparisons to the 2013 fiscal year. Council member Tufts asked what the difference was between cash flow and operation flow. Mr. Spears noted that cash flow from operation is the general revenues, whereas operations is the normal operation of the utility fund (water/sewer). He reported that changes in accounts receivable, accounts payable, insurance, etc. are the normal operating expenses of the utility fund. Mr. Spears asked if there were any further questions. Mayor Lyerly thanked Mr. Spears for the presentation and he and his firm for a good job well done.

Zoning Ordinance Amendment – Add Section 316 Food Trucks

Mayor Lyerly asked if there was any further discussion regarding the Food Truck Ordinance and asked if there was a motion. Council member Tufts asked if council will adopt this with an additional phrase in #5 as discussed earlier. Attorney Eggers noted that paragraph #5 will read “All Food Trucks shall be connected to a permanent power source *if outside power is required for operation*. Council member Tufts made a motion to accept the ordinance with the addition of the stated phrase in paragraph #5. Council member Bolick seconded the motion. All were in favor. No one opposed.

Zoning Ordinance Amendment – Wireless Communication Ordinance

Mayor Lyerly asked council if any changes or corrections needed to be made to this ordinance before it is adopted. Council member VonCanon asked Ms. Buchanan to check on *Page 5, j “Existing Structure”* for the missing wording and on *n. “Monopole Tower”* add “*s*” to anchor. Attorney Eggers asked council member VonCanon to repeat the changes. Council member Bolick stated that from what was reported, the planning board has come up with changes and they will continue to update and modify as recommendations come in to keep this a very current ordinance based on the current marketplace. Ms. Buchanan concurred. Mayor Lyerly asked for a motion based on the changes that will be made. Council member Bolick motioned to approve the ordinance. Council member VonCanon seconded the motion. All were in favor. No one opposed.

Amend Record Retention Schedule

Mr. Owen reported that earlier this year council adopted the retention policy for municipalities from the state. The state has made some amendments to this policy and are requesting that we keep ours up to date by accepting these updated amendments. Mayor Lyerly asked if anyone had any questions. Council member VonCanon motioned to accept the Records Retention Schedule Amendment. Council member Lecka seconded. All were in favor. No one opposed.

Consider BB&T Loan for New Truck

Mayor Lyerly reported that the loan proposal for a 2014 International Snow Plow Truck from BB&T is included in council’s packets. Mayor Lyerly asked if there were any questions. Council member Tufts asked why not just pay it off versus taking out a loan, paying the interest over 4 years, even though it is a good rate. Mr. Smith noted that by borrowing the money the impact on our fund balance won’t be as much and it helps the town keep cash on hand for other

town projects. He stated that this subject was discussed during budget. Mr. Owen stated that even though the statutory requirement is much lower for our fund balance, the state wants more. The flood in May that swept through the town is a good example of having funds available. Debt is not a bad thing even though the town is making payments, we have already funded the payments which is figured into our tax rate. This keeps us in a good financial situation. Council member VonCanon asked if this 2014 truck comes with the plow or is that an additional expense. Mr. Smith noted that this truck includes the plow and salt spreader. Mr. Smith also noted that the truck that is being replaced with the new one lasted 15 years. He also reported that the town checked with other banks and their loan rates, but BB&T had the best. Mr. Smith said that this new truck will depreciate over 10 years. Council member VonCanon motioned to accept the loan from BB&T to finance the 2014 International Snow Plow Truck. Council member Bolick seconded. All were in favor. No one opposed.

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 High Country ABC Board Meeting minutes. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen stated that at last month's meeting he told council that the new park shelter would be completed for the Christmas Celebration in the Park (December 7), but it was not. He was told by the contractor that the new completion date is January 7th.

Mr. Owen reported that in regards to the Dogwood storm water project, bids have gone out. The bid date is this coming Thursday, December 12th at 4:30 p.m. Derek Goddard reported that he has gotten a fair response from people inquiring into the project, so hopefully we will get some competitive bids.

Mr. Owen noted that regarding the bridge work, the contractor has agreed to hold to his quoted price until spring instead of starting it this time of year due to unpredictable weather situations so that we can get a good result from the work.

Mr. Owen reported that The Essentials of Municipal Government is meeting at the end of February in Hickory. He asked that if any council members are interested in attending to let him know.

Mr. Owen stated that as a reminder the council's open house is this Friday, December 13, for board members and committee members.

Mr. Owen noted that Boone's Mayor Clawson has retired and the town has received an invitation for a reception to be held for her on December 17th from 1:00 until 4:00. Mayor Lyerly stated that the reception will held at the United Methodist Church.

Mr. Owen reminded council members that the town has a luncheon for employees before Christmas and is looking at either Wednesday, December 18 or Thursday, December 19 at noon. He asked which would be more convenient for council. Mr. Owen noted that Thursday is his first choice and asked that whoever can attend would be most welcome.

At 7:00 p.m. council member VonCanon motioned for council to proceed to closed session pursuant to NCGS 143-318.11, attorney client matters including Grandfather Home for Children vs. the Town of Banner Elk litigation matter. Council member Lecka seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming and thanked Mr. Stevenson for his input.

Council returned to open session at 7:15 p.m.

Other Business

Council member Bolick asked Mr. Owen about the audit. Council member Bolick noted that this evening Mr. Spears gave a summation or a presentation. He asked if there will be a time when we can go over the audit in more detail. Mr. Owen encourages council to go over the audit and he will ask staff to do the same and then call back Martin Starnes to answer our questions. Their representative will be able to explain in more detail versus myself or Steve. He noted that “water and sewer” is a big issue in the audit that you don’t see anywhere else, like the town’s daily financial statements and the budget process. Another example is depreciation. Depreciation isn’t talked about as a line item in the budget process, yet it is part of the audit, which is a requirement of the state. Once we see this depreciation figure appear, the town isn’t looking as good as we’d like to think. This then spurred the staff to start working on a recommendation for a water and sewer rate increase. Mr. Owen reported that we are working on this, but it is not an easy task because he wants council members to be comfortable with what is presented to you. He stated that it is confusing the way the rates were previously set up and not accurate historically. The first area that he wants to address is to make up that area of deficit in the depreciation and look for monies to make improvements to the system which could possibly mean doubling the water and sewer rates. A plan needs to be put in place and the sooner the better. He noted that the town hasn’t done anything wrong, but that historically the town had money coming in from development fees which offset the deficit. When the impact and availability fees went away we still had all the expenses that we were trying to operate under and still had to keep the system running. The town’s water and sewer rates are too low. He noted that even doubling the town’s rates won’t compare to some other rates in the state (i.e. Seven Devils, which is a town with wells, a small system and a small number of customers like Banner Elk and their rates are \$10 per 1,000 gallons). Mayor Lyerly noted that when the town does increase the rates, we will need to justify the increase to our customers. Mr. Owen stated that may be hard to do and difficult for them to understand. He met with Rural Water. They reviewed our system and financials and they were looking at \$17 minimum water and \$17 sewer with no usage per month. We also discussed a base rate. Mr. Owen stated that he and staff will research this area of water and sewer along with areas that impact this such as operating costs, investing in the present system, infrastructure, new well sites, maintenance, upkeep and planning.

There being no further business, at 7:30 council member Lecka made a motion to adjourn the December 2013 town council meeting. Council member Tufts seconded. All were in favor.

Adjourn

The town council meeting adjourned at 7:30 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: January 13, 2014