

**BANNER ELK TOWN COUNCIL**  
**December 9, 2019**  
**MINUTES**

The Banner Elk Town Council met Monday, December 9, 2019 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

Staff present: Town Manager Rick Owen, Cheryl Buchanan, Chief Kevin Hodges, Justin Hodges and Attorney Josh Coffey.

**Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular monthly meeting of December 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.

**Issuance of Oath of Office**

Town Clerk, Cheryl Buchanan, administered the oath of office for the newly elected officials: Mayor Brenda Lyerly, Council Member Allen Bolick, Council Member David Lecka and Council Member Charlie B. VonCanon, Jr. Ms. Buchanan provided the Mayor with certificates from the Board of Elections for distribution.

**Selection of Mayor Pro Tempore**

Council Member Dunn motioned to nominate David Lecka as Mayor Pro Tempore. Council Member Tufts seconded the motion. All were in favor. No one opposed.

**Public Hearing – Rezoning Request – PIN 1849-0340-6616 and 1849-0050-1654**

At 6:05 p.m. Council Member Tufts motioned to open the public hearing. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Cheryl Buchanan summarized the rezoning request. She noted that the rezoning is for two parcels; one located on Highway 194 and the corner of Edgar Tufts Road, which is owned by David Jennings. Mr. Jennings is purchasing the second parcel from Rob Robbins which adjoins Mr. Jennings' property. This parcel is currently zoned R-2. Ms. Buchanan noted that Mr. Jennings would like to rezone both parcels to C-1P.

Mayor Lyerly asked those interested in speaking to come forward, state their name and address before speaking. The speakers are listed in the order in which they appeared before Town Council.

1. Ken Howell, 57 Valley View in Banner Elk. Mr. Howell noted that he purchased his cabin a year ago and explained his background and his roots in the mountains. He stated that he did his due diligence before the purchase and was aware of the adjoining Jennings/Robbins property, which was zoned residential, so he felt protected. Now that the request for rezoning to commercial has come up, he is opposed due to several reasons. He explained that he was in construction business and is aware of the implications and would like to see more buffering (i.e. hardscape/landscape) if the property is rezoned. Mr. Howell stated that his concern is noise from heavy equipment, dust, increased traffic, the future of the property if sold, etc. He noted that he met with David Jennings and was nice enough to go over the proposal for his property. He went over buffering suggestions to the property (i.e buffer with trees, berms, curfews for heavy equipment, etc.)

2. Bill Moseley, 178 Edgar Tufts Road. Mr. Moseley stated that he has known David Jennings for three years and has worked with him over the years. He finds Mr. Jennings a good steward in his business and a good neighbor. He noted that he and his wife are totally in support of this rezoning. Mr. Moseley noted that they bought this piece of property knowing that there was an airport across the street, aware of Mr. Jennings' commercial piece of property immediately below theirs and would still buy the property again.

3. Mike Chester, Edgar Tufts Road. Mr. Chester stated his concerns with the airport of which there are no restrictions, the noise coming from the concerts at Eagles Nest late into the night, the landscaping on 194/184, high end trailer parks, etc. He doesn't see any reason why David shouldn't purchase this property and have it rezoned. There are no noise concerns.

4. Becky and Danny Woodard, 1190 Old Turnpike Road. Mrs. Woodard stated that her home sits on top of a hill overlooking Valley View. She stated that she sent an email with a letter today to the Town Manager and read the letter to have it on record. Mrs. Woodard's letter stated that the property owners on Old Turnpike Road are strongly opposed to the rezoning, opposed to any acts that Mr. Jennings would do to their road, opposed to the danger imposed by heavy equipment going up and down their road, etc. She noted that in their community on Old Turnpike there is a lot of foot traffic, children playing, etc. and they are concerned with the effects of this rezoning. Mrs. Woodard explained the history of Old Turnpike and its residents. She stated that any request for a commercial rezoning in our area be denied. Mr. Woodard also expressed his concern for heavy equipment creating ruts, protected barriers and how they don't work (trees die). He doesn't want Old Turnpike Road being used in this rezoning.

5. John Davis, 1014 Old Turnpike Road. Mr. Davis stated that he knows that several property owners on Old Turnpike have written letters to the Town Manager regarding this subject but

weren't able to attend this evening's meeting. He felt that these letters should be read. Mr. Owen stated that these letters were forwarded to Council and that legally these letters do not necessarily have to be read into record. He noted that after reading them, the letters basically reiterate the concerns expressed so far to Council. One of the letters indicate reaching out to DOT to discuss the road connections. Mr. Davis again expressed his concern that Old Turnpike is not wide enough to take on this rezoning and the traffic problems it could create.

6. Dean Eisenberg, 1378 Beech Mountain Parkway. Mr. Eisenberg stated that he personally knows David and Preston Jennings over the past 20 years. He noted that he is here to comment on their character. He finds David and Preston two of the finest people he ever met. If either of them makes a promise, they would follow through with their word.

7. Allen Gregory, 1745 Tynecastle Highway. Mr. Gregory stated that he is a business owner in Banner Elk. He noted that he uses Mr. Jennings for his landscaping needs. The materials that he provides is valuable to many local businesses. Mr. Gregory stated that he stands behind Mr. Jennings and the work he has done for the community and continues to do.

8. Leslie Platek, 59 Valley View. Mrs. Platek stated that she knows David Jennings personally and has nothing against him. Her only concern is their property value. Mrs. Platek noted that they purchased their home a year ago. If it would be today with all that is going on, they probably wouldn't purchase. They don't plan on living here forever. Their concern is when they plan to sell, will someone buy it.

9. Preston Jennings, Jennings Lane. Preston Jennings is the son of David Jennings and co-owner of the business. Preston read from a prepared statement on the future plans of his and his father's business. He noted that they provide commercial commodities in a small scale to several communities like Eagles Nest. Their company saves many from having to travel to Boone for their supplies. Preston also explained the reasoning behind the request for the property to be zoned commercial. He also touched on the concerns expressed at this public hearing (i.e. noise, the dust issue, access to Old Turnpike).

10. David Jennings, 400 Jennings Lane. David Jennings is the applicant and co-owner with his son Preston Jennings. He explained his family ties and roots with Banner Elk and noted that he has worked hard for his family and serving the community. He also reviewed his future plans for his company, not only the grading aspect but selling mulch, recycled concrete, and other materials that would benefit the community. Mr. Jennings stated that he has heard the community's concerns and will do his best to address these concerns. He distributed a sketch of his proposed site plan and explained his plans. There were questions and answers exchanged regarding the plan.

11. Steve Horney, 671 Horney Creek Road. Mr. Horney noted that he is a good friend with David Jennings. He stated that he hears more noise from the airport and road traffic than what comes from David's property.

12. Richard Shay, 1236 Banner Elk Highway. Mr. Shay is an adjoining property owner and has lived there for only a few months. He noted that Mr. Jennings has been a good neighbor and he doesn't notice the noise from his business. The traffic noise is worse.

Cheryl Buchanan shared her discussion with DOT regarding recommendations for access to 194 and Mr. Jennings' property (included in Council's packets).

Council Member Allen Bolick stated that he understands the plans Mr. Jennings has for the property, but he believes that due consideration needs to be given to the homeowners of the neighboring properties. He knows there are long-term and short-term residents in that area who are concerned with the value of their property. Council Member Bolick expressed his concern that if the property is rezoned commercial, that zoning goes with the property. He also noted that this issue was not approved by the Planning Board and came to Town Council for this expressed reason. Council Member Bolick stated that he personally thinks the best thing that could happen would be for this to go back to the Planning Board for further review of the buffering, etc. and then return to Town Council for a vote. He stated that voting on this issue tonight with all the uncertainty is wrong.

Council Member Mike Dunn stated that the loop Mr. Jennings is proposing is an excellent attempt on his part to show his willingness to compromise. He asked if the Carmen Guy property is in any way, shape or form in play. Mr. Jennings noted that it is "a swamp", unusable.

Council Member Robert Tufts stated that the Land Use Plan that was adopted by the Town in 2012 specifically states that commercial is going to be developed down 194; all three avenues, but will be controlled. The Town understands the future growth and development of these areas. He noted that it was specifically written for 2010 through 2030.

With no further comments or discussion, at 7:08 p.m. Council Member VonCanon motioned to close the public hearing. Council Member Lecka seconded the motion. All were in favor. No one opposed.

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

Mayor Lyerly asked for a motion to approve or amend the November 11, 2019 Regular Meeting Minutes. Council Member VonCanon motioned to approve the minutes as written. Council Member Lecka 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 Dunn motioned to approve the stated agenda. Council Member Tufts seconded the motion. All were in favor. No one opposed.

#### **Public Comments**

Mr. Owen noted that two people signed up, but it was in regard to the public hearing. There were no further public comments.

### **Consider Rezoning Request**

Mayor Lyerly noted that this item was presented at the public hearing and that Council heard many comments from concerned citizens. She asked Council Members for their recommendation. Council Member VonCanon stated that he appreciates all the people that came to the public hearing, representing themselves and the community and voicing their concerns, both for and against this rezoning request. He noted that as a Council Member, we need your input and we try to do what is best for Banner Elk. Having made his comment, Council Member VonCanon motioned to approve the rezoning of David Jennings' property. Council Member Tufts seconded the motion. Council Members Lecka, Dunn, Tufts and VonCanon were in favor of the motion. Council Member Bolick was opposed. Mayor Lyerly noted that the motion carried with a majority approval. There was discussion about amending the Conditional Use Permit. Ms. Buchanan noted that it will come before the Board of Adjustment and the Town will call for a public hearing regarding this amendment so that the community will be notified, and it will be made public.

### **Request for Tax Bill Release**

Mr. Owen reported that Water Quality Labs requested to be connected to the Town's water back in the spring and Council approved that connection based on annexation. He noted that the annexation process took several months to get through. Water Quality Labs was annexed.

However, the water tap for the property was not completed until September. Mr. Owen stated that he spoke with the owners when they received their tax bill regarding the amount owed since the timing of the annexation did not line up with the water tap service. Mr. Owen is requesting Council to consider releasing 2/3 of that tax bill since the water tap was not made until September. They will be paying for 1/3 of the year. The amount of the release would be \$1,024.80 with the amount owed by Water Quality Labs being \$512.40. Council Member VonCanon motioned to approve releasing 2/3 of the tax bill. Council Member Dunn seconded the motion. All were in favor. No one opposed.

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

Mr. Owen reported that the Town is still working on the site plan and have met with Mountain Electric on specific site items related to upcoming events held on the property and is hoping to have a complete plan ready in January for Council's review so it can be put out for bid. He stated that a recent development is related to the water improvements that were previously discussed which is the interconnection at Culver Street down behind the cafeteria, past the gym and coming out at the fire department and also coming down Azalea. Mr. Owen noted that David Poore put together some figures incorporating fire hydrants, 6-inch water lines, etc. The estimate for all of these improvements is \$100,000. It is a project that doesn't have to be done but something the Town should seriously consider as we move forward. Mr. Owen stated that this would be a water system improvement and the monies would come out of the water sewer fund if Council decided to fund this project.

Mr. Owen stated that the Town met with Mountain Electric regarding burying electrical lines that run from the corner of Elementary and Azalea along the front of the school and at the back of the school. Mountain Electric would hire a contractor to do the work. Mr. Owen stated that since these improvements are aesthetic in nature and not required it would be the Town's

responsibility to bear all of the costs involved. He noted that between Mountain Electric and the contractor their cost would be approximately \$72,000. This figure would not account for any panels the Town added along that line or any electricity for streetlights.

There was discussion regarding an additional cost for Piedmont Natural Gas. Mr. Owen reported that the water and power would be addressed first and would go side by side.

Council Member Bolick reported that on December 18<sup>th</sup> the front doors on the school will be replaced and on December 19<sup>th</sup> the back doors will be replaced.

### **Manager's Update**

Mr. Owen reported that included in Council Member's packets are the police report, planning, zoning and tax collection reports and the Financial Summary Report for 5 months ending 11/30/19 was handed out before the meeting. He stated that if there were any questions regarding these reports to let him or staff know. Mr. Owen noted that also included in their packets is a draft copy of the Planning Board Meeting Minutes of December 2, 2019 and a copy of the High Country ABC Meeting Minutes of October 17, 2019.

Mr. Owen stated that the staff Christmas luncheon will be held on December 20<sup>th</sup> at 1:00 p.m. and that all Council Members are invited to attend.

Mr. Owen noted that the ethics webinar for newly elected officials is now available. It is a two-hour session.

Mr. Owen reported that the downtown WiFi project is progressing well with the exception that we are waiting for the electrician to connect the power to the antennas. Most of the antennas are installed throughout Town. He noted that the Town is also working with Skyline to provide the internet connection.

At 7:32 p.m. Council Member Tufts motion for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Council returned to open session at 7:54 p.m.

Council Member Lecka motioned to approve the Christmas bonuses as discussed. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

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

At 7:55 p.m. Council Member VonCanon motioned to adjourn the December 2019 Town Council meeting. Council Member Tufts seconded the motion. All were in favor. No one opposed.

**Adjourn**

The Banner Elk Town Council meeting adjourned at 7:55 p.m.

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Mayor Brenda Lyerly

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Attested

Approved: January 13, 2020