

**BANNER ELK TOWN COUNCIL**  
**February 11, 2013**  
**MINUTES**

The Banner Elk Town Council met Monday February 11, 2013 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, Penny VonCanon, Donna Dicks, Ted Silver, Wayne Miller, Nathan Paris and other interested parties.

**Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for February 2013 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.

**Public Hearing: Fencing – Ordinance Amendment**

Mr. Owen asked that Cheryl Buchanan address this issue. Ms. Buchanan stated that there is one addition to the existing ordinance which reads: *Fencing higher than six (6) feet shall follow the setback chart in Section 309 for that zoning district.* Mayor Lyerly asked if there were any questions or comments regarding the fencing ordinance. There being no further discussion, Mayor Lyerly closed the public hearing.

**Public Hearing: Political Signs – Ordinance Amendment**

Cheryl Buchanan reported that in 2011 the state made changes to one of its statutes which regulates different guidelines for political signs. The planning board wants to bring the town ordinance up to date with the recent state changes. Mayor Lyerly asked if there were any comments. There being no further discussion, Mayor Lyerly closed the public hearing.

**Public Hearing: Section 923 (Breweries) – Ordinance Amendment**

Cheryl Buchanan reported that Section 923 is a recommended new section of the ordinance. This type of industry is not addressed in our current ordinance. She stated that this section applies to all of Banner Elk not just the incubators and that it includes wineries and distilleries. Mayor Lyerly asked if there were any questions or comments. She recognized Nathan Paris. Mr. Paris stated that he is the owner of Flat Top Brewing Company, the brewing company in

question, and is hoping to open his brewing company in Banner Elk. He noted that council may have read about some of his plans in the local papers, but he preferred to address council in person. Mr. Paris stated that his goal is to be a good steward of Banner Elk and of Avery County. He is hoping that this brewery will serve as a catalyst for the tourist industry in Banner Elk. He noted that the brewery will also be proud to help sponsor any local festivals including the Woolly Worm Festival. He stated that he will be conducting other business in his brewery such as using local apples to make cider and using other natural resources to make non-alcoholic beer so as to offer things for all ages. He thanked the planning board and town council for opening up this concept for approval within the Town of Banner Elk. Mayor Lyerly asked if anyone had any questions for Mr. Paris. Council member VonCanon asked what the time frame would be from approval of the ordinance to assessment of the location of the brewery to the actual production of beer. Mr. Paris stated that his goal is a June 1 opening date. Council member Tufts asked Mr. Paris if he had other breweries. He noted that this will be his first. Council member Lecka asked if he would be using other local ingredients. Mr. Paris stated that he has talked with several people and yes will be using local resources, even sourcing hops locally, not 100% dependent, but will be using local hops in every batch that is brewed, along with using barley. Mayor Lyerly stated that it sounds very exciting and asked if there were any further questions. There being no further comments, Mayor Lyerly closed the public hearing.

#### **Public Hearing: Tree Protection – Ordinance Amendment**

Cheryl Buchanan addressed council stating that the town has been working on this type of ordinance for a long time. She stressed the need for the town to protect its trees and encourage better care of trees and vegetation. She noted that the planning board discussed what area will be covered under the new ordinance and presented the overlay map. The ordinance allows more time to survey the situation before cutting down or removing existing trees as well as planting new trees and vegetation. Mayor Lyerly asked if there were any comments. There being no further discussion, the public hearing was closed.

#### **Approval of the Minutes**

Mayor Lyerly asked council for a motion to approve the January 2013 minutes. Council member VonCanon motioned to approve the minutes as written. Council member Bolick provided a second. The January 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 for February. Council member Lecka made a motion to approve the February agenda as written. Council member Tufts seconded the motion. The amended agenda passed with all in favor.

#### **Public Comments**

There were no public comments.

#### **Special Presentation – Banner Elk Volunteer Fire Department**

Mayor Lyerly recognized Wayne Miller, chief of the Banner Elk Volunteer Fire Department. Mr. Miller thanked council members for the opportunity to be present at this meeting and thanked them for being able to provide their service to the town and its citizens. Mayor Lyerly

thanked him and the department for all they do. Mr. Miller noted that concerns and questions have been raised throughout the county regarding the purchase of a new fire engine. He reported that the department was on the list for rotation to receive a new fire engine this year. However, during this time one of their engines blew up and the price to repair it was close to \$20,000. He reported that the fire commission decided that since it was 22 years old, it was not worth the repair. The department was in the process of pricing a new truck. The time without a truck would have placed a huge liability on the department as the new engine would have taken 12 to 14 months to be delivered and per the State of North Carolina our station would not be serviceable. He reported that the department opted to purchase a used fire engine from Texas. Mr. Miller stated that he personally flew down to Texas and drove the fire engine back to Banner Elk. It is a custom built chassis and a 2004 model. He wants to reassure council that this engine will far exceed our requirements and is probably the largest in the county. Mr. Miller also noted that it has a much larger pump capacity. He stated that the budget for the year towards a new vehicle is \$350,000. The used fire engine cost us \$225,000. Mayor Lyerly stated that since Banner Elk was in rotation from the county to get a new vehicle will the county reimburse the department some money for the difference. Mr. Miller noted that approximately \$125,000 will be put into a contingency fund which will go towards the next rotation. Only the county commissioners know what will become of the money. Council member VonCanon asked if the department had a bay large enough for this new vehicle. Mr. Miller noted yes. Council member Tufts asked how many years is the rotation for new fire engines. Mr. Miller responded that if the county continues to replace 2 vehicles a year and there are nine departments, approximately every 3 years, if they maintain two new trucks a year. Mayor Lyerly thanked Mr. Miller for his report.

### **ABC Store Travel Policy**

Mr. Owen reported that the ABC Board made changes to their travel policy based on concerns and recommendations from Banner Elk Town Council along with Seven Devils. He also noted that Donna Dicks was present to hopefully receive approval or to discuss any further questions council might have. Mayor Lyerly asked council member Bolick if his concerns were rectified in the revised policy. Council member Bolick said that they were and apologized to Ms. Dicks. He did not want her to feel that he was being too demanding. Ms. Dicks stated that she understood completely. Council member Bolick stated that through his years spent in business one of the items that people tended to take advantage of was the travel policy and noted that the policy isn't just written for the present but for the future. Council member Bolick made a motion to approve the travel policy as written. Council member Draughon seconded. All were in favor. No one opposed.

### **Fencing – Ordinance Amendment**

Mayor Lyerly asked if there was a motion. Council member Lecka made a motion to approve the fencing ordinance amendment. Council member Draughon seconded the motion. Council member Tufts asked if there was any particular incident that caused this change to the ordinance. Mr. Owen reported that there was a reason that this change was brought about. He stated that the original look into this ordinance came up when someone wanted to build a fence close to a town sidewalk which in turn brought the planning board to look at fence height, placement and when it becomes a structure, etc. He stated that the board spent much discussion on this ordinance.

They felt that it was too broad to fix it all, but that the height issue was an obvious issue and could easily be addressed. Mayor Lyerly asked if there was any further discussion. Council members voted all in favor of the amendment. No one opposed.

#### **Political Signs – Ordinance Amendment**

Mayor Lyerly asked if there was a motion or if there was any further discussion. Council member Tufts made a motion to approve this amendment per the changes in the text. Council member VonCanon seconded the motion. All approved. No one opposed.

#### **Section 923 (Breweries) – Ordinance Amendment**

Mayor Lyerly asked if there were any questions or discussions. Council member Bolick made a motion to approve the ordinance amendment as written. Council member VonCanon seconded the motion. Council member Draughon opposed the amendment and it was noted. The motion passed 4-1.

#### **Tree Protection – Ordinance Amendment**

Mayor Lyerly asked if there was a motion. Council member VonCanon made a motion to accept the tree protection ordinance amendment as written. Council member Draughon seconded. All were in favor. No one opposed. Mr. Owen asked Mayor Lyerly if we could expand on the motion. He noted that we previously discussed putting off the take effect date to allow for public notice to the citizens. He would like for Mr. Eggers to prepare a resolution for the next meeting which would remove the current wording from the ordinance and replace it with the new and that we put off the date instituting the change. Mr. Eggers stated that since a motion was already passed and approved, he would prefer that a new motion be set forth. Mayor Lyerly asked how long it should be publicized. Mr. Owen noted that it will be published at town hall and on our web site. He stated that he wanted to report on another topic which could coincide with advertising this ordinance change. He would like the town to change the way utility bills are printed and mailed. He foresees printing it on an 8-1/2 x 11 piece of paper and mailing it in an envelope versus the current use of cards. He then proposed that the new amendment be noted on the utility bills. Mayor Lyerly asked when the bills go out. Mr. Owen noted about two billing cycles. He stated that if the town gets the word out to its citizens by spring it should be ample time. Council member VonCanon made a motion to advertise the tree protection amendment for 60 days (May 1, 2013), delete that part of the ordinance that is not pertinent and insert the wording as written. Mr. Eggers stated that another resolution should be prepared to be signed at the next meeting, a housekeeping matter, to present this resolution with the correct wording. Council member Lecka seconded. All were in favor. No one opposed.

#### **Advertisement of Tax Liens**

Cheryl Buchanan reported that the state statute requires that at each town council meeting in February a list of unpaid taxes be compiled and presented to council. The tax collector must also provide the tax payer a 30 day notice that unless paid, their name will appear in a newspaper of general circulation. Once the delinquent taxes are advertised a lien is automatically placed on the property. She noted that if the taxes are paid by March, their names will be removed. Mayor Lyerly asked if there was a motion. Council member VonCanon made a motion to advertise the delinquent taxes. Council member Bolick seconded. All were in favor. No one opposed.

### **Audit Contract**

Steve Smith reported that this is the third year on this particular contract with Martin Starnes & Associates. It is \$200.00 more than the first year of the contract because of a new reporting requirement to a federal agency. He also noted that it is the third and final year on this contract. He stated that the price will likely go up next year. Mr. Smith requests council to approve this particular contract. Mayor Lyerly asked if it was yearly. Mr. Smith said the town needs to sign a contract with the firm every year, but that this particular contract price was agreed to two years ago and that they would hold the price for three years. Council member Tufts made a motion to approve the audit contract with Martin Starnes & Associates. Council member Lecka seconded. All were in favor. No one opposed.

### **Board Appointments**

Cheryl Buchanan reported that last week Mr. Jerome Clapp, who serves on the board of adjustment, notified her that he will be resigning due to his ailing father and feels that he can't fulfill his duties. She noted that the board is a five member board, three in town members and two out of town members and consists of three alternates. She stated that Mr. Ted Silver is an in town alternate and has filled in with the BOA on several occasions. She reported the board has several important issues coming up in the next couple of months and the need for this appointment is important. She recommends that council fill this vacancy soon and in the meantime, we will continue to look for alternates. Ms. Buchanan also reported that there is a vacancy on the Preserve America Committee. The town has received an application from Leslie Carter who is interested in the position. Mayor Lyerly asked council if there was a motion to appoint Ted Silver to the in town permanent member of the Board of Adjustment. Council member Bolick made a motion to approve Ted Silver. Council member VonCanon seconded. All were in favor. No one opposed. Mayor Lyerly stated that the town needs to look for alternates, in and out of town. Ms. Buchanan agreed. Council member VonCanon made a motion to approve the appointment of Leslie Carter to the Preserve America Committee. Council member Draughon seconded. All were in favor. No one opposed.

### **Call for Public Hearing – Amendment Section 922 Incubators**

Council member VonCanon made a motion to call for a public hearing for Amendment Section 922 Incubators on March 11, 2013. Council member Bolick seconded. All were in favor. No one opposed.

### **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 draft minutes from the planning board.

Mr. Owen reported that on February 21 the next High Country Municipal Association meeting will be held in the Banner Elk council chambers. If council members have any topics that they would like to be presented at the meeting, please contact him by Tuesday (2-12-13) so that he can have them added to the agenda.

Mr. Owen stated that he sent council an email regarding Town Hall Day to be held on Wednesday, March 27<sup>th</sup> in Raleigh. The RSVP date is March 15<sup>th</sup>. Hotel reservations need to be made as soon as possible. He noted that Mayor Lyerly will be attending.

Mr. Owen reported that the park extension project has begun, but due to weather progress has been slow. Pipe and gravel has been delivered and the silt fence is up.

Mr. Owen reported that in regard to utility billing we need to make a change to the appearance of the bills. Currently a post card is mailed out and issues have arisen where the bills haven't been received or are lost and it all relates back to the size of the card that is mailed out. We are looking into having the bill printed on an 8-1/2 x 11 sheet of paper, folded and mailed in an envelope. There will be a minimum increase which will be absorbed in the budget. He wants council to let him know if they have any concerns. Council member Lecka asked if the town had e-statement capability and if that could be an option. Mr. Owen stated that he is working with a company who does provide e-billing. He noted that he will have further information for them at the next meeting.

Mr. Owen told council that they may have seen articles published about Lees-McRae opening a school of nursing program. Dr. Buxton has now announced that they hired an architectural firm out of South Carolina to begin designing the project and working with the town. The firm hired a local architect, Dawn Sellers, to work with them through the process to make sure there is a smooth course through the board of adjustment, planning board and town council. Lees-McRae will go to the Preserve America Committee first and then the planning board.

Mr. Owen reported that he cleared with the mayor personal vacation time. He noted that he will be out of town the week of February 25<sup>th</sup> through March 1<sup>st</sup>.

Mr. Owen told council that he is working with High Country Waste Solutions on a new contract. Their contract is up in April and he is hoping to extend it and for it to include other items that he and council have discussed such as brush pick up. He is hoping to present it to council at next month's meeting.

Mr. Owen noted that there have been previous discussions regarding the placement of the town seal on the front of the new desk. He stated that Mr. Dicks has looked into the possibility. Mr. Owen also told council that he received some feedback such as a larger seal on the wall behind the desk versus on the desk. He wants council to think about it. Mayor Lyerly asked that with the chair that she is sitting on which is high, would the seal be seen on the back wall? Mr. Owen said the seal would be larger than what would be placed on the desk. In addition it was felt that having the seal on the desk would take away from the appearance and the wood work of the desk. He also noted that Mr. Dicks suggested using the elk logo on the front of the desk and the seal on the wall. Mr. Owen said he will gather additional information and present it to council soon.

Ms. Dicks asked Mayor Lyerly if, when the garbage contract is renegotiated, the issue of curb side recycling could be brought up?

Mayor Lyerly asked if there was any other business.

At 6:48 p.m. council member Von Canon motioned to have council proceed to closed session pursuant to NCGS 143-318.11 (a)(3) Attorney-Client matters. Council member Tufts 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**

Mr. Owen reported that as a part of agenda item “Advertisement of Tax Liens”, council needs to vote on a resolution supporting the collection of taxes. Council member Tufts made a motion to accept the resolution supporting the collection of taxes. Council member Bolick seconded the motion. All were in favor and no one opposed.

At 8:07 p.m. Council member VonCanon made a motion to adjourn the February meeting. Council member Draughon seconded the motion. All were in favor

**Adjourn**

The town council meeting adjourned at 8:07 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: March 11, 2013