

**BANNER ELK TOWN COUNCIL**  
**July 9, 2012**  
**MINUTES**

The Banner Elk Town Council met Monday, July 9, 2012 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

Others present: Penny VonCanon, Rebecca Bolick, Ted Silver, Bret Gardella, Robert Wiseman, Commissioner Johnson, Dan Baron, Jamie Shell and other interested parties.

**Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for June 2012 to order.

**Pledge of Allegiance**

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

**Invocation**

Council member Bolick opened the meeting with prayer.

*Mayor Lyerly welcomed everyone into the new council chambers. She stated that she was very pleased to have the new look.*

**Public Hearing: Town Code 70.01 – Speed Limits**

Mayor Lyerly opened the public hearing and asked Mr. Owen to address council. Mr. Owen addressed council stating that this issue came about when DOT asked the town to provide an ordinance that showed that the town agreed with the speed limit on Hickory Nut Gap Road which directed us to look into our town code which states that we need to keep on file an updated list of streets and their speed limits. The purpose of this public hearing is to request council to pass the adoption of the state enacted speed limits on streets in the town. Mr. Owen provided council with a copy of the town streets and speed limits. Mayor Lyerly asked if anyone had any comments or needed additional information. Mayor Lyerly closed the public hearing.

**Approval of the Minutes**

Mayor Lyerly asked council for a motion to approve the June 2012 minutes. Council member Bolick motioned to approve the minutes as written. Council member Tufts provided a second. The June 2012 minutes passed with all in favor and no one opposed.

### **Approval of the Stated Agenda**

Mayor Lyerly asked council for a motion to approve the July 2012 agenda as written. Council member Draughon made a motion to approve the agenda. Council member Lecka seconded the motion. The agenda passed with all in favor.

### **Citizen Concerns**

Mayor Lyerly introduced Dan Barron, director of AMY (Avery, Mitchell and Yancey) Regional Libraries. Mr. Barron spoke to council of his wanting to bring library services closer to the Banner Elk area. He asked council's help in determining how to provide better library services. AMY is beginning to develop their 5-year plan which is required by the state in order to acquire state funding. Mr. Barron distributed a copy of the goals for the regional library system. Their mission is to help economic development, literacy and education. He asked council's thoughts on having a Book Mobile Day in Banner Elk and in what location. Mayor Lyerly asked Mr. Barron if he has spoken with the county regarding its incubator facility. Mr. Tufts asked Mr. Barron if he was looking for a location for the book mobile or just looking for a way to have the book mobile come to Banner Elk? Mr. Barron stated that their mission was to serve the people of Avery, Mitchell and Yancey counties. How best to do that needs to be discussed further and he suggested doing so at next month's council meeting. Mr. Tufts also asked if AMY had any connection or relationship with Lees-McRae library. Mr. Barron stated that technically, just good friends. Mayor Lyerly thanked Mr. Barron and his group for all their efforts.

### **Town Code 70.01 – Speed Limits**

Mr. Owen distributed to council a copy of the state maintained roads within the town and the speed limits which the state has posted to these streets. Mr. Owen asked council to adopt this list, concurring what the state has on its file. Mr. Eggers stated that the only option to change these would be to petition the NCDOT to raise or lower the speed limits. Council member Lecka motioned to approve the state maintained road speed limits. Council member Bolick seconded. All were in favor. No one opposed.

Mr. Owen next presented to council staff's recommendation on lowering the city-wide speed limit. Currently by state statute the city-wide speed limit is 35 mph unless otherwise posted. Our legal council and police department question the term "posted" and what it means. Mr. Owen presented council a list of town streets that are posted. In theory we would have a list of every street in town with a speed limit.

Mr. Eggers clarified by stating that the statute lets you change the speed limit by posting notices. The question would be how best to do it. We thought best to post it as one is coming into town. However, the chief's concern is that under the statutes each street should have to be posted, which could get expensive purchasing all the extra signs, would involve maintenance and would be an aesthetic issue. He stated that for the present, council could adopt and approve the list of posted speed limits in town and the roads that are not posted, the default speed would be 35 mph. Mr. Eggers also stated that the only speed signs that the police department can enforce are regulatory signs. Mayor Lyerly questioned would the town then put a sign at each of the three entrances into the Town of Banner Elk stating the city wide speed limit? Mr. Owen stated that it is his recommendation depending on what Mr. Eggers comes up with. Council member Tufts

made a motion to accept the list of town roads that are currently posted. Council member Lecka seconded. All were in favor. No one opposed. Mr. Tufts asked Mr. Owen if he would be looking into this further as far as how we can best post the limits legally and have it enforceable. Mr. Owen agreed. He stated that currently we have 34 streets with no signs. Mr. Eggers stated to council that we will also look into lowering the city wide speed limit and what is required. Council members agreed that 25 mph is recommended.

### **Discussion, Incubator Ordinance**

Mayor Lyerly opened the discussion welcoming County Manager, Robert Wiseman and County Commissioner Johnson. Mr. Owen addressed council stating that an ordinance was passed in regards to the incubator to our zoning ordinance. Mr. Gardella questioned the wording of the ordinance. Mr. Owen stated that after much discussion with Mr. Gardella and council members the town should spend less time focusing on how to change the wording of the ordinance, but let Mr. Gardella express to council what he needs to do and determine if council wants it to happen or not and then send this information back to the planning board, legal council and staff to write the ordinance that fits.

Bret Gardella presented to council an outlay of the building and the property in discussion which showed in color groups what will be taking up the spaces (i.e. Lees-McRae and Mayland Community College, Avery County Chamber of Commerce and areas for existing opportunities). The existing businesses will be located at the outside classrooms of the building which will be an anchor to the incubator, helping to offset some of the county's expense of operation by paying a slightly higher rent than the incubator business, will have a stay longer than those involved in the incubation process and will be a channel for the facility by attracting customers to not only their location, but the customers will see other businesses in the incubator. Mr. Gardella stated that renting to existing businesses is a good way to kick start the incubator. Mr. Gardella also noted that the county is looking into putting a lot of money into this facility, already approving \$75,000 for improvements. Existing opportunities coming into the facility will help cover business expense and overhead. Mayor Lyerly thanked Mr. Gardella. Mr. Owen stated that the key to this entire conversation is for council to give direction on what it desires. The big sticking point is the use of the words "existing business". We have to stop focusing on the fact that the conversation started on new business and look at the broader picture of what the idea of an incubator is. The question for council is how you feel about allowing existing businesses and anchor businesses into the incubator or having a portion of the building being used for retail businesses. The planning board needs some direction from council. Mr. Tufts responded stating that he always thought there would be a start up retail space in the incubator. He stated that he always heard Bret from the beginning state that new businesses were going into the incubator and that the term anchor business is new to him. Mr. Gardella stated that the original structure from day one of this proposal has always been an incubator for the use of new businesses and startups and that the outside classrooms have always been in the proposal to allow for existing opportunities to come to it. Mayor Lyerly stated that she too never heard anything about the term existing businesses. She noted that the concern for the town was that we didn't want to draw existing businesses from Newland and Banner Elk that were already in existing spots elsewhere. Mr. Lecka stated that from a business standpoint, in order to give the county and the town the best chance to make the incubator successful, the town needs to approve a plan that

does have the option for an existing business. Mr. Gardella did concur to council that the term anchor is a new term and it is a follow up from last month's confusion of the word existing. The term anchor, he believes, is easier to comprehend. It is a type of business that would draw new start ups to the facility. In addition, the existing business will be a part of the educational component. Mr. VonCanon thanked Mr. Gardella for returning to council. He feels that the town can work this out, using the research that Ms. Buchanan has done. He stated that as far as an existing business needing help, some type of committee should be set up to see if the business meets a certain criteria. Mr. VonCanon believes that it is a great idea and that existing businesses are needed to help support the new businesses. He suggests that council send this ordinance back to the planning board and work with Mr. Gardella on what he wants and what is needed. Mr. Bolick stated that the informational hand out received from Ms. Buchanan was excellent and that it covered many points including an acceptance of standards for bringing in businesses. He also noted that he agreed with Mr. VonCanon. Ms. Draughon asked Mr. Gardella if he had a board of directors for the facility. Mr. Gardella stated that his boss were the county commissioners, but that there will be a selection committee which will be comprised of business owners from around the county. If someone is interested in coming into the facility they will have to present themselves to the committee. Ms. Draughon noted that it would be helpful to know that there is a board of directors for this facility and their interpretation of what an existing business is. She also asked if a feasibility study was conducted. Mr. Gardella stated that in his opinion a feasibility study takes too long and costs too much. He stated that the county needs to move now and that we need to start creating jobs now. Mayor Lyerly asked if there was a motion or does council need more guidance. Mr. Owen noted that the staff wants as much guidance as possible so as not to drag this process out any longer than we have to. He also stated that he encourages Mr. Gardella to continue the process of getting the conditional use permit so that if council does change the ordinance he will be able to continue where he left off.

The conversation turned to how the educational component would be worked into existing businesses. The concern being that an incubator would be operating in the M/E Zoning District and should show an educational component. Mentoring of incubating businesses and internships were two ideas that were discussed. Questions were raised as to the formation of the committee that Mr. Gardella had originally proposed that would approve businesses entering the incubator. Mr. Gardella stated that he had no plans of forming that committee until he knows the project is going to happen. Council felt that the forming of this committee would aid in answering many of their concerns and offer useful input to the writing of the ordinance.

Mr. Owen stated to council that the conversation is getting lost in the educational component. With existing businesses or anchor businesses we are opening the door to this educational component even wider. The committee would show the guidelines for how this incubator is going to operate which will bring some level of comfort to the rewrite of the ordinance to allow these existing businesses into the incubator.

Mr. Eggers stated that one of the issues related to this is that the ordinance will need to have some standards for the board of adjustment to apply such as: For an anchor business, do we want it to remain there indefinitely or attach a time limit? What standards will be expected of them? What percentage of the incubator will be occupied by anchor businesses vs. struggling

businesses? The board of adjustment will need standards by which to apply for whether something fits with the zoning, which in this case is medical or educational.

Mr. VonCanon addressed Mr. Gardella stating that once this ordinance is re-written so that it works for the town and the county, it will have to go back to the planning board to rewrite it, then to the board of adjustment to apply guidelines as to what criteria the existing business must meet. This has nothing to do with the zoning. It will just give the board of adjustment guidelines. Mr. Gardella stated that council is introducing something brand new to the conversation. He questioned why it has to go through the town's board of adjustment. He felt that the county had included a lot of language so that the opportunities didn't have to go this process again. He is not prepared to have this conversation. Council member VonCanon stated that the term existing business is new to council. He said that it would be to the advantage of the town to have existing businesses go before the board of adjustment. Council member VonCanon reiterated that because the town is trying to meet Mr. Gardella's needs and the county's needs to make it affordable for the county and admit existing businesses, there is nothing wrong with that business having to meet certain criteria fixed by the board of adjustment.

Mr. Eggers explained how the board of adjustment works. Their obligation is to consider on a case by case basis the buildings and certain things that will be used to come within the Town of Banner Elk to maintain the harmony of the community and make sure things fit within the area. The board of adjustment does not make an arbitrary decision but only makes its decision based upon the criteria within the ordinance. Council is basically inviting Mr. Gardella to propose the language that he would like the board of adjustment to consider and take that to the planning board, something that is workable for him. He further explained that depending upon how the ordinance is written, the board of adjustment has the authority to apply whatever standards are in the ordinance if it fits the character and nature of the town. Ms Buchanan noted that the incubator as a whole is a conditional use permit which requires it to go before the planning board and to the board of adjustment, as a whole. Mr. Eggers stated that one of the issues may be which area of the proposed use would be considered for anchor businesses, what the standards for an anchor business would then be and those conditions. These will be the type of questions that will need to be addressed. He said that the conversation could start with a proposal.

Council member Bolick made a motion to return this ordinance back to the planning board for further clarification, wording adjustment and consideration of what Bret Gardella will bring forward as to what he needs in that ordinance and what we need through the town staff to make this ordinance workable for everyone and to include standards and criteria for anchor businesses. Mr. Eggers addressed council stating that one consideration is that the ordinance should apply to anyone wishing to bring in an incubator project, not this particular incubator. If any private party wishes to create an incubator, the same standards would apply. Council member VonCanon seconded. Council member Draughon asked the question, what are we asking the planning board to do? She stated that we are not giving them any information. Council member Tufts asked that the motion be repeated. The motion was repeated. Four council members were in favor. One member, Ms. Draughon, opposed.

### **Avery County Solid Waste Management Plan**

Mr. Owen reported to council that the town and county must maintain a 10-year Solid Waste Management Plan that is updated every three years. If the town does not want to create its own plan, it may adopt the county plan. This is what has been done in the past. The county has updated and adopted their plan. They provided Banner Elk with the necessary resolution for the town to adopt. Mayor Lyerly asked if there was any further discussion regarding the Solid Waste Management Plan. Mr. Tufts asked Mr. Owen if he read the plan. Mr. Owen responded that he had not read the plan. He felt that it was prepared by Avery County's professional solid waste management staff, which the town does not have, and assumed that the town would not prepare their own plan. Mr. VonCanon made a motion to accept the Avery County Solid Waste Management Plan as presented. Mr. Lecka seconded the motion. Four were in favor. Council member Tufts opposed on the basis that staff had not read the plan. Mr. Owen stated that he would read the plan and report back to council.

### **Budget Amendment #2**

Mayor Lyerly recognized Steve Smith. Mr. Smith reported that the Governing Body, Planning, Drug Task Force and the Water Sewer Administration are currently over budget for the budget year ending June 30, 2012. By moving the funds from those departments that are compliant to those departments not compliant, the total budget will be balanced. He also stated that the overall budget numbers will not increase. Council member Tufts made a motion to approve the budget amendment. Council member Draughon seconded. All were in favor. No one opposed.

### **Call for Public Hearing – Zoning Ordinance Amendment**

Mayor Lyerly called upon Ms. Buchanan to present this amendment. Ms. Buchanan stated that the planning board recommended adopting the Alternative Energy Ordinance and adding it to the ordinance as Section 315. She also noted that Attorney Eggers has reviewed the ordinance. The planning board along with staff requests that council call for a public hearing at the August meeting. Mr. Tufts made a motion to call for a public hearing at the August meeting on this issue. Mr. VonCanon seconded the motion. All were in favor. No one opposed.

### **Call for Public Hearing – Rezoning Banner Manor Mini Storage**

Ms. Buchanan reported to council that the planning board made a recommendation to rezone a piece of property, currently known as the Banner Manor Mini Storage units in the Mail, Pack, Ship Store. The property is currently zoned R-2. When Mr. Meyer received his Conditional Use Permit (CUP) in 1983, the property was zoned C-2. However, the current zoning map shows it as R-2. This was discovered when they were amending their CUP. The property should be zoned C-2 to match the current use. The staff is in agreement with the planning board and asks council to call for a public hearing. Council member Lecka made a motion to call for a public hearing at the August meeting. Council member Bolick seconded the motion. All were in favor. No one opposed.

### **2012 Street Assessment**

Mr. Owen reported to council that West Consultants performed a town street assessment. They came up with a rating and grade for each road. Mr. Owen noted that the spread sheet that was compiled listed the mileage, length and width of each road and an overall rating. By doing so,

we were able to sort this list and come up with a list of roads that were in the poorest condition and which ones would be the first to re-pave. The roads rated lower than 85 were in poor condition. The town would then request bids for those roads and determine how many can be paved per what is budgeted for the year. Then staff would return to council and make recommendations as to what roads should be resurfaced. The company also recommended preventive maintenance issues on certain roads (i.e. ditches cleaned out, weeds cleared).

Mr. VonCanon asked Mr. Owen what is the state requirement regarding the width of a road. What does it have to be before the state can take it over as a state maintained road. Mr. Owen stated that it would have to meet DOT standards; he believed the width was 16 feet. Mr. Owen also noted that the estimated costs given on the spread sheet were for 1.5" of asphalt and were based on current asphalt costs. The costs did not include any type of repair and maintenance. Mr. Owen stated that no action was required from council. He just wanted council to see the report

### **Planning Board Member Appointment**

Mayor Lyerly addressed council that Martha Laura Miller has been recommended for the ETJ member for the planning board. Ms. Buchanan stated that she was approved by the Avery County Commissioners and would be the seventh member of the board. Council member VonCanon made a motion to approve Martha Laura Miller to the planning board. Council member Tufts seconded the motion. All were in favor. No one opposed.

### **Tax Release**

Ms. Buchanan spoke to council stating that the property being discussed, formerly known as Morel's, was not opened for business on January 1, 2011, but was assessed taxes by the county. She noted that she contacted the county assessor and they agreed to release their bill. The town's amount to be released is \$66.77. Council member Lecka made a motion to approve the tax release. Council member Draughon seconded the motion. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen reported to council that the financial reports, police reports, planning, zoning and tax collection reports were included in council's packets along with the minutes from the planning board meeting and board of adjustment meeting. Mr. Owen noted that also included in their packets was the High Country ABC Board minutes which he will be providing each month and the ABC Board state adopted budget for fiscal year 2012-2013.

Mr. Owen reported that he has received two quotes for the construction of the council table. They are below the cost of what the original laminate table was priced, which is good. He is waiting for the third party to come back with a price.

Mr. Owen stated that the July 4<sup>th</sup> parade and activities in the park went well. He is welcoming any feedback. The event is co-sponsored by the Chamber of Commerce, who does the parade and the Kiwanis who is in charge of the party in the park. The town acts as a facilitator for the events. Ms. Draughon stated that it was good to see the children on the side lines picking up candy and not in the streets.

Mr. Owen reported that the town hired a part time person to take care of the town flowers a few days a week along with cleaning town hall. The woman will be responsible for planting, weeding and planning. The town will maintain the watering. Ms. Draughon asked the name of the person. Mr. Owen said her name is Susie Knepka. Mayor Lyerly asked if we would consider the area in front of Dunn's Deli as town property and get the weeds pulled and the area looking better. It is right in the center of town. Mr. Owen will look into it.

Ms. Draughon brought up Banner in Bloom. Mr. Owen asked if she could meet with him later in the week to discuss.

Mr. Owen reported that the paving of the road at the Mill Pond below the dam to the wild life center is completed. Mayor Lyerly noted that it looks very nice. Mr. Owen noted that if anyone hasn't been down there that the wild life center is also a nice looking building.

Mr. Owen reported that the bid opening for the park project is set for Wednesday, July 11<sup>th</sup> in council chambers at 9:00 a.m. He hopes it will go well. He reminded council that on Wednesday, July 18<sup>th</sup> at 3:30 there is a council meeting to review the bids. Mr. Owen needs at least three members to show up. If for some reason the town doesn't get three bids or qualified bidders he will inform council members.

Mayor Lyerly asked if there was any other business or discussion. Council member VonCanon stated that the chambers look very nice and thanked Mr. Owen for keeping the project going. Mr. VonCanon asked if it was complete. Mr. Owen reported that he is getting a punch list together to go over with Nils. He stated that the room is a culmination of council's input. He also noted that a large screen TV was donated to the town by Ted Silver.

At 8:10 p.m. council member Bolick motioned to have council proceed to closed session pursuant to NCGS 143-318.11 (a)(3) Attorney-Client Privilege and pursuant to NCGS 143-318.11(1)(6) Personnel Matters. Council member VonCanon seconded. All were in favor.

Mayor Lyerly thanked everyone for coming.

At 8:23 p.m. council member VonCanon motioned to exit closed session. Council member Allen Bolick seconded. All were in favor.

Council returned to open session at 8:25 p.m.

### **Other Business**

Personnel Policy. Mr. Owen reported that he and Steve have been discussing the issue of insurance benefits for current employees who may retire from the town. He stated that it is a huge liability to the town which the town can not afford. If an employee retires from the town, the town will pay that employee's health insurance until the age of 65 providing that they had 25 years of service to the town. Mr. Owen stated that he felt it was his responsibility to bring it to

council's attention. It is a huge benefit, but currently we don't know what will happen with health care and at some point we may have to start placing a portion of the burden of health care cost onto staff. Current employees could be paying a share of their insurance while we are paying for retired employees' insurance. The sooner council can decide on this matter, the better. Mr. Smith stated that the town at the moment can't comply with this. Blue Cross Blue Shield won't allow a retiree on our policy. The only way we can remedy this is to go with the insurance company with the League. However, that would increase our bill up \$150 per month per employee which is not feasible. It is too costly and we cannot comply. Mr. Smith stated that this was policy, not ordinance. Mr. Eggers noted that once an employee has reached the required length of service with the town, they would be vested. Before that time is reached, you can change the policy and they are not vested.

Mr. Smith stated that each employee has state retirement which the state funds as well as the employee. Mr. Owen noted that the town is not incurring any additional cost once the employee retires. Mr. Owen addressed council proposing that we prepare a change to the policy, determine what our legal ramifications are and how it affects everyone. We will submit this back to council and hopefully at next month's meeting we will be able to recommend some changes to the policy. Mr. Eggers requested information from Mr. Owen and Mr. Smith: When was the policy adopted? How long have employees been with the town?

Mr. VonCanon questioned the start time of council meetings. Ms. Draughon stated that the 6:00 meeting time was determined several months ago and it would continue year round.

At 9:00 p.m. Ms. Draughon made a motion to adjourn the July meeting. Mr. Lecka seconded. All were in favor

**Adjourn**

The town council meeting adjourned at 9:00 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: August 13, 2012