

## **BANNER ELK TOWN COUNCIL**

**July 14, 2014  
MINUTES**

The Banner Elk Town Council met Monday, July 14, at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

Others present: Rebecca Bolick, Penny VonCanon, Jim Swinkola, Sarah Brewer, Ted Silver, Mari-liis Smyth, Dick Evans and other interested parties.

### **Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for July 2014 to order.

### **Pledge of Allegiance**

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

### **Invocation**

Council Member Bolick opened the meeting with prayer.

### **Approval of the Minutes**

Mayor Lyerly asked Council for a motion to approve the June 2014 minutes. Council Member Tufts motioned to approve the minutes as written. Council Member Dunn seconded the motion. The June 2014 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 July agenda as stated. Council Member Dunn motioned to approve the agenda. Council Member VonCanon seconded. All were in favor. No one opposed.

### **Public Comments**

Mayor Lyerly reported that three individuals signed up for public comments. The mayor introduced Ted Silver. Mr. Silver reported that the Town has been asked to participate in a bike ride (48 mile) which will originate in Banner Elk. It will be held Sunday, May 17<sup>th</sup> following next year's Beech Mountain Metric. Mr. Silver noted that proceeds will be given back to the local communities. He asked Council for a consensus to support and promote this bike ride and make it a successful event. Mayor Lyerly and all Council Members gave Mr. Silver a consensus.

Mayor Lyerly called upon Jim Swinkola. Mr. Swinkola stated that he came to the Council meeting with two hats. The first hat deals with his role with the Banner Elk Chamber of Commerce. He stated that he attended the 4<sup>th</sup> of July parade and said it was a phenomenal and positive experience. Mr. Swinkola stated that his second hat deals with his membership with the Kiwanis. He attended the party in the park and stated that the Kiwanis brought in almost \$10,000 which will be put back into the community. He said the 4<sup>th</sup> of July parade and party was a job well done.

Mayor Lyerly called upon Dick Evans. Mr. Evans stated that he is a resident of Bear Run and wanted to express his concerns and those of many others of the proposed development in Elk Creek. He reported that he attended the Planning Board meeting and also expressed his concerns to them. He noted that the meeting was very informative and the discussion was very good. Many concerns were brought up such as infrastructure, access to the property, etc. that need to be addressed.

Mayor Lyerly thanked those that spoke.

### **Request for Rezoning, Elk Creek**

Cheryl Buchanan reported to Council that the developers of this project are not ready to present a set of plans to the Town. They have been granted a 404 Permit (Wetlands Mitigation) and are waiting for approval from the State for a 401 Permit (Stormwater). She noted that there are two sections to this development: 12 single family lots that are already recorded and a multifamily section which consists of 11-1/2 acres. Both sections are zoned R-1. The multifamily section needs to be rezoned to R-2. The owner and his attorney would like the bottom section to be rezoned in order to support multifamily. Ms. Buchanan recommends that Council call for a public hearing for rezoning purposes. Council Member Bolick stated that he is requesting that Council postpone calling for a public hearing and send this request back to the Planning Board until the following items are completed: the plans for the development are completed and presented to the Planning Board for due process and consideration; that a request be sent from the Planning Board to Town Council to call for a public hearing; that all State requirements are completed, approved and granted; that all requests made by the Zoning Administrator have been completed; that all water, sewer and stormwater concerns are satisfied. Mayor Lyerly stated that the rezoning of a portion of this property has nothing to do with the issues Council Member Bolick just put forth. These items do need to be addressed but does not have to be done in conjunction with the rezoning. She also noted that the prior owners thought it was zoned R-2 and the people who purchased the property bought it with the understanding that it was zoned R-2. Mayor Lyerly stated that the Town owes it to the new owner to have the property rezoned. Mr. Eggers reported that the Conditional Use Permit ran out on the previous development, but the buildings that have been built would be grandfathered in even though they don't conform to the current requirements of the Town's zoning ordinance. One of the purposes for establishing a zoning district is not to look at the specifics of what someone plans on using the property for but what type of development the Town wishes to see going forward and what you would like that area of Town to look like. The specifics of the plan would be up to the Board of Adjustment to determine if it complies with the ordinances. Mr. Eggers noted that you can't necessarily

require plans before you do the rezoning. He stated that Council has three options: call for a public hearing to rezone the property, send it back to the Planning Board for more information and input for their recommendation or you can simply take no action on it. From a rezoning perspective, you can't require them to have specific plans for a rezoning. Discussions continued among Council Members and Mr. Eggers. Mr. Eggers noted that all the concerns that have come forth from Dick Evans, Council Member Bolick and other Council Members would have to be addressed at the point the developer applies for a Conditional Use Permit. The Planning Board would review specific plans at that time and then it would go before the Board of Adjustment with the Planning Board's recommendation or not for a final decision whether those plans are appropriate for the site. Mr. Owen stated that the Town will review the State's findings on the 401 Permit (stormwater) and the 404 Permit (wetlands) and will make sure the developer complies. Discussions continued regarding the Town's Land Use Plan. Council Member Tufts motioned to call for a Public Hearing at the August 2014 meeting for the rezoning. Council Member Lecka seconded. The motion carried with Council Members Tufts, Lecka and Dunn in favor of the motion. Council Members Bolick and VonCanon opposed. Mayor Lyerly noted that there will be public hearing at August's meeting.

### **Budget Amendment**

Steve Smith addressed Council that a late invoice came in after the year end close of 6-30-14 in regards to the bathrooms in the new shelter. He noted that in order to bring the current year budget into compliance, a budget amendment to the General Fund Capital Reserve is needed in the amount of \$20,000. Council Member Lecka motioned to approve budget amendment #2. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

### **Consider Lease Agreement, Chamber of Commerce**

Mr. Owen reported that at last month's meeting we discussed that the Town leases the Old Village Grocery Store, which is now the Banner Elk Chamber of Commerce, from Highlands Union Bank. He noted that it is in the best interest to the Town and the Chamber of Commerce to have a formal lease agreement established. Mr. Owen stated that a lease agreement has been prepared that mirrors the same terms as set forth in the agreement between the Town and Highlands Union Bank. Mr. Eggers has reviewed the lease and staff is prepared to give Public Notice of Council's intent to enter into this lease prior to the vote on the lease. Mr. Owen noted that the only thing that doesn't mirror our lease with Highlands Union is the insurance on the building and the property. The Town carries insurance on the building because of the lease with Highlands Union but doesn't want to transfer that expense burden onto the Chamber. Council Member Bolick questioned Item #12 "*in the event of partial destruction of the leased premises*". Mr. Eggers stated that the Town has the insurance on the building and would receive any proceeds in case of partial destruction, but the Chamber would pay for the repairs. The way it is written is a favorable clause to the Town. Council Member VonCanon motioned to approve the lease as written without Item #12 and since the Town does not have a need for the use of the building or the property for the term of the lease. Council Member Lecka seconded the motion. All were in favor. No one opposed.

### **Consider Contract, ABC Law Enforcement**

Mr. Owen reported that the ABC Board has been working to secure Alcohol Law Enforcement to police and inspect the establishments they sell their products to. He noted that he and Chief Clawson have had several discussions about the potential of the Drug Task Force Officer undertaking this job, contracting with the ABC store and providing that service. Then he is not acting as an officer of the Town. The Drug Task Force is semi-independent, but the Town does manage that position and has jurisdiction throughout the County. Mr. Owen stated that Chief Clawson met with Sara Brewer and members of the Board regarding this and prepared a proposed contract. All parties are happy with the terms of the contract and Mr. Eggers has reviewed it. Mr. Owen noted that the Drug Task Force would be compensated \$12,000 for providing the ABC law enforcement. Sara Brewer addressed council and stated that it is a good opportunity for the Drug Task Force Officer being also an ABC Law Enforcement Officer and is a good fit for the needs of the ABC Board and the community. She also stated that the merger of the ABC store presented law enforcement money which is split three ways (\$1,000 each year to the three towns) and the ABC store will continue to keep that contract. Council Member Von Canon motioned to approve the contract. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Projects Update**

*Dogwood Road Stormwater Project.* Mr. Owen reported that the final layer of gravel has been placed on the road and the contractor will begin paving, laying the first coat of asphalt this week and the second coat next week. The curb and gutter is in along with the storm drains.

*Park Expansion.* Mr. Owen reported that the grant deadline was up June 30<sup>th</sup>. We have 60 days from that date to have the project inspected.

*Greenway Trail Extension.* Mr. Owen noted that discussions have been ongoing between the Town and property owners (those between the caboose and the Mill Pond). The conversations have been positive. The two property owners involved (three parcels) indicated that they are ready for the Town to provide them with easements. Mr. Owen stated that he has talked with Destination by Design who performed the consulting work for this project from the Mill Pond to Best Western. They will provide more of a proposal, cost estimate and construction costs for that section of greenway. Mr. Owen reported that the other Greenway Trail that is being worked on is the stretch going out to Wildcat Lake. The Town has had positive discussions with Grandfather Home for Children about getting around their property and out to the lake. Ted Silver has spoken with people from Lees-McRae and is hoping to get feedback from them. Destination By Design has also given the Town a proposal for the greenway going out to Wildcat Lake.

### **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 the High Country ABC Board Meeting minutes for May 27, 2014, the Planning Board Workshop minutes of July 7, 2014 and the Planning Board Special Meeting of July 8, 2014. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen reported that Mr. Paul O'Connell, who gave a \$20,000 donation last year to the Drug Task Force to help support its operation, gave a \$10,000 donation this year to the Drug Task Force which is greatly appreciated. He asks that council, at some point, recognize Mr. O'Connell for his contribution to the Town.

Mr. Owen reported that the Avery County Comprehensive Transportation Planning Public meeting will be held on July 29, 2014, 4:30 until 6:30, in the Banner Elk Town Council Chambers.

Mr. Owen noted that the High Country Council of Government annual dinner will be held on August 29, 2014. The RSVP date is August 8<sup>th</sup>.

Mr. Owen stated that regarding the Cooke house, the Avery County Inspections Department has been working with one of trustees of the property to get the area cleaned up. The owners' intent is to burn down the house on the property. They are working with the fire department who in turn will contact the Town when this controlled fire will take place. Council member VonCanon hoped that before the fire some of the valuable wood inside the property could be removed. Mr. Eggers noted that since the house is on private property it would have to be the owner's choice whether he would want people on or about the property. The owner would have to give permission. Mr. Owen stated that he has an email and address for the owner if anyone wanted to contact him.

Mayor Lyerly reminded everyone that Heritage Day is this weekend. She stated that she hopes everyone will come. A quilt will be auctioned and tickets are \$5.00 each.

Council member Lecka stated for public record that the 4<sup>th</sup> of July parade and party in the park was awesome. He also noted that the grand opening for the Flat Top Brewery was a success and Nathan was very pleased. Council member Lecka said it was a fabulous weekend for our Town. Mayor Lyerly noted she received and heard of many positive comments from visitors to our area. Council member Dunn added that the police and Town staff did a great job.

At 7:00 p.m. Council Member Bolick motioned for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member VonCanon seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:24 p.m.

### **Other Business**

Mayor Lyerly reported that the Town has a new police officer. His name is Dustin Beam, was sworn in on last Friday and was formerly an officer on Beech Mountain for a number of years.

Mayor Lyerly reported that Charter Communications is undergoing changes effective on or after Tuesday, August 12, 2014. WKPT ABC Channel 8, an out of market channel on the Charter Channel lineup serving our community, will no longer be available. Customers can still view ABC programs on the in-market channel WSOC ABC Channel 9 and Channel 709HD. She noted that the request to drop WKPT was made by the in-market channel WSOC.

Council member Tufts stated that in reviewing the Town's financial reports, the Town collected more money than was expected and spent less money than was expected; thus we ended up with a positive balance for the end of the year.

Council member Tufts reminded everyone of the staff cookout on Friday, July 18<sup>th</sup> and discussed with everyone what was needed in terms of food and miscellaneous items.

Council member Lecka stated that the traffic was backed up coming from Invershiel on Thursday (3<sup>rd</sup>) evening and Friday (4<sup>th</sup>). He noted that it would be nice to have a police officer help direct and move the traffic along at the Town's traffic light. Council member Bolick noted that there were almost 1,000 people at the concert in the park on Thursday evening.

Mr. Owen stated that there is another traffic issue. The traffic was stopped for an hour (+) during the 4<sup>th</sup> of July parade. People voiced their concerns to him regarding this issue. Mr. Owen stated that he spoke to Chief Clawson about this and that next year the Town notify DOT and ask that signs be displayed warning people of the delays during the 4<sup>th</sup> of July parade in Banner Elk. Mayor Lyerly agreed that signs would help along with advertising ahead of time.

There being no further business, at 7:35 p.m. Council Member Lecka motioned to adjourn the July 2014 Town Council meeting. Council Member VonCanon seconded the motion. All were in favor.

**Adjourn**

The Town Council meeting adjourned at 7:35 p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: August 11, 2014