

BANNER ELK TOWN COUNCIL
July 8, 2019
MINUTES

The Banner Elk Town Council met Monday, July 8, 2019 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

Staff present: Town Manager Rick Owen, Cheryl Buchanan, Justin Hodges, and Attorney Four Eggers.

Call Meeting to Order

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

Mayor Lyerly thanked Jo-Ann McMurray and the entire Banner Elk Chamber of Commerce for all the work that went into the Town's 4th of July Parade and the events following. She also thanked Robert and Kimberly Tufts for Art on the Greene and its success. Council Member Lecka thanked the Town staff and Police Department for their work and involvement with the 4th of July events.

Approval of the Minutes

Mayor Lyerly asked for a motion to approve or amend the June 10, 2019 Town Council Minutes. Council Member VonCanon motioned to approve the minutes as written. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Approval of Stated Agenda

Mayor Lyerly asked for a motion to approve 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

Mayor Lyerly recognized Bill Stevenson. Mr. Stevenson stated that he has been very involved with the Town and its Telecommunications Tower Ordinance. He stressed the importance of the word "aesthetics" which appears in the mission statement of the ordinance. Mr. Stevenson expressed his concerns and the effects this Telecommunications Tower Ordinance will have on the Town and the community.

Request to Call for a Public Hearing: Ordinance Amendment -Timing of Permits

Cheryl Buchanan reported that this topic came up during the cell tower case and the meetings that were held last March that lasted 6 hours each. There was much controversy over the timing of permits and the Town's zoning ordinance section on zoning permits, in particular the expiration of permits. She stated that the Planning Board requested legal advice from Attorney Eggers. Ms. Buchanan noted that included in Council's packet is a draft of his recommended changes to Section 1002 Zoning Permit. Attorney Eggers reported that there is a process that a permit goes through. First is the issuance of a decision either by the zoning administrator or by the Board of Adjustment where they decide if the permit will be issued or not. Following that decision there is a period in which the applicant needs to come in and accept the permit and the conditions that are attached to it as part of the Town's process. Attorney Eggers noted what was highlighted by the most recent hearing before the Board of Adjustment, there was some question as to if there are appeals that proceed with this at what point does the period begin to run for the acceptance of the permit. Once a permit has been accepted, statutorily the owner of that permit has a minimum of two years to begin work on that permit and the Board of Adjustment can extend that to a period of up to five years under the Vested Right Statute. Attorney Eggers stated that as long as they keep a building inspection every six months that permit does not expire and continues on until the project is finished. He stated that the proposed issue Council has before them states that once a decision has been issued and the permit is ready, if the owner doesn't come to accept it or sign off on it within 60 days, the permit would then expire and it would have to go again before the Board of Adjustment to essentially start over. Attorney Eggers noted that if a matter is on appeal, the draft Council has before them states that an appeal to the Superior Court stays that period they have to sign the acceptance on the permit under the theory that no one is going to begin work on a project if there is a possibility the court is going to make them tear down whatever was built. This would not just apply to telecommunications towers but also to residential homes, commercial buildings, and any other project that has been permitted by the Town. Attorney Eggers also noted that the Town can't change state law which is a two year vesting period, but the Town can address how long a person has in accepting the permit as presented with the conditions and also whether that period should be held while the case is on appeal. Mayor Lyerly asked for a motion to call for a public hearing at next month's Council meeting. Council Member VonCanon motioned to call for a public hearing for an ordinance amendment on timing of permits. Council Member Tufts seconded the motion. All were in favor. No one opposed.

Request to Call for a Public Hearing: Ordinance Amendment -Telecommunications Tower Ordinance

Cheryl Buchanan noted a change on page 14 (n) of the Ordinance Amendment draft (page 31 in the agenda packet). She noted that the color should be medium gray matte, not light gray. Ms. Buchanan stated that included in Council's packet is an article on new small technology with pictures which was incorporated into the Town's existing telecommunication ordinance and three sources of law that must be followed (federal, state and local) and a Small Cell Application/Permit. She noted that the new small cell technology has a much smaller coverage area than a telecommunication tower. Therefore, more are needed to cover an area and they need to be in sight of each other. They need fiber optic and 5G services. Ms. Buchanan stated that this new technology is coming and through the new ordinance, the Town will be covered. She noted that Attorney Eggers has reviewed the entire ordinance rewrite. Council Member Bolick had two

suggestions of changes: (1) page 31 (agenda packet) “*Guy wires and other support devices shall be no closer than 20 feet from any lot line*”. He asked if the 20 feet could be changed to 200 feet. (2) page 33 (agenda packet), number 5 Fees. “...*processing fee in the amount of \$5,000*”. Council Member Bolick requests that following \$5,000 we add “*and a \$50,000 secured bond to cover the Town of any court costs that they may incur*”. Attorney Eggers noted that he will do some research on this. He noted that there is some case law on whether a town can, by ordinances, assess court costs and attorney fees against an applicant if they are the prevailing party. Council Member Lecka motioned to call for a public hearing for an ordinance amendment on the telecommunications ordinance at next month’s meeting. Council Member Tufts seconded the motion. All were in favor. No one opposed.

Request to Call for a Public Hearing: Ordinance Amendment – Recreational Vehicle Park

Ms. Buchanan reported that the Town has received inquiries regarding this topic. She noted that the Town’s Zoning Ordinance does have a definition for it and a zoning district, but no language or guidelines to regulate its use. Ms. Buchanan noted that included in Council’s packet is Section 926 Recreational Vehicle Park. She stated that Attorney Eggers and the Planning Board have reviewed the document and the Planning Board recommends a public hearing. Council Member Tufts motioned to call for a public hearing on the ordinance amendment for a recreational vehicle park at next month’s meeting. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Consider Equipment Financing

Mr. Owen reported that he doesn’t have all the material ready to present to Council at this evening’s meeting. He noted, however, that the piece of equipment that the Town intends to purchase will be delivered on Wednesday and Town staff will begin training on the street sweeper. As reported at last month’s meeting the Town will fund \$161,000 out of the fund balance and an equipment loan in the amount of \$100,000. Mr. Owen stated that the total cost of the equipment is \$261,000. Mr. Owen stated that he will have a recommendation for Council at next month’s meeting.

Historic Banner Elk School Project Updates

Mr. Owen reported that the summer activities at the school all went well. Ensemble Stage has had two great shows, the 4th of July celebrations went well even though there were rain showers. Council Member Tufts reported that Art on the Greene was a success. Even though there was an overlap Friday night and Saturday night with Ensemble Stage, we worked well together and there didn’t seem to be any problems.

Council Member Bolick reported that the refinishing of the floors in Rooms 10 and 11 are complete. The photographer’s studio moved back into Room 10. Room 11, a new yoga studio, is being painted and worked on. They hope to be open by later July, early August. He noted that the entire building is full; not more spaces to rent.

Manager's Update

Mr. Owen reported that included in Council Member's packets are the planning, zoning, tax collection reports and police report. He stated that if there were any questions regarding these reports to let him or the staff know. Mr. Owen noted that also included in their packets is a copy of the Planning Board Meeting Minutes of July 1, 2019 and High Country ABC Board Meeting Minutes of May 16, 2019.

Mr. Owen reported that he received a request from the Banner Elk School PTO. For the past two years Avery County has put on a "Back to School Bash" at Avery High School. It was an opportunity for students throughout the county to pick up school supplies and offer services to parents and students to prepare them for the upcoming school year. He noted that the Banner Elk School was made aware that Avery County was not going to hold the event this year. They asked if the Town would consider using the grounds of the Historic Banner Elk School to hold the event and again have it open to the entire county. Mr. Owen stated that there was no set date nor any particular plans, although Thursday, August 1st was mentioned. He stated that the school will have to work with Ensemble Stage's schedule and the Farmers' Market. Council Members agreed it was a good idea. Mr. Owen noted that he will work with the Banner Elk School PTO on a date, time and the specifics of the event.

Mayor Lyerly thanked everyone for attending.

At 6:41 p.m. Council Member Lecka motioned for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Council returned to open session at 8:04 p.m.

Other Business

Attorney Eggers reported that Council may want to discuss placing a moratorium on Recreational Vehicle Parks. Council Member Lecka stated, I move that the Town Council find that without the adoption of appropriate standards that Recreational Vehicle Parks constitutes an imminent threat to public safety and health due to concerns over traffic patterns, pedestrian safety, safe septic connections, waste disposal, wildlife nuisances (i.e. attracting bears and other animals), and other elements which need to be properly considered and addressed. An immediate action by the Town Council is not practical due to zoning law requirements of a public hearing which is set for the August 12, 2019 regular meeting of the Town Council. The Town Council is concerned the present proposed regulations and existing regulations are insufficient to address these concerns. Further, no Recreational Vehicle Parks have presently been submitted to the Town Council and Council is unaware of any vested property rights which will be affected by this moratorium. I further move that the Town of Banner Elk adopt a moratorium on Recreational Vehicle Parks within the Town of Banner Elk and its zoning jurisdiction, and further move that such moratorium continue and exist until the conclusion of a special meeting to be expeditiously called for by the Mayor of the Town of Banner Elk following seven days public notice as required by State Statute or at 5:00 p.m. on July 30, 2019, whichever is sooner. During this moratorium, the Planning Board shall reconsider the draft on Recreational Vehicle Parks Ordinance as submitted to the Town Council and the Zoning Administrator shall research the potential risks and public safety hazard posed by Recreational Vehicle Parks. At the Special Meeting referenced above, the Town Council shall

consider whether an extension of this moratorium is warranted and necessary, and if so, extend this moratorium for a period not to exceed a total moratorium period of up to 60 days. I further move that the Town Council find this initial moratorium period is necessary and appropriate in part, due to the fact that publication of the initial public notice cannot run in any newspaper of general circulation until the July 17, 2019 publication date, and that such newspapers are weekly publications and at the time of the adoption of this moratorium the deadline for publication in the July 10, 2019 edition has passed. Council Member Lecka stated that he confirmed that this is the motion he is making. Council Member Tufts seconded the motion. Mayor Lyerly asked if there were any questions. Council Member Tufts asked Attorney Eggers to clarify the timeline with the moratorium, Planning Board's review, Special Meeting, etc. Attorney Eggers stated that that would be the suggested direction we would take at the public hearing. He noted that because the moratorium statute says that we have to move expeditiously, this would call for the Planning Board to meet sometime before then so that we can justify that we are in fact moving quickly to adopt regulations. At the Special Meeting on the 29th Council will then extend the moratorium up to 60 days. Attorney Eggers stated that at this Special Meeting we will lay out a more detailed timeline, receive public comment at the August meeting, Planning Board will meet on such a period and then Council will reconvene again to pass whatever is deemed appropriate, unless you wish to pass regulation following public comment at the August meeting. There being no further discussion, all voted in favor. No one opposed. The motion carried.

Attorney Eggers stated that the motion presented gives Mayor Lyerly the statutory authority to call for a Special Meeting and noted that she may want to discuss with Council any conflicts of the date at this time. Attorney Eggers also noted that the mayor can decree it, but it would require a majority of council to be present for that Special Meeting.

Mayor Lyerly called for a Special Meeting to be held on Monday, July 29, 2019 at 6:00 p.m.

Mayor Lyerly questioned if the Town could resolve the issue of two dilapidated barns which are in Town limits, but on private property. Attorney Eggers stated that they would fall under the category of public nuisance. The barns would have to be structurally unsound. He noted that if it is a condemned structure or a danger to public health or safety then it would be up to the Avery County Building Inspector to require it be removed.

Council Members discussed future art show dates and July 4th being on a Saturday next year. Council Member Tufts stated that he and Kimberly would like to do four Art on the Greene shows in 2020 (May 23rd and 24th, July 4th and 5th, August 1st and 2nd and September 5th and 6th). Council Member VonCanon motioned to have four Art on the Greene shows in 2020. Council Member Bolick seconded the motion. After further discussion, Council Member VonCanon amended the motion to include that the only art shows held at The Historic Banner Elk School property will be Art on the Greene to be held May through September. All were in favor. No one opposed.

Council Members discussed further the 4th of July celebrations for next year, having them in the Town Park and the repair and reinforcement of the bridge.

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

At 8:32 p.m. Council Member VonCanon motioned to adjourn the July 2019 Town Council meeting. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Adjourn

The Banner Elk Town Council meeting adjourned at 8:32 p.m.

Mayor Brenda Lyerly

Attested

Approved: August 12, 2019