

# **BANNER ELK TOWN COUNCIL MEETING**

**July 12, 2021**

## **MINUTES**

The Banner Elk Town Council met Monday, July 12, 2021, at 6:00 p.m. in person for Council and staff with public participation facilitated through remote communication using audio and video connections due to the COVID-19 pandemic.

Council Members present: Mayor Brenda Lyerly, David Lecka, Robert Tufts, and Charlie VonCanon. Mike Dunn was not physically present but joined via audio connection.

Staff present: Town Manager Rick Owen, Town Attorney Four Eggers, Zoning Administrator Cheryl Buchanan, Police Chief Kevin Hodges, and Public Works Director Justin Hodges.

Although not part of staff, Tyler Burr was present and recognized as the Chief of the Banner Elk Volunteer Fire Department.

### **Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular Town Council meeting of July 12, 2021 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.

### **Public Hearing**

Mayor Lyerly declared the public hearing open. The first item was the adoption of the newly codified Town Code of Ordinances. No public comment was forthcoming.

The second item included five (5) Zoning Ordinance amendments. Zoning Administrator Buchanan was asked to speak to each of these. Ms. Buchanan said the first relates to Table 308-2, Dimensional Requirements. Ms. Buchanan said that this was to clarify the original intent of the use of impervious and pervious surfaces. Ms. Buchanan told the Council that originally, the pervious calculation was meant to remain green and protect Banner Elk's green space. However, there are several pervious materials out there that can be used and can diminish the green space Banner Elk was trying to protect. Ms. Buchanan said she was seeking a clarification on how much green space the Town wanted to protect.

The second was Section 311 Procedures for Review of Plans and Applications. Ms. Buchanan said this amendment would allow plenty of time for advertising, getting the materials out and time to review plans for a meeting. As it was, the Zoning Administrator was having a hard time advertising for a Board of Adjustment meeting to be held 2 weeks after the Planning Board meeting. This change will allow plenty of time for everyone concerned.

The third amendment was Section 316 Mobile Food Trucks. This amendment would allow food trucks to use generators on town property during special events. These events generate a lot of noise anyway and would be able to mask the use of generators to a certain extent.

The fourth Amendment was Section 400 Parking. Ms. Buchanan said it was difficult to anticipate every scenario that might come before the board for parking. Ms. Buchanan is proposing an amendment that would allow the Boards to consider special uses individually based on topography, size of property and the use to make a recommendation on parking requirements. A table that would list them individually could be rather lengthy and this runs in conjunction with Section 307 Intent where special uses not listed in the ordinance are given generalized criteria to meet because trying to list every use would be close to impossible.

The last item was Section 708.1.3(e) Screening of Solid Waste Receptacles. Ms. Buchanan said that the ordinance allows for screening to use natural materials and some use of chain link fences. However, there are no considerations given for bear proof materials, namely metal, and in certain areas this is necessary for the protection of the public.

Mayor Lyerly asked if anyone wanted to speak to this. Matt Bagley was recognized. Mr. Bagley said he felt the change to pervious surface calculations was being made based on his proposed plan for a miniature golf course to be located next to his car wash and asked for a special exception. Mr. Bagley said he has spent a lot of money and this change would make it impossible to bring his project to fruition and that other properties in the area exceed the current guidelines of impervious surfaces whether they are grandfathered in or not. Mr. Bagley asked if he could share a screen with the Council. Attorney Eggers said that this ordinance consideration is for the whole of the zoning area, not to a specific site, that this would be a matter to go before the Town Boards. Mr. Bagley was allowed to show his screen of neighboring properties and pointed out several properties that he believes have a maximum amount of impervious surface beyond what the ordinance allows.

With no further comments from the public, the Public Hearing ended.

### **Approval of the June 14, 2021 Minutes**

With no changes noted, David Lecka motioned to approve the minutes as submitted for June 14, 2021. Robert Tufts seconded. The vote was:

Mayor Lyerly – yea

David Lecka – yea

Robert Tufts – yea

Charlie B. VonCanon – yea

Mike Dunn via audio – yea

The vote was unanimous, and the motion carried.

### **Approval of Stated Agenda**

Mayor Lyerly asked if there was a motion to approve the stated agenda. Council Member Charlie B. VonCanon motioned to approve the stated agenda. Council Member Tufts seconded the motion. The vote was:

Mayor Lyerly – yea

David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

### **Public Comment**

No one was signed up for public comment at this time.

### **Adoption of the Newly Codified Town Code of Ordinances**

Motion by Charlie B. VonCanon to approve the adoption of the newly codified Code of Ordinances. Council Member Lecka seconded the motion. The vote was:

Mayor Lyerly – yea  
David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

### **Approval of Ordinance Amendments**

#1. Table 308-2 Dimensional Requirements by District. Ms. Buchanan asked to make one statement for clarification before the vote was taken. Ms. Buchanan said that Matt Bagley alluded to the change being made in the C-2 zoning district when in fact this affects every zoning district. Ms. Buchanan further explained that in any zoning district there is an impervious surface requirement and a pervious surface requirement and none of these are changing. It is the pervious calculation that is being clarified so that whatever the pervious calculation is, 30% of that can be other previous materials and 70% of that must remain green as outlined in the wording of the ordinance. David Lecka asked what that would have been before this proposed change. Ms. Buchanan said that originally the entire amount of pervious surface was supposed to be green but that the way it is worded now, 100% could be pervious materials other than green vegetation. This change allows applicants to use 30% of their pervious calculation with materials such as pervious pavers, and the 70% would be green vegetative materials.

David Lecka motioned to approve this amendment effective 30 days from today to allow Mr. Bagley time to present his project. Attorney Eggers stated that if someone has invested a lot of time and money into a project, then the ordinance allows for them to have a vested right under the guidelines of the ordinance before it was amended. However, this would be determined by review of the facts, circumstances, and case law. Seconded by Robert Tufts. The vote was:

Mayor Lyerly – yea  
David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

#2. Section 311 Procedures for Review of Plans and Applications. No discussion and motion by Charlie B. VonCanon with a second by David Lecka. The vote was:

Mayor Lyerly – yea  
David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

#3. Section 316 Food Trucks. No discussion with a motion by Robert Tufts and a second by Charlie B. VonCanon. The vote was:

Mayor Lyerly – yea  
David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

#4. Section 400 Parking Requirements. Mike Dunn asked about parking requirements that are already established and would this affect them. Ms. Buchanan answered that the current requirements would remain the same and this affected special use permits only. Charlie B. VonCanon motioned to approve with a second by David Lecka. The vote was:

Mayor Lyerly – yea  
David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

#5. Section 708.1.3.(e) Screening of Solid Waste. Mike Dunn asked if people were given time to change over to the bear proof screening. Ms. Buchanan said this was for those properties that experience a lot of activity with bears. Motion by David Lecka to approve with a second by Robert Tufts. The vote was:

Mayor Lyerly – yea  
David Lecka – yea  
Robert Tufts – yea  
Charlie B. VonCanon – yea  
Mike Dunn via audio – yea  
The vote was unanimous, and the motion carried.

**Resolution Accepting American Rescue Plan Funds**

Town Manager Rick Owen stated that the American Rescue Plan Fund is still allocating money back to communities with uses still yet to be determined. It appears that Banner Elk could receive approximately \$366,000 allocated over the course of two payments. Motion to approve the Town

Manager to accept the funds on behalf of the Town by Robert Tufts and a second by Charlie B. VonCanon. The vote was:

Mayor Lyerly – yea

David Lecka – yea

Robert Tufts – yea

Charlie B. VonCanon – yea

Mike Dunn via audio – yea

The vote was unanimous, and the motion carried.

### **Preliminary Plat – Red Fox Meadows**

Zoning Administrator Cheryl Buchanan told the Council that this was previously approved in 2018. During the time since, there were some problems obtaining permits from various environmental agencies and then COVID hit and it was difficult to get anyone to do any work, so the two-year vested right expired. The new plat has 14 lots as opposed to the original 11 lots with the 3 additional lots in the upper portion where it is flat. Ms. Buchanan said that the road had to be tweaked to meet the engineer's expectations on the project. Manager Rick Owen mentioned that there is one section of the road in one of the curves that only has a 70-foot right-of-way as opposed to the 90 feet required. Mr. Owen also pointed out that the curves going up the Beech Mountain Parkway are only 45 feet wide as a matter of comparison. Ms. Buchanan mentioned that the roads do not exceed 15% grade. Tyler Burr was asked if the fire department would have any problem on these roads. Mr. Burr asked if it would be gated? Ms. Buchanan said she was not sure but if it is they would have the proper access needed. Mr. Burr said he would like to see a siren activated unlocking mechanism to avoid problems with changed codes that are not reported. Ms. Buchanan said she is on the Avery County Planning Board and knows that the County requires a Knox-box for entry into gated communities. Tyler Burr said that could work. Motion by Charlie B. VonCanon to approve the preliminary plat. Second by David Lecka. The vote was:

Mayor Lyerly – yea

David Lecka – yea

Robert Tufts – yea

Charlie B. VonCanon – yea

Mike Dunn via audio – yea

The vote was unanimous, and the motion carried.

### **Art on the Greene Show Dates 2022**

Robert Tufts said the artists have asked for the dates for 2022 shows to plan for next year's shows. The proposed dates are in your packets. Motion by David Lecka to approve the proposed dates for 2022 with a second by Charlie B. VonCanon. The vote was:

Mayor Lyerly – yea

David Lecka – yea

Robert Tufts – yea

Charlie B. VonCanon – yea

Mike Dunn via audio – yea

The vote was unanimous, and the motion carried.

**Manager Update**

Town Manager Rick Owen stated that the only item he has is a reserved date for the public to meet Senator Warren Daniel and House Representative Dudley Green at Lees-McRae College on July 23, 2021, between 6:30 and 7:30 pm.

**Closed Session**

Motion by Charlie B. VonCanon at 6:50 to go into closed session with a second by David Lecka. The vote was:

- Mayor Lyerly – yea
  - David Lecka – yea
  - Robert Tufts – yea
  - Charlie B. VonCanon – yea
  - Mike Dunn via audio – yea
- The vote was unanimous, and the motion carried.

**Back into Regular Session**

Motion by Charlie B. VonCanon with a second by Robert Tufts at 7:10 to go out of closed session and back into regular session. The vote was:

- Mayor Lyerly – yea
  - David Lecka – yea
  - Robert Tufts – yea
  - Charlie B. VonCanon – yea
  - Mike Dunn via audio – yea
- The vote was unanimous, and the motion carried.

**Other Business**

Town Manager Rick Owen brought up two parcels between the Town of Banner Elk’s Extra Territorial Jurisdiction (ETJ) and Sugar Mountain’s ETJ that belong to neither entity. This means that there is no zoning on either parcel. Mr. Owen also mentioned that the larger tract is 22+ acres. Manager Owen said that someone should extend their ETJ to cover that area. The Town Council asked the Town Attorney what is involved in the process. The census of the council was for Banner Elk to investigate and possibly pursue taking these two (2) lots into our ETJ.

**Adjourn**

The Banner Elk Town Council meeting adjourned at 7:30 p.m. with a motion by Charlie B. VonCanon and a second by David Lecka.

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Mayor Brenda Lyerly

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Attested

Approved: August 9, 2021