

BANNER ELK TOWN COUNCIL
June 10, 2013
MINUTES

The Banner Elk Town Council met Monday, June 10, 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, Charlie VonCanon, Allen Bolick, David Lecka and Robert Tufts.

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

Others present: Rebecca Bolick, Anne Carriere, Tom Eggers, Derek Goddard, Tim Holmes, Tom McMurray, George Meyer and brother, Art Neuberger, Ted Silver, John Wright, Penny VonCanon, and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for June 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: Rezoning Request

Mayor Lyerly opened the public hearing and asked Cheryl Buchanan to present the request. Ms. Buchanan reported to council that the town received an application from George Meyer. Mr. Meyer owns a parcel in the Silver Springs Farm Subdivision with a remodeled barn which he uses as a sales office. He would like to rezone this residential piece of property to commercial. It is currently zoned R-2 and wants it rezoned to C-2. Ms. Buchanan stated that Mr. Meyer is also represented this evening by his attorney, John Wright. Mr. Wright stated to council that per tax records the remodeled barn has been in town since 1952 and had commercial status. It is used for business and adjacent to it are other commercial properties zoned C-2 (i.e. the self-storage building). Mr. Wright noted that we are expanding the existing commercial use but not changing anything. Mayor Lyerly asked if anyone wanted to speak regarding this matter. Council member VonCanon stated his concern on parking and asked if there was enough parking to allow eight office spaces to go into the building. Mr. Wright stated that there was ample parking and there is room to expand if necessary and if the zoning ordinances required it. Mayor Lyerly called upon Anne Carriere who asked to speak at this public hearing. Ms. Carriere stated that she owns the property that directly shares the line with the property in question and is opposed to the rezoning. She is opposed at the way the town is nibbling away at their residential neighborhood for no other reason than for the resale of the building. She noted that there have been several businesses in that building over the years and it directly impacts us as neighbors.

Mayor Lyerly asked if there were any further questions. There being no further discussion, Mayor Lyerly closed the public hearing.

Public Hearing: 2013-2014 Budget

Mayor Lyerly opened the public hearing. Mr. Owen gave a 4-slide presentation providing an overview of the budget. He noted that this is the state statute regulatory public hearing that town council has to have for the budget each year. Mr. Owen stated that the general fund covers the general operating costs for the town and noted the proposed tax rate of \$.42 for each \$100 of valuation this year. It is a 4 cent tax rate increase over the past seven years. The tax valuation for the town is \$246,453,082. Mr. Owen reported that inside the budget are major purchases and projects that the staff would like to ask the council to entertain this year: replacement of two trucks and a police patrol car, four bridges needing repair, the conversion of the town's sidewalk lighting to LED lighting which we anticipate a 50% cost savings on electricity and a major cost savings on repair and replacement of the lights. Mr. Owen reported that in the water and sewer fund we anticipate the revenue and expenditures to be \$538,230. He noted that this is a decrease from last year based on current year revenue. A rate increase is needed in this fund, but not proposed at this time. He reported that salaries and benefits are a large portion of the town's budget and as presented, the budget maintains current staffing levels with one change. The town has a part time maintenance position which we are requesting to change to full time. The proposed budget includes a 1.9% cost of living increase. Mr. Owen noted that this will be the first year that council will be budgeting for post-employment benefits relating to police department retirement. The town council has two budget workshops scheduled for June 11th and June 25th, both at 5:30. Mr. Owen stated that the budget does need to be adopted by July 1 and that the staff is working diligently in getting all information out to council. Mayor Lyerly asked if anyone had any questions regarding the budget presentation. There being no comments, Mayor Lyerly closed the public hearing.

Approval of the Minutes

Mayor Lyerly asked council for a motion to approve the May 2013 minutes. She asked if there were any changes. Council member VonCanon stated that on page six, paragraph 4 the application fee should be paid to the *town*, not the *county* as written. Mr. Owen noted that he was correct. Council member VonCanon also stated that the wording needs to be changed in the same paragraph: "*but thinks that we should*" to "*but thinks that town council should*". Mr. Owen noted to the mayor that there was one other change and that was Steve Smith was not present at May's meeting, so his name will be deleted under *staff present* from the minutes. Council member Bolick motioned to accept and approve the minutes as amended. Council member Tufts seconded the motion. The May 2013 minutes were approved with all in favor and no one opposed.

Approval of the Stated Agenda

Mayor Lyerly asked council if there were any additions or changes to the stated agenda. Council member Draughon made a motion to approve the June agenda as stated. Council member Lecka seconded the motion. The stated agenda passed with all in favor.

Public Comments

Mr. Owen noted that the two who signed up to speak (Anne Carriere and John Wright) have already spoken.

Rezoning Request

Mayor Lyerly asked Ms. Buchanan if she had anything else to add that wasn't stated at the public hearing. Council member Lecka asked if there was any buffer between Mr. Meyer's property and the Carriere property. Ms. Carriere responded that there are trees. Council member Lecka also asked if this property has been a sales office since the beginning of the development. Mr. Wright responded yes. Mayor Lyerly asked how many businesses will be in the cabin or how many offices for one business. Mr. Wright stated that there are eight offices that could be used and Mr. Meyer is planning on selling the building so he is not sure how it will be used. Ms. Buchanan cautioned council that they aren't voting on office spaces but on a C-2 rezoning of this piece of property. Council member Bolick asked if they had any concern of devaluating the adjoining properties if someone else came in and did something else with the property. Mr. Wright stated that Silver Springs subdivision is almost sold out. Once this occurs, that building may be in violation because it would no longer be a sales office and the building is not suitable for a home. Mr. Owen told council that all the adjoining property owners were notified of the rezoning request and Ms. Carriere's concerns are what might happen to the property. Mr. Owen asked Ms. Buchanan to go over the list of things that could go in where the subject property is located once it is rezoned to C-2. Mr. Owen wants council to be aware of this before going forward. Ms. Buchanan read the list of permitted conditional uses in a C-2 zone. Mr. Owen stated that the list is quite extensive. Mayor Lyerly asked if the planning board addressed this item. Council member VonCanon addressed council stating that the planning board recommended that council look at this item more closely. He also noted that the building in question is on Old Turnpike Road which used to be the only road into Banner Elk from Elk Park. On that very road was a lawyer's office, grocery store, a home that took in boarders, etc. He stated that we should consider more commercial businesses in Banner Elk, a better opportunity for economical development. He also stated that he has commercial property next to his home and it hasn't been a problem. Council member Tufts asked if there was any other C-2 in that area other than the mini-storage. Ms. Buchanan stated that the only other one is down the road, the Elk River Sales office. She also mentioned that on the other side of Carriere's is the substation and along that street there is a Bed & Breakfast and Bill Dick's sign shop. Council member Tufts asked if it is customary for a development like Silver Springs, when it is built, to make part of it a sales office even though it is R-2. Ms. Buchanan stated that it has been done in the past as in Crooked Creek. She also noted that the property in question was originally lot #1 of Silver Springs development and they asked and the board of adjustment permitted it as a conditional use. Mayor Lyerly asked if there was a motion to approve the rezoning request from R-2 to C-2. Council member VonCanon made a motion to approve the rezoning request provided they work with the town in doing everything that is required according to the square footage of the building. Council member Bolick seconded. Council members Bolick, VonCanon, Draughon and Lecka voted in favor. Council member Tufts opposed. The motion carried.

Resolution – Mountain Electric Greenway Easement

Mr. Ted Silver addressed council. He noted that in their packet was a resolution which he drafted requesting that the town of Banner Elk support the concept of Mountain Electric allowing a multipurpose greenway along the easement which they will be negotiating from Sugar Mountain to the Banner Elk substation. He noted that this same resolution is sitting in the hands of Beech Mountain, Sugar Mountain and Seven Devils. Mr. Silver stated that he has received indications that they all find it favorable. It is a resolution that shows that council supports the benefits and the purpose that a multimodal greenway can provide economical and regional benefits in both summer and winter. Mayor Lyerly asked which way Mountain Electric was leaning. Mr. Silver stated that he spoke with two of the three trustees that cover this area. They said it sounded like a good idea but their basic concern is how the property owner will respond to the concept. Mountain Electric cannot sublease or sub-grant the easement for the greenway. It will have to be negotiated with the property owner. Mr. Silver stated that this concept is not unique to our area. Greenways produce increased property values and economical benefits. Council member Draughon stated that she has a poor understanding of the 475 to 500 ft. Mr. Silver said that Mountain Electric is looking at 500 ft. in their survey but they are only going to take 75 ft. for their easement and we are only going to be asking for about 15 to 20 ft. of that 75 as a dedicated greenway. Council member VonCanon asked if this multimodal greenway he is considering is it substation to substation, the whole distance. Mr. Silver stated yes which includes property that Mountain Electric already owns. Council member Lecka asked if this would connect with the town's greenway at any spot or is it still to be determined. Mr. Silver responded that it still needs to be determined. Mayor Lyerly asked if the other municipalities showed interest in this resolution. Mr. Silver stated that they showed interest and support. He also stated that the resolution was also given to the Avery County Commissioners and it is on their agenda for June 17th. Mayor Lyerly asked if there was a motion to support the resolution. Council member VonCanon made a motion to submit this resolution supporting the Mountain Electric Greenway. Council member Tufts seconded the motion. All were in favor. No one opposed.

Park Project Update

Mr. Derek Goddard addressed council. He reported that Eggers Construction did a wonderful job in getting the park back in shape following the town's recent flood. He noted that the asphalt is down and is being used by folks using the park. The steps are in going up to the picnic shelter. If you go up the steps, the last step (top step) is where the pad will be for the picnic shelter (about 4-5 ft. below where it is now). The soil there now is surcharge material which adds more weight and compaction. We are monitoring it, watching for settlement and once the settlement has stopped, the surcharge material will be scraped away. Mr. Goddard stated that he has had two walk-throughs with Eggers Construction and gave them a punch list of twelve items. Their estimate is a week of good weather (which has been hard to come by) to get the items completed (i.e. a lot of fine grading to do on the site, maintain drainage and ensure drainage, concrete to pour, etc.). Mr. Goddard asked if anyone had any questions. Council member VonCanon asked about building materials being hauled onto the site for the construction of the shelter. What will it do to the already laid pavement? Mr. Goddard stated that plywood will be laid down to protect the pavement if needed. It will be protected. Mayor Lyerly asked if there were any other questions. No action was taken.

Consider Bids for Park Shelter

Mayor Lyerly asked Derek Goddard to speak about the bids for the park shelter. Mr. Goddard stated that the last time he addressed council, he asked that the bids be rejected from last fall and rebid the project under a new configuration in hopes of achieving a lower price for the town. We removed the renovation of the old bathrooms in the existing building. Three bids were received:

Bid #1 – Mountain Craft Construction	\$199,000
Bid #2 – M&M Construction	\$200,000
Bid #3 – Tom Eggers Construction	\$190,819

Mr. Goddard stated that he reviewed all the bids and the apparent lowest bidder, Tom Eggers Construction, making sure all required issues were addressed (i.e. bond information, insurance, etc.). He along with town staff is recommending that Tom Eggers be awarded the bid for the park shelter and advises legal council to begin drafting contract documents to proceed with the contract with Tom Eggers Construction for the construction of the park shelter. Council member Tufts asked when might be the earliest date they can start construction, how long the process will take and when will it be ready to use. Mr. Goddard reported that the contract date was 175 days from the notice to proceed. Mr. Goddard thinks within a month. Mayor Lyerly asked if there was a motion to recommend that we award the contract to Tom Eggers Construction LLC. Council member Tufts made the motion to approve the lowest bidder. Council member Draughon seconded. All were in favor. No one opposed.

NCDWR Grant Proposal

Mr. Owen addressed council with some background information. He stated that as shown in the proposed budget, he is recommending to council that we go forward with the Dogwood Road project and is asking for budget funds for that project. Therefore, anticipating that this project will be in the budget, Derek Goddard will present to you a proposal for funding the Dogwood Road project. Mr. Goddard reported to council that we keep our eyes and ears open for potential funding sources. The Division of Water Resources here in North Carolina is a funding source in which our firm has had good success. The problem with this agency, as with all agencies, is that they have had a decrease in funding in recent years. Mr. Goddard noted that a benefit is where matching funds are available they require a 50% matching funds requirement. Where matching funds are available they can fund smaller projects. And since council is thinking about budgeting for the Dogwood Road project we thought it would be a good opportunity to seek out these funds. Mr. Goddard stated that the resolution council has before them is for \$119,000 or 50% of the total project cost for two projects: the Dogwood Road project and the repair/retrofit of the existing storm water vaults at the old elementary school property. Our goal is to seek out those funds for the Town of Banner Elk. Mayor Lyerly asked if there was a motion to proceed with the grant proposal. Council member VonCanon made a motion to support pursuing the grant. 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 a draft of the minutes of meeting from the Banner Elk Board of Adjustment, Preserve America Committee and the minutes of the High Country ABC Board. Mr. Owen asked council if there were any questions.

Mr. Owen handed out an application that Ms. Buchanan received from Art Neuberger. He noted that Mr. Neuberger has applied for the position as an ETJ alternate on the Board of Adjustment. Mr. Owen stated that his nomination will have to be approved by the county commissioners, but will also need to be passed by you before we send it to the commissioners. Ms. Buchanan reported that Mr. Neuberger has prior experience in this field and is also a former mayor when he lived in Florida. Mr. Neuberger introduced himself to council and stated that he is familiar with the board of adjustment and not only a former mayor but served also as a city councilman and county commissioner. Mayor Lyerly thanked him for his interest in this board. Mr. Neuberger stated that he is a newcomer in the area (less than two years) and wants to use his talents and help the town as much as he can. Council member Tufts made a motion to recommend Mr. Neuberger to the county commissioners as a candidate for the board of adjustment ETJ alternate. Council member Draughon seconded. All were in favor. No one opposed.

Mr. Owen reminded council of the two budget workshops that are scheduled for June 11th at 5:30 p.m. and June 25th at 5:30 p.m. If council so wishes to schedule additional workshops to let him know.

Mr. Owen reported that he was approached by Mark Meadow's office to inform our council of an opportunity to meet with him. He is on the Committee for Oversight and Government Reform and will be in our area on Friday, June 21st at 9:30 a.m. at the Mitchell County Courthouse. That committee will be holding sessions on mining safety.

Mr. Owen gave council an update on the flood damage. He stated that staff is continuing to do repair work and has spent a solid two week period just related to flood damage. The park is somewhat back to normal. The town has ordered new mulch for the playground areas and sand for the volley ball court. Most of the debris has been cleaned up. The town still needs to repair the paving at Floyd Ramsey's. Mr. Owen also noted that there are culverts and catch basins that need to be paved around. One major project in Apple Orchard has still not been addressed. The town will have David Poore look at it and give the town a report and description of what needs to be done so that we can get competitive bids. He wants to make sure that all pricing is the same. Mr. Poore is estimating that the repair work will be in the \$5,000 range to repair the sidewalk. Mr. Owen noted that the town has already spent approximately \$5-7,000 in materials (gravel, fill, etc.) related to the flood. He stated that the biggest problem that still remains is the project at Highlands Drive. Eggers Construction was responsive enough to be there when the town needed them immediately. The road has continued to cave in small portions and we are now convinced that we are going to have to remove the entire road to determine the damage to the culvert and repair or replace it. Mr. Owen reported that the estimate he received, which will be discussed at the budget workshop, is \$88,000. Mr. Owen will ask David Poore to look at the project and give his estimate.

Council member VonCanon asked if the town was planning on putting a pump down the culvert to help expedite getting the water out of that area. Mr. Owen stated that the subject has been discussed, but we don't have a pump large enough to make that big of a difference. He also stated that another concern with the settling road is the water and sewer lines that also run alongside that road. Gravel has been packed along the downhill side of it which has helped stabilize it and allows the road to remain open and passable. Council member Tufts asked if there was grant money for the repair of bridges. Mr. Owen stated that there was not or nothing that he is aware of.

Mayor Lyerly asked if there was any other business.

At 7:10 p.m. council member VonCanon motioned to have council proceed to closed session pursuant to NCGS 143-318.11 (a)(3). Council member Bolick seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:22 p.m.

Other Business

Mr. Owen stated to council that he and Chief Clawson have had several conversations and would like feedback from council. Mr. Owen reported that the police department currently has a police commissioner and doesn't know the history behind the police commissioner. Mayor Lyerly stated that Richard White appointed Joe Perry many years ago. Attorney Eggers noted that there is no statutory position of a police commissioner, so that position does whatever the town wants him to do. Mr. Owen reported that Mr. Perry is listed as a reserve officer for the town so the town carries the same liability for the commissioner as other reserve officers.

The council discussed workers comp and liability insurance as it related to reserve officers with the police department.

At 7:43 p.m. Council member Lecka made a motion to recess the June meeting until June 11th at 5:30 p.m. for a budget workshop. Council member Tufts seconded the motion. All were in favor

Adjourn

The town council meeting adjourned at 7:43 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: July 8, 2013