

# BANNER ELK TOWN COUNCIL

**June 8, 2015  
MINUTES**

The Banner Elk Town Council met Monday, June 8, 2015 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

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

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

## **Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for June 2015 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.

## **Public Hearing (Proposed 2015-2016 Budget)**

Mayor Lyerly opened the Public Hearing for the proposed 2015-2016 budget.

Mr. Owen reported that he prepared a Budget Message which he read to Council Members and those present:

*Presented for your consideration is the proposed budget for the Town of Banner Elk for Fiscal Year 2015-2016. This budget has been prepared in accordance with the provisions of the Local Government Budget and Fiscal Control Act.*

## **General Fund**

*The proposed tax rate for fiscal year 2015-2016 is .54 cents per \$100 of valuation. This is the same rate as last year. The rate is based on a tax base valuation of \$194,757,283.00 and a 95% tax collection rate. Each penny on the tax rate generates \$19,462.*

*While we are not recommending a tax increase this year we continue to monitor the potential need in the near future. With continued uncertainty of the future of sales tax distribution we are not recommending any new projects in the general fund.*

*The most notable change in the General Fund this year is the defunding of the Drug Task Force which will mean the loss of a position. This position performed law enforcement work related to illegal drug activity throughout the County. This department received funding from outside sources in addition to funds and management from Banner Elk. With one large contributor dropping their contribution it left Banner Elk with the potential of a large increase in our portion*

*of the cost. There is strong community support for this important position but it is my belief that we must find a way to stabilize the cost to the Town.*

*We have added a new department in the General Fund, the Historic Banner Elk School. This department is for the operation of the school property. The expenses in this department will reflect the operational cost such as utilities. The revenue shown in the general fund to offset these expenses will be from property rental, including both building space and outdoor space. It is anticipated that we will be able to cover the expenses with this revenue.*

*Council will see a request to purchase a new patrol vehicle in the General Fund.*

*The total General Fund revenue/expenditures are projected to be \$1,629,564.*

#### **Water and Sewer Fund**

*Water and Sewer Fund revenue/expenditures are projected to be \$611,600. After our rate restructure last year we have seen approximately a 15% increase in our average revenue from our per gallon charges. We continue to see the effects of low revenue from impact and availability fees related to new construction. The water and sewer fund is an enterprise fund and, as such, must meet certain revenue requirements to remain solvent. The proposed budget recommends a \$3.00 increase to our base rates for both water and sewer services. Our current base rate is \$15.00 for water and \$15.00 for sewer. The proposed rate would be \$18.00 for water and \$18.00 for sewer.*

#### **Historic Banner Elk School Project Fund**

*This fund is new this year and reflects the debt payment to the County for the purchase of the school property. The revenue sources for this fund include public donations and funds borrowed from the General Fund Capital Reserve. The debt payment is \$83,333.00. The proposed budget indicates \$10,000.00 in donations and a loan of \$73,333.00 from the capital reserve.*

#### **Salaries and Benefits**

*Employee benefits are proposed to remain the same.*

*The Town provides health insurance to fulltime employees. The Town saw a 9.5% decrease in health insurance premiums. Employees are covered by a vision and dental policy and a life and disability policy paid by the Town.*

*The Town offers a 6% 401K match to employees who invest in the 401K program. Law enforcement employees receive an additional 5% State mandated 401K contribution from the Town.*

*A 2% pay increase is recommended for Town staff. Of this 2%, .5% would go to cost of living adjustment and 1.5% would be a rate of pay increase.*

*I look forward to your review and public input on the proposed budget for FY 2015-2016.*

Mayor Lyerly called upon Nancy Morrison. Ms. Morrison reported that she represents DART (Drug Abuse Resolution Team) and also the citizens of Avery County. She stated that we can't lose the Drug Task Force. She gave a history of DART which was established in 2002 and addressed the drug problems in Avery County, the Drug Treatment Court which is in place because of DART and the need for drug enforcement. Ms. Morrison encouraged and asked Council to amend the Town's budget to put the funding back into the Drug Task Force. She noted that DART is working at coming up with the shortfall of funds needed for the Drug Task Force. Mayor Lyerly thanked Ms. Morrison and all of DART's efforts.

Mayor Lyerly called upon Fred Schmitt. Mr. Schmitt addressed Council stating that he lives at 158 Bear Cub Lane in Banner Elk. He stated that he has no comment about a specific budget line item, but does have a general comment about the budget process. Mr. Schmitt encouraged Council to consider adopting a formal policy on the use of the fund balance. He noted that the Town should not use the fund balance for recurring expenses. Mayor Lyerly thanked Mr. Schmitt and stated that Council is very frugal with the Town's fund balance and is very confident with our Town Manager.

Mayor Lyerly called upon Mari-Liis Smyth. Ms. Smyth stated that she was disappointed when Council returned the sidewalk money without having finished the sidewalk in front of Bank of America. She noted that she slid down the bank on front of the bank. It would be good if there was a sidewalk at that location. Mayor Lyerly thanked Ms. Smyth and noted that Council will take her comments under advisement.

Mayor Lyerly asked if anyone else would like to speak in regards to this subject. There being no further comments, Mayor Lyerly closed the Public Hearing at 6:15 p.m.

### **Approval of the Minutes**

Mayor Lyerly asked if there was a motion to approve the May 11, 2015 Town Council meeting minutes. Council Member Bolick motioned to approve the minutes. Council Member Tufts seconded the motion. All were in favor. No one opposed.

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

Mayor Lyerly asked if there was a motion to approve the June agenda. Council Member Dunn motioned to approve the agenda as written. Council Member Lecka seconded the motion. All were in favor. No one opposed.

### **Public Comments**

Mayor Lyerly introduced Ted Silver. Mr. Silver stated that as Chairman of the Bicycle Committee, he reminded those present of an upcoming public workshop to be held on June 16<sup>th</sup> at the Caldwell Community College Campus in Boone. The NCDOT is wanting public feedback on the designs for wider lanes for bicycles on Highway 105 from Linville to 105 By-Pass. Mr. Silver stated that as Chairman of the Historic Banner Elk School Fund Raising Committee, he thanked everyone for supporting their efforts at the first Arts on the Greene. He noted that they had an information booth at the event. Pamphlets were passed out, people made inquiries and

donations were received. He noted that they plan on doing this at every Town event this summer. Mayor Lyerly thanked Council Member Tufts and his wife, Kimberly, for organizing the art show. It was a success and a lot of work went into it.

Tom McMurray addressed Council. He stated that for the record, this Council has shown the greatest respect and cooperation towards everyone that has come before them at Council meetings. Mr. McMurray also thanked Rick Owen who demonstrates professionalism on a daily basis. Mayor Lyerly thanked Mr. McMurray.

### **Call for Public Hearing – Amend Telecommunications Tower Ordinance**

Cheryl Buchanan addressed Council. She reported that the Planning Board is recommending adding amendments to this ordinance. The changes, which Attorney Eggers has reviewed, are defining wooded lot and the size of the wooded lot. Ms. Buchanan noted that the area where the cell tower shall be located will have to be 3 acres of wooded area consisting of mature tree growth sufficient to conceal or screen the tower itself. The ordinance is also requiring that the cell towers be disguised as trees which will reduce the impact it has on the neighborhood. Attorney Eggers addressed council stating that the reasons for the smaller lot size (3 acres vs. 4 acres) was that all the other requirements in the ordinance such as setbacks and building site foot prints also have to be looked at. One of the requirements of state law is you cannot ban towers in a jurisdiction. It cannot be an expressed ban nor can it be an implied ban. If you consider all the terms of the ordinance it would restrict all possible sites for a cell tower which would make the ordinance subject to attacks. Council Member VonCanon stated that perhaps three acres would better be defined by square footage bringing up land owners, cell tower companies and looking out after everyone's interest. Attorney Eggers stated that if we look at it in a square footage perspective it is very difficult to find a number of lots in Town that fit the precise square. The Town has certain setbacks which states that the tower has to be at the edge of the property. Mr. Eggers noted that the concern of the Planning Board is since we are requiring the tower to look like a tree, we want it to blend in with other trees and that whatever acreage you deem to be appropriate to meet that balancing test that it would have other trees to fit in with. We need to consider all the terms of the ordinance as a whole so we won't be too restrictive on what we are looking at. We have considered the acreage requirements along with the setback requirements and the site sizes. That is how the ordinance will be viewed. Mr. Eggers noted that if we go too far with such an ordinance, we run the risk of challenging its validity. Council Member Tufts questioned the term *Wooded Lot* which calls for 50 percent of the trees shall be a minimum of 35 ft. in height. Attorney Eggers stated that he would interpret it as of the day of its adoption. The Planning Board didn't want a large tree looking tower in the middle of a Christmas tree field. If the tower was 50-100 feet tall, they would want half of the trees to be at least 35 ft. tall. When mapping out the area for a new tower, the trees have to already exist. Mayor Lyerly asked if there were any other questions. Council Member Tufts motioned to call for a public hearing at the July 2015 Town Council meeting. Council Member VonCanon seconded. All were in favor. No one opposed.

### **Call for Public Hearing – Amend the Zoning Ordinance – Section 704 Buffer Yard**

Cheryl Buchanan reported that the purpose of a buffer yard is to provide a transitional area between uses; two different zoning districts. A buffer yard is used to screen, for example, a residential area from a commercial area. Over the years, many of the buffers that have been put in place, such as white pines and hemlocks, have died out, become diseased or are overgrown. Ms. Buchanan noted that the Planning Board would like to input new language in the ordinance

which would require buffer yards to use a mix of evergreen, deciduous trees and shrubs. She stated that also the new language would state that buffer yards are to be maintained and any dead plants be removed and replaced as weather permits. Council Member VonCanon noted that under paragraph (a) it reads that a six foot fence be constructed of masonry. He thinks that phrase should be defined a bit more; cement block, brick, stucco, etc. Ms. Buchanan stated that it is covered in another section of the ordinance that the Town doesn't permit exposed concrete blocks. It must be covered with stucco or rock. Mayor Lyerly asked if there were any other questions. Council Member Lecka motioned to call for a public hearing at the July 2015 Town Council meeting. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Call for Public Hearing – Amend the Zoning Ordinance – Section 600 Signs**

Cheryl Buchanan reported that the Planning Board received a request from Lees-McRae College to change their marquee in front of Hayes Auditorium. They want to bring it into conformance with the Town's ordinance and to update the look to a digital display. The Planning Board has concern over these types of signs in Town, but is willing to work with Lees-McRae on this issue. She noted that the ordinance will need to be amended to permit a digital sign. Ms. Buchanan noted that this type of sign would only be permitted in the M/E (Medical/Educational) and G/O (Government/Office) Zoning Districts. She stated that the ordinance will be revised to include the addition of two definitions: *Electronic/Changeable Copy Sign* and *Nit* (measure of light). Under Section 606(b) the word *with* will replace *or*. Ms. Buchanan noted that the ordinance will not permit moving messages. Under Section 607 Exempt Signs, a paragraph was added to permit only static signage. The message can only be changed every 24 hours, the background must be black, the lettering white and the Town is asking that the sign be turned off at 11:00 p.m. each night. Council Member Tufts asked why the use of the term Nit versus Candela. Attorney Eggers stated that his understanding is that a candela is a measure of luminescence and a nit covers the area to be affected by that. He noted that Nit is a more technically accurate definition than Candela. Mayor Lyerly asked Council for a motion. Council Member VonCanon motioned to call for a public hearing at the July 2015 Town Council meeting. Council Member Bolick seconded the motion. All were in favor. No one opposed.

### **Amend Fee Schedule for Privilege License Taxes**

Cheryl Buchanan reported that in 2014 the NC General Assembly repealed the Class B Privilege Licenses effective this tax year. The only items that were not repealed were taxis and those holding an ABC permit. Ms. Buchanan noted that the Town now collects approximately \$3,500 a year, but this new tax year will only collect \$585 a year. The Fee Schedule needs to be adjusted to reflect this new legislation. Ms. Buchanan reported that there is legislation in the State House which would allow state municipalities and cities to collect a Business Registration Tax which would be approximately \$50 per business. Mayor Lyerly stated that the purpose would be to help cities maintain a data base of businesses which she feels would be a good thing. Mayor Lyerly asked Council if they had any questions. Council Member Bolick motioned to amend the Fee Schedule for the Privilege License Tax. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Discuss Bonding of Council Members**

Mr. Owen addressed Council. He reported that he spoke with the Town's auditor who spoke with the School of Government regarding the bonding of Council Members whose names are on the Town's signature cards with the bank. It is something that we should be doing. The auditor is recommending a \$10,000 bond for the three Council Members (Mayor Lyerly, Council Member Bolick and Council Member VonCanon). Mr. Owen noted that the Town requested a quote from the NC League of Municipalities. It is anticipated that it will cost the Town approximately \$100 per \$10,000 of coverage per Council Member. Mr. Owen recommends Council approve the bonding of the three Council Members. Mayor Lyerly asked Council if they had any questions. Council Member Tufts motioned to approve the \$10,000 bond. Council Member Lecka seconded the motion. All were in favor. No one opposed.

### **Consider Budget Amendment – Manhole Repair**

Mr. Owen reported that the Town has issues with the inflow and infiltration in sections of our sewer system from storm water. We located several locations in April. The Town has a SCADA system which operates and monitors the flow and pumping at the pump station located at Elk River. The pump station reported some unusual high flow rates so we began looking at the system that flows into that pump station. Mr. Owen stated that 7 manholes were identified that had obvious inflow infiltration coming into them and as opposed to waiting we went ahead and repaired the manholes. The fee for the repairs was \$8,730. We could have absorbed this into this year's budget, but it should be taken out of the capital reserve because it is a capital project which can be taken out of this fund. Mr. Owen is requesting Council to spend the \$8,730 out of the water and sewer capital reserve as opposed to taking it out of this year's budget. Mayor Lyerly asked if there was a motion. Council Member Bolick motioned to approve the Budget Amendment for the \$8,730 to be taken out of the capital reserve. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

### **Historic Banner Elk School Project**

Mr. Owen reported that he wants to update Council on various items related to the school project. Regarding the fund raising, Council Member Bolick gave an update on Team of 83 and the Elk River Golf Tournament. He reported that the Team of 83 committee (Brenda Lyerly, Rick Owen, Donna Dicks, Jo-Ann McMurray, Leslie Carter and Allen Bolick) sent out individual letters to approximately 150-200 people and approximately 100 businesses, made presentations to the Kiwanis Club, Rotary Club and the High Country Realtors Association, advertised in the Avery Journal and is on the Banner Elk web site. Council Member Bolick reported that they received a donation of paint which will be used for the inside of the school. He noted that pledges have already come in and stated that at this time, things are moving along well. Council Member Bolick reported that the golf tournament committee (Brenda Lyerly, Mike Dunn, David Lecka, Jeff Davis, Roy Crege, Toni Littleton, Rick Owen and Allen Bolick) has determined the costs per sponsorship holes, the activities that will be conducted, tournament player costs, developed all the costs going into the budget and the budget itself, prizes are all listed, etc. He noted that currently we have 24 players registered. Mr. Owen noted that the more opportunities we provide to people the more they will give. He cited the flyer that was handed out at Art on the Greene. Mr. Owen updated Council on Property Use, the first issue being Land Planning. He noted that the Town is still working with Joel Shipley and Bob Mann. He noted that sketches are displayed in the Council Chambers and would like feedback from Council. There are renderings for the area in front of the elk, the stage area and parking in front of the school. Mr. Owen noted that he asked Joel to show the road connecting from the fire department

and Culver Street, creating another city block. He needs feedback from Council so that we can move forward. Mr. Owen noted that he asked Bob to work on a key component, the rendering for the landscape/street area in front of the school so that it can be shown to Mrs. Wold, who donated the money specifically for this area. He stated that we are also waiting on the design concept from the Kiwanis who is donating money for the permanent stage. Once we agree on the concept, we need the money to get started which will lead to storm water, electric and utilities buried underneath the “pretty picture”. Mayor Lyerly noted that once we get the okay from Mrs. Wold on the design concept for her area, we can definitely get underway with that part of the project. Mr. Owen reported on a Building Use Plan. He handed out a sketch (a conceptual idea) of what would be in the spaces in the building. We know of Mayland’s space and Council has been intent on having the cafeteria renovated and the space used as a community kitchen for catering purposes. He noted that Council has committed the gymnasium space be also renovated and made available for community space. Mr. Owen noted that other spaces discussed were the library, meeting spaces, conference rooms and spaces available for rental. He pointed out spaces which can be rented out for retail or business opportunities. These become potential income sources for the school. Council will need to determine how to rent these spaces (i.e. how much will the spaces be rented for, what type of businesses fit the spaces, which spaces need to be renovated, etc.). Council Members determined that the Town should designate certain spaces for business and certain spaces for arts and crafts. The Town Manager will research competitive rental rates per square footage and will in turn make recommendations to Council which will be discussed further at the budget workshop. It was agreed that the library will also be a community space as a future library. Discussions continued regarding the renovation of the spaces, the heating of the spaces, bathroom renovations, renting out the gymnasium and library spaces for events, the Avery Library and taking a project management approach to moving forward with the use of the building. Mr. Owen stated that Council needs to determine how invested financially does the Town want to get into fixing up the rental spaces. Mr. Owen reported on the recent events that have been held at the school property: Beech Mountain Metric and Art on the Greene. He noted that this property has a potential for many uses all year round. Mr. Owen reported that there is now a web site for the school: *historicbannerelkschool.com*. There is much information on the web site: how to make donations, property use, etc. Mr. Owen asked Council to check out the site and give him their feedback. He noted that a list of donors will be added to the site as well. Mr. Owen reported that two items have been discussed: a ribbon cutting ceremony or an open house. He asked Council to give it some thought and let him know what they want. There were discussions about opening up the school, have volunteers show people around the school, accepting donations and taking suggestions. Also discussed was having some type of event at the property prior to the construction of the stonework, perhaps while Mrs. Wold is in Town. Mr. Owen asked Council to provide him with dates.

### **Budget Discussion and Workshop Date**

Mr. Owen reminded Council that another budget workshop is scheduled for June 22, 2015 at 6:00 p.m. He noted that if any member has something that would like to be taken up at this workshop to let him know (i.e. the Drug Task Force). Mr. Lecka stated that it is clear that Avery County has no intention of participating in this program for the foreseeable future, so we need to find a way of other support, of raising funds. Mayor Lyerly noted that Council will look into putting into the Town’s budget the \$20,000 needed for this program. The Town knows the importance of this program.

**Manager's Update**

Mr. Owen reported that included in Council Member's packet were the police report, planning, zoning and tax collection report. Also included are draft copies of the May and June 2015 Planning Board Meeting Minutes. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen stated that a conversation took place last week at the Avery County Commissioner's meeting. He noted that he has not taken an active role in campaigning to keep the money for the Drug Task Force or beg the county commissioners to keep the money in. The chairman pulled Banner Elk into it at the last commissioners' meeting. The information the chairman attempted to provide to the public were two pages from the Town's audit that is posted on the Town's web site. The information given was inaccurate information. Mr. Owen told the commissioners that he wished that he was given the opportunity to discuss this prior to the meeting so he could have provided the correct information and the actual figures.

Council Member Tufts asked where the Town stood on the sidewalk extension. Mr. Owen stated that the Town does not have the easements. Mr. Eggers is working on adding the language that we requested. To date we are still waiting on the agreements from the VonCanon's. Mr. Owen noted that the Town is working with Destination by Design on the changes to their contract. We are moving along.

At 8:00 p.m. Council Member VonCanon made a motion for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member Tufts seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 8:34 p.m.

**Other Business**

Council Member Tufts raised a question regarding the Drug Task Force. Much discussion took place on this issue.

Other items of discussion were the uses and zoning for the Historical Banner Elk School.

There being no further business, at 9:10 p.m. Council Member VonCanon motioned to adjourn the June 2015 Town Council meeting. Council Member Lecka seconded the motion. All were in favor.

**Adjourn**

The Town Council meeting adjourned at 9:10 p.m.

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Mayor Brenda Lyerly

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Attested

Approved: July 13, 2015