

# **BANNER ELK TOWN COUNCIL**

**March 12, 2018  
MINUTES**

The Banner Elk Town Council met Monday, March 12, 2018 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, Mike Dunn, Charlie VonCanon and Robert Tufts.

Staff present: Town Manager Rick Owen, Cheryl Buchanan, Lieutenant Orrie Smith and Attorney Four Eggers.

## **Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular monthly meeting of March 2018 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 if there was a motion to approve or amend the February 2018 Town Council Minutes. Council Member VonCanon motioned to approve the February Town Council Minutes as written. Council Member Dunn seconded the motion. All were in favor. No one opposed.

## **Public Hearing – Annexation Request, Old Turnpike Investments LLC**

Mayor Lyerly opened the public hearing at 6:02 p.m. regarding the annexation request by Old Turnpike Investments, LLC. Mr. Owen reported that the Town received an annexation request from Old Turnpike Investments, LLC for a 1.037-acre parcel on Highway 194 across from Elk River Realty. The owner also requests water and sewer connections from the Town. Mr. Owen noted that the Town received estimates from David Poore for water and sewer extensions to connect to the property. Mr. Owen stated that the owner is also looking at some type of cost share on the extension of the water line with the Town. Mayor Lyerly asked if there were any comments or questions from the public. Mr. Rick Foster addressed Council. He noted that he has been associated with the Elk River community for over 30 years. He stated that he is the owner of two tracts that border the subject property and is not in favor of the annexation nor of commercial rezoning of this property. Mr. Foster also noted that he has been contacted by several concerned Elk River residents and they feel strongly that this annexation and commercial rezoning would not be in the best interest of the Elk River community or the Old Turnpike community. Mr. Foster requested Council to postpone making a final decision on this matter for 90 days until the Elk River residents return and can be given the opportunity to understand and comment on this significant change to the Town's ETJ. Mayor Lyerly reported that she received emails from the following who were in favor of the annexation and rezoning: Stan & Annette Kirschner, Bill Forness, Ronald Parr, John Fox, Dr. Terry Daugherty, Del Williamson, Dan Dillon, Philip Myers and John Kaufman. Mayor Lyerly closed the public hearing at 6:10 p.m.

### **Public Hearing – Rezoning Request, Old Turnpike Investments, LLC**

Mayor Lyerly opening the public hearing at 6:10 p.m. Cheryl Buchanan addressed Council that when considering the commercial rezoning request, any of the commercial uses listed in the Town's Zoning Ordinance under Table of Uses will come into play, this property is in harmony with the surrounding properties and uses in the area and is consistent with the Banner Elk Land Use Plan for that corridor along Highway 194 for commercial uses. She noted that the Planning Board has given its approval. Mr. Swinkola addressed Council. He summarized the mission and purpose of the High Country Charitable Foundation, how it got started, its community involvement and commented on its founder and current chairman, Mr. James Ward. Mr. Swinkola read aloud a letter addressed to the Mayor and Council Members from James Ward. Council Member Dunn questioned the annexation vs. the rezoning request and the affects involved (use of property, services provided by the Town, residential vs. commercial, etc.). Mr. Owen addressed these issues and explained more fully. Mr. Mike Smith, the contractor for Mr. James Ward, spoke on his behalf. He noted that he has a set of preliminary plans for the building. Mr. Smith stated that Mr. Ward's intention is for a nice office building to be built on the property and wants its appearance to blend in with the community. Mr. Smith noted that Mr. Ward is also a member of Elk River. There being no further questions or comments, Mayor Lyerly closed the public hearing at 6:30 p.m.

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

Mayor Lyerly asked if there was a motion to approve the amended March agenda. Council Member Lecka motioned to amend the March 2018 agenda to add Item #11 Sale of Property. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Public Comments**

Mayor Lyerly recognized Jim Swinkola. Mr. Swinkola reminded Council that on Saturday, April 14<sup>th</sup> at 9:00 a.m., the Kiwanians and community volunteers will be putting together the new playground equipment in the Tate-Evans Park. He also reported that on June 12<sup>th</sup> there will be a panel presentation under the theme *The Effects of Opioid Crisis in Avery County*. Mr. Swinkola noted that Sheriff Kevin Frye, Dr. Charles Baker, Representative Josh Dobson, District Attorney Seth Banks and Kelly Icenhour with Avery DSS will be the panel members. He stated that the Kiwanis Club of Banner Elk will join with the Rotary Club of Avery County in sponsoring this program which will be held at the Best Western. Mayor Lyerly thanked Jim Swinkola.

### **Annexation Request, Old Turnpike Investments, LLC**

Mr. Owen stated that staff has certified the petition for annexation and the deed and boundary survey have been presented to Council. He noted that the owner is requesting water and sewer connections from the Town. In this case, the Town will not be committed to any expansion funds that need to be spend. We can discuss the Town's participation of the cost in this at a later date. Attorney Eggers stated that since this is a voluntary annexation, it will be subject to a signed Annexation Agreement between the Town and property owner before it is finalized. Mr. Owen noted that the Town received a request from the tax office requesting that the annexation take effect on January 1, 2018, which would be part of the agreement prepared by Attorney Eggers. Council Member VonCanon motioned, based on the approval of the Planning Board, that we approve the annexation as of January 1, 2018 upon the executed Annexation Agreement between the Town and the property owner. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Rezoning Request, Old Turnpike Investments, LLC**

Attorney Eggers reported that the Town had this rezoning properly advertised and that it is within Council's discretion as to what zoning district you believe this property would be most appropriate for the Town. Ms. Buchanan stated that currently the property is zoned R-1. She noted that Mr. Ward is requesting that it be rezoned commercial for the construction of a commercial building. The Planning Board's recommendation is that this property be rezoned C-2 which is general business. Ms. Buchanan noted that once the property is rezoned Mr. Ward is subjected to the Town's zoning ordinances, all of Section 500, which includes the Architectural Review Guidelines. He would have to meet all the requirements of the Town's ordinances. Council Member Lecka stated that the Town has a great relationship with Elk River and certainly doesn't want to do anything to jeopardize it. A lot of great things have happened in Banner Elk because of Elk River. Mr. Lecka noted that he understands the concern and desire for Elk River, Mr. Foster and their residents to hold off in making a decision, but he recommends that Council approve the rezoning as presented, based on all the information reported to us this evening. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

### **Wastewater Plant Clarifier Drive Replacement**

Mr. Owen reported that he previously discussed with Council that the wastewater treatment plant is reaching 30-years old. He noted that this topic came up for discussion when he first became Town Manger, in which the State likes to see redundancy in wastewater plant operations, specifically in the clarifier drive. Mr. Owen noted that the fear is that if the drive unit should fail, the wastewater plant would be out of service until a repair could be made. He has met with Jadd Brewer (Water Quality) and David Poore (West Consultants) to discuss options for moving forward. Included in Council's packets are letters from them, summarizing their recommendations. Mr. Owen stated that he is leaning toward a long-term solution. He recommends replacing the clarifier drive with a new drive. This operation would involve putting in a temporary clarifier and hiring a company to build and install the new drive. The estimated cost for this rental unit and making the repair would be \$100,000. If a new clarifier is constructed, the cost would be \$350,000. Mr. Owen is asking Council not to accept any proposals from the companies that address these options, but to direct the Town Manager to proceed with planning for this project and obtaining final quotes. He hopes to appear before Council next month with more detailed information and his hope is to begin construction this summer, possibly next budget year. David Poore introduced himself to Council and summarized the function and importance of the clarifier drive, the long range-goal of developing a plan for a second clarifier, etc. There were questions to Mr. Poore and discussions regarding seeking grant funds, the importance of the wastewater treatment plant, its upkeep and maintenance, power supply to operate the plant, etc. Council Member Bolick motioned to authorize the Town Manager to proceed with the planning for the clarifier drive replacement. Council Member Dunn seconded the motion. All were in favor. No one opposed. Mayor Lyerly thanked Mr. Poore for all of his work.

### **Lift Station Generator Replacement**

As reported at last month's meeting, the Elk River lift station had a mechanical failure in the generator. He noted that the current generator will only run one of the two pumps (7-1/2 hp each) so the Town is looking to upsize to be able to handle more pumping capacity. Mr. Owen stated that he has researched and requested quotes for a replacement generator. A proposal is included in Council's agenda packet. He distributed a budget amendment which is a fund balance appropriation for pump station maintenance to purchase the generator. Mr. Owen noted that there is a 4-week turnaround to have the generator delivered and installed. Council Member Bolick

asked if the generator could be placed on a raised platform to protect it from potential flooding. Mr. Owen noted that he would work with David Poore on this issue. Council Member Lecka motioned to approve the replacement generator replacement and the budget amendment. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Consider New Ordinance – Chapter 97: Alarms**

Mr. Owen reported that Chief Kevin Hodges brought to his attention that the police department was having issues with false alarms. The Town doesn't have the means to properly enforce anyone to maintain their alarm system. Chief Hodges sat down with Attorney Eggers to draw up a recommendation for a new ordinance. Mr. Owen noted that there are two minor changes he is recommending to Council. (1) *Section 97.02 Alarm Permit, Section B Application*. He noted that it mentions costs associated with the permit application and the waiver for residents of a certain age. Mr. Owen would like to remove these two sentences and not have an administrative cost for the permit. (2) *Section 97.07 Enforcement of Provisions*. He noted that it lists a fee schedule. Mr. Owen would like to amend the last sentence to read: *as set forth in the Town of Banner Elk Fee Schedule*. Those fees would appear in the fee schedule as opposed to in the ordinance. In this way, if a change comes before us in the future it would affect only the fee schedule and the Town would not have to amend the entire ordinance. Mr. Owen reported that if this ordinance is adopted, the Town recommends it not go into effect until July which would give the Town time to work with all the residents who have alarms. He noted that if anyone had any questions they could ask Lieutenant Orrie Smith. Mr. Owen noted that the reason Chief Hodges is not in attendance this evening is because he has been taking a class, Administrative Law Enforcement, at NC State. This is his last week for class. Lieutenant Smith explained to Council the procedures the police department goes through with false alarms. There was discussion regarding the ordinance being addressed specifically to commercial now, then later residential. Council Member Dunn motioned to approve Ordinance 97, Alarms, do not include an administrative cost, include the fee schedule wording and have it immediately imposed on commercial establishments and then in July include residential. Council Member Tufts seconded the motion. Attorney Eggers reported that since this is a general police power ordinance, it can be enacted without a public hearing. He also noted that this ordinance will be effective within the corporate limits to Town, not the extraterritorial jurisdiction. All were in favor. No one opposed. Attorney Eggers advised a motion to include the amendment to the fee schedule, adopting what the penalties would be as written on page four of the ordinance. Council Member Dunn made the motion. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Firearm Replacement**

Mr. Owen reported that included in Council's packet was information regarding the cost for firearms replacement. He noted that the budget for the police department already included money to make this purchase, but it was also counting on the trading in of the existing firearms to cover some of the cost. Mr. Owen is requesting Council to approve a Budget Amendment to budget the full cost of the weapons and the reimbursement of that money coming back to the Town upon the sale of the firearms. He noted that there will be a second step to this process at a later date. The Town will come back to Council requesting the surplus of these weapons, so they can be sold. Mr. Owen stated that he will request Council's approval to sell them back to the police officers. The budget amendment will make up the difference in the weapons. After the trade in, the actual cost of the weapons would be \$2,526.80. But prior to the trade in, the Town would need additional funds in the amount of \$4,180.00, which is the value of the weapons. Mr. Owen reported that for the benefit of the public, as per the recommendations of most manufacturers, these firearms have

exceeded their years in service. Council Member Lecka motioned to approve the Budget Amendment. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

### **Proposed Ordinance Amendment – Home Occupation**

Ms. Buchanan reported the she was questioned about the definition of *home occupation*. She noted the Zoning Ordinance lists Home Occupations in the Table of Uses and some zoning districts are listed as conditional. Ms. Buchanan checked to see what kind of the guidelines existed in the Town’s Conditional Use section and there was none. This proposed ordinance includes two definitions for Section 200 and some standards and conditions for Home Occupations (Section 809) which will cover all four zoning districts; R1, R-1U, R2 and M/U. Ms. Buchanan reported that the Planning Board recommends the approval of this zoning ordinance amendment and she asks that Council call for a public hearing. Council Member Bolick motioned to call for a public hearing at next month’s Council meeting. Council Member Dunn seconded. All were in favor. No one opposed.

### **Advertisement of Tax Liens**

Ms. Buchanan reported that at last month’s meeting, she presented Council with the Tax Collector Report, which NC State Statutes require, listing the delinquent taxes on real property. A letter was sent out to all delinquent taxpayers noting that they had 30 days to pay these taxes or risk having their names published in the local papers. Ms. Buchanan noted that the notices went out on February 2<sup>nd</sup> and since then, the current list has been cut in half due to payments received. Council Member VonCanon motioned to approve the advertisement of tax liens. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Tax Release**

Ms. Buchanan reported that this issue involves a unit in the Banner Elk Vistas that was sold to Ernest Gault. Mr. Gault sent his payment through his bank without any reference for what the payment was for. The Town returned his check. Ms. Buchanan stated that she received a call from Mr. Gault informing her of his purchase in the Vistas and that his tax payment was sent in. Additional interest has accrued in March, but since his payment was received in February, she requests Council to release the tax penalty on this account in the amount of \$41.76. Council Member Tufts motioned to approve the tax release. Council Member Dunn seconded the motion. All were in favor. No one opposed.

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

Council Member Bolick reported that the renovation and expansion work to the Artist’s Gallery is looking very nice. Their gallery will be twice as large as the original. They are hoping to have the grand opening in mid-April.

Council Member Bolick stated that there will be a “community yard sale” in front of the Historic Banner Elk School on Saturday, June 9<sup>th</sup>. It is a fund-raising event and noted that last year it raised over \$1,000.

Council Member Bolick reported that the plumbing at the Historic Banner Elk School will require some work. He hopes to report to Council next month about the issues.

### **Sale of Property – Crooked Creek Lot 4**

Mr. Owen reported that the Town foreclosed on Lot 4 in Crooked Creek and put the property up for sale on govdeals.com (an auction site) to recoup the taxes that were owed on the property. He noted that the property was listed for 30 days and last week was the close of the auction. Mr. Owen reported that the Town had a high bid in the amount of \$17,100.00 from Raleigh, NC. He is requesting Council to approve the sale of this property. Council Member Lecka motioned to approve the sale. Council Member Bolick seconded the motion. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen distributed the financial summary report for eight months ending 2/28/18 and stated that in Council Member's packets are the police report, planning, zoning, and tax collection reports. Also attached is a draft copy of the March 5, 2018 Planning Board Meeting minutes and a copy of the January 11, 2018 High Country ABC Board Meeting Minutes. He stated that if there were any questions regarding these reports to let him or the staff know.

Mr. Owen reminded Council that the High Country Municipal Association meeting will be held on April 19<sup>th</sup> at Beech Mountain.

Mr. Owen noted that Town Hall Day will be held on May 23<sup>rd</sup> in Raleigh. Mayor Lyerly will not be able to attend but asked if any other Council Members would like to attend. A Budget Workshop is scheduled for that day. There were discussions regarding who would attend and the rescheduling. The Budget Workshop date was moved to May 30<sup>th</sup> at 6:00 p.m.

Mr. Owen met today with DC Smith regarding the farmers' market summer schedule. He noted that if Council has any input or issues concerning this summer's farmers' market to let him know. They are hoping to encourage more people to participate. Mayor Lyerly asked about their fees. Mr. Owen stated that last year the group supplied the Town with budget numbers (advertising costs, vendor fees, etc.) and in the end, their profit is very little. The Town charges them a minimal fee just to have an agreement with them and they provide the Town with liability insurance.

Mayor Lyerly thanked everyone for attending and asked for a motion to go into closed session.

At 7:23 p.m. Council Member Bolick motioned for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Council returned to open session at 7:32 p.m.

There being no further business, at 7:32 p.m. Council Member VonCanon motioned to adjourn the March 2018 Town Council meeting. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Adjourn**

The Town Council meeting adjourned at 7:32 p.m.

---

Mayor Brenda Lyerly

---

Attested

Approved: April 9, 2018