

BANNER ELK TOWN COUNCIL

November 13, 2013

MINUTES

The Banner Elk Town Council met Wednesday, November 13, 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, Cheryl Buchanan, Chief Byron Clawson, Steve Smith and Attorney Four Eggers.

Others present: Penny VonCanon, Ted and Carol Silver, Donna and Bill Dicks, Mike Dunn, Eric Woolridge and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for November 2013 to order.

Pledge of Allegiance

Mayor Lyerly led those in attendance in the Pledge of Allegiance.

Invocation

Council member Bolick opened the meeting with prayer.

Mayor Lyerly stated that before the meeting goes any further she wants to take a personal moment to congratulate Mr. Tufts and Mr. Dunn on being elected to the Banner Elk Town Council and looks forward to serving with them in December. She also thanked Ms. Draughon for her years of service on council and stated that she will be missed.

Approval of the Minutes

Mayor Lyerly asked council for a motion to approve the October 2013 minutes. Council member Draughon motioned to approve and accept the minutes as written. Council member VonCanon seconded the motion. The October 2013 minutes were approved with all in favor and no one opposed.

Approval of the Stated Agenda

Mayor Lyerly asked council for a motion to approve the stated agenda. Council member Lecka motioned to approve the agenda as stated. Council member Bolick seconded. All were in favor. No one opposed.

Public Comments

There were no public comments

Greenway Trail Report, Destination by Design

Ted Silver stated that included in council member's packets was the report done by a consulting firm, Destination by Design. He noted that Eric Woodridge is present to later give an overview. Mr. Silver reported that a pedestrian master plan was developed several years ago which established certain priorities and possible greenway trails and connections. Mr. Silver stated that the town received a grant that allowed the town to work closely with a consulting firm to create a conceptual trail plan to identify trail alignment and the best way to connect Banner Elk out to the Best Western and the school. In an attempt to expand on a conceptual trail plan, the TDA approved funds to review the identified routes. Mr. Silver introduced Eric Woodridge to present the next steps. Mr. Woodridge addressed council. He reported that his firm went a step further from the plan that was first introduced to the town in 2011. Their primary task was to focus on two opportunities: Route 2A and Route 2B. He noted they looked at these plans from an economical development perspective, a recreational perspective, an environmental perspective and an overall user trail experience. Both routes have their own challenges. Route 2A has topography issues around a historical structure and some retaining wall issues, so we are pushing the cost benefit ratio. Route 2B is a little more practical, but still has some ADA issues, an existing driveway issue and other compliance issues. Mr. Woodridge stated that the report speaks for itself. It includes the funding for the preferred route and a list of adjacent landowners. He noted that the town is looking at a fairly expensive project per linear foot. We are basing this cost at approximately \$90 a linear foot to build a trail like this; a 10 ft. wide, paved, multi-use trailway along a highway corridor. Mr. Woodridge also noted that the town is looking at a DOT project. This involves DOT funding which kicks the town in a whole different set of requirements. In terms of this level of analysis, we feel comfortable with the number at hand. If we look at a more rural environment for developing a trailway, we are looking at \$40-\$50 a linear foot. Moving outside of the wetland area, in a more natural environment would be more ideal. Mr. Woodridge told council that this report highlights their study. Mr. Owen stated that what we hope to accomplish this evening is direction from council; what direction do we go next (with this particular trail or any other trail), what options do we have short and long term and what is feasible to the town. Mayor Lyerly asked for clarification which trail would be more expensive. Mr. Woodridge stated that Route 2A would be more costly because it involves ADA requirements, construction of retaining walls and adjacent landowners. Mayor Lyerly also asked what is the historic white house. Council member VonCanon stated that it is not the museum but the old Banner house. Mr. Woodridge continued and asked council their thoughts and goals: what are we trying to link, what will its impact be, what is the town's larger economic goals in planning this trail and do they exist? He also reported that DOT has changed its procedures with bike pedestrian projects. There will be a special designated fund for these types of projects for communities with a population under 5,000. However, the community will have to provide a 20% match, all easements and all engineering will have to be completed. A lot of up front monies before you ever get to the next stage. There is then a decision as far as commitment to a project this size. Mr. Silver noted to council the term "preferred route". It does not mean the chosen route or the #1 route we are choosing to go. Given the parameters we had to work with in these choices and given the instructions on where we wouldn't want to go, Mr. Woodridge was directed to look at the red routes 2A and 2B and give the town some direction with these two routes. Council member Bolick asked the name of the \$200,000 grant. Mr. Woodridge stated that it was Recreational Trails Program. Mr. Silver asked Mr. Woodridge to explain to council

his background. Mr. Woodridge reported to council that over the last four to five years he has been involved with various projects in Boone and Watauga County, Caldwell County, etc. and explained to them how much he deals with in obtaining grant funding for these projects. He noted that his degree is in local government planning with a master's degree in public administration. Discussions were had on various locations for a greenway (i.e. Dobbins Road to Best Western, The Farm area into town, etc.) Mr. Woodridge asked council at what point does the town have a project? From where to where is the town willing to put money into it? Council member Lecka expressed his concern for safety on Route 2B at the existing private driveway and the sharp turn. He noted there would also be concerns regarding snow removal at that area. Mr. Owen noted to council that they need to consider several options: do we make better what we have and look at other options to where we want a greenway or do we expand on what we have (maybe not up to the level we want to have) then do we want to deal with right-of-way/easement issues. He stated that the town is open to a greenway in Banner Elk, but maybe not at these particular spots (Route 2A and Route 2B). Mr. Woodridge stated that he agrees with Rick in that council should focus on the core of the town and make what you have exceptional. He noted that the town has a phenomenal asset with Wildcat Lake and with only one major landowner. He also stated that looking at trying to connect with the Best Western is more of a "no". How do you make that area function from a pedestrian stand point? Right now it leans toward the automobile. This could be a future project, taking a look at that area and trying to improve it for pedestrians. Council member Lecka stated that what he is hearing from this discussion is that the town should focus on expanding what we already have in town and work towards what we can do between the caboose and Wildcat Lake. Mr. Woodridge stated that he would be willing to come back, sit down with council and develop a scope of work or multiple scopes of work with different options and with a reassessment of costs. Mayor Lyerly thanked Mr. Woodridge for his time and work.

Zoning Text Amendment – Impervious Surfaces

Ms. Buchanan addressed council. She reminded council that the Banner Elk Volunteer Fire Department was gifted a .10 acre parcel from Avery County for an additional parking lot. In September an amendment to the zoning ordinance was proposed to town council asking that any entity that provides civil or emergency services to the citizens of Banner Elk could cover up to 90% of the property with impervious surfaces. Zoning District G/O would be from 60% to 90%. Council also asked for a proposed parking lot plan with calculations for the amount of impervious surface they would have once the proposed parking lot was paved. Three plans were prepared and after meeting with Gary Miller, the one which worked best for the fire department is the one in council's packets. Ms. Buchanan noted they came back and asked the town if the parking spaces could be placed against the building which leaves the back area open. Both plans work and they will be well within the 10% required in the ordinance. The proposed plan allows for 17% of pervious surface. Ms. Buchanan noted that council first needs to amend the zoning ordinance. Attorney Eggers asked Mayor Lyerly if he could make a technical wording suggestion to the proposed text amendment to make it more clear. He stated that where the two asterisks are shown, move them down to apply to the G-O zoning district and instead of having 60% to 90% listed, strike where it says to 90% and place that in the footnote by replacing the wording *may waive this requirement* and insert *have a density up to 90%*. The footnote would then read *Properties dedicated to providing emergency or civil services in a governmental*

capacity may have a density up to 90% if deemed essential for their operation. Mr. Eggers stated this would apply to properties in the G-O zoning districts only not to all the districts. Mayor Lyerly asked if there was a motion to approve the suggested changes to the text amendment. Council member Tufts motioned to approve the zoning ordinance text change. Council member Lecka seconded the motion. All were in favor. No one opposed.

Call for Public Hearing – Zoning Ordinance Amendment (Add New Section 316, Mobile Food Truck Ordinance)

Cheryl Buchanan addressed council stating that food trucks are becoming increasingly popular in many towns and cities. The planning board has discussed this topic on several occasions as to what the town needs to do to prepare for when food trucks do become an issue. She noted that the planning board wants to add a new ordinance to allow the use of food trucks in certain zoning districts with certain conditions and regulations. We are asking council to call for a public hearing on December 9th. Mayor Lyerly asked for a motion. Council member Bolick motioned to call for a public hearing at the December meeting. Council member VonCanon seconded the motion. Mayor Lyerly asked if there were any questions or comments. Council member VonCanon asked about the food trucks that come into town during the Woolly Worm festival. Ms. Buchanan stated that they are grandfathered. All were in favor. No one opposed.

Council member Tufts noted that under regulation #4 it states that the *operation of a food truck shall only occur upon a paved parking area.* He asked why only paved areas and not gravel as an option? Penny VonCanon stated that it is a health department requirement. Council member Tufts also asked the reasoning behind *a food truck must be at least ten feet from the edge of any property line.* He felt that it is too restrictive. Mr. Owen stated that there are many items that could affect the adjoining property owner (i.e. exhaust fumes, the motor continuously running, the trucks coming and going, etc.). Mayor Lyerly stated that the town doesn't want to discourage businesses from coming into town and asked if the planning board could revisit the 10 feet regulation or add a phrase that the 10 feet may be waived with consent by the adjacent property owner. Discussions were had regarding the regulations listed for the proposed ordinance of mobile food vending (i.e. prohibiting generators, advertising, blocking tree trunks, operating as a drive-through window, along with the wording of said regulations).

Call for Public Hearing – Zoning Ordinance Amendment (Amend Telecommunications Tower Ordinance)

Cheryl Buchanan reported that the planning board held a special meeting last evening (November 12th) to consider this ordinance which has gone through considerable refining. There have been several rewrites and legal changes. She noted that at last evening's meeting it was requested that we add to the "definitions" portion (Section 4) of the ordinance "electrical transmission towers". She noted that the ordinance will now be up to date which includes legislative changes along with text changes which better fit Banner Elk and its needs with regards to today's cell tower market. The planning board recommends council to call for a public hearing. Mr. Eggers stated that by way of background there were substantial changes in state law (that became effective October 1, 2013) that addressed a lot of items that we previously addressed in our ordinance and there were also changes at the federal level relating to telecommunication towers and what a local government can and cannot regulate. He noted that

we still have the right to regulate aesthetic conditions relating to the towers but we cannot ask questions about business plans, radio frequency emissions, etc. Council member Tufts questioned Section 6 General Standards and Design Requirements (A) (i). He felt that the minimum 1/2 inch of solid ice is low. Mr. Eggers noted that he believes this is a statewide minimum, but will look into it. Council member Tufts also questioned (r) “surrounded by a fence or wall at least eight feet in height”. He asked if this was standard for utilities. Mr. Owen asked Mr. Eggers if the word “tower” should remain in the ordinance. Mr. Eggers stated yes. Ms. Buchanan gave more clarification to the definition addition of “electrical transmission towers”. The source of this definition was a model ordinance that was worked on by AT&T and the League of Municipalities and it was the only collaborative one that was found. The wording would be as follows: *Electrical transmission tower and electrical transmission structure used to support high voltage overhead power lines. The term shall not include utility pole.* Mr. Owen noted that this definition will be added to what we now already have. Mayor Lyerly asked for a motion. Council member Tufts motioned to call for a public hearing at the December meeting. Council member Bolick seconded the motion. All were in favor. No one opposed.

Resolution to Designate Applicant’s Agent, Emergency Management

Mayor Lyerly stated that council is asked to designate a primary and secondary agent to represent the town while working with State and Federal Emergency Management to file for and report on any request by the town regarding July’s flood damage to the park project. The form has Rick Owen and Steve Smith as the required agents. Mayor Lyerly asked for a motion. Council member VonCanon motioned to approve this resolution. Council member Tufts seconded the motion. All were in favor. No one opposed

Manager’s Update

Mr. Owen reported that included in council member’s packets were the financial report, police report, planning, zoning and tax collection report. Also included is a draft copy of the planning board meeting minutes and High Country ABC Board Meeting minutes. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen reported that Charter Communications has raised its rate \$1.56 on the minimum or basic package that they offer. He has the full report on how they have come up with this dollar amount in case anyone is interested.

Mr. Owen noted that Christmas in the Park is December 7th. He stated that when he gets a more detailed schedule of events for that weekend he will distribute that to council.

Mr. Owen reported that the construction of the picnic shelter is progressing very well. The contractor estimates another four weeks until completion. Our goal is to have it completed for the town’s Christmas in the Park.

Mr. Owen stated that in regards to the Dogwood Stormwater project, we have the bid documents put together and Mr. Eggers is reviewing the contract. The way it is written now, the contractor will be able to begin the stormwater work this winter, weather permitting and save the paving

portion until spring. He noted that he will keep council informed as to when the bids go out along with a bid date. A set of plans is located here in town hall for anyone to review.

Mr. Owen noted that the Essentials of Municipal Government is coming up again. He has a list of dates in case anyone is interested in attending.

Mr. Owen stated that in prior years since he has been with the town, council has had a holiday get together. He wants to know if council is still interested in this event and when. Mayor Lyerly asked for input and any feedback from council as to whether we should continue to hold this event. Council member Tufts stated that he is strongly in favor of holding this event for employees and town committee members. All other members agreed. Mayor Lyerly noted that Mrs. Tufts has agreed to hold the Holiday Open House at their home. The scheduled date is Friday, December 13th from 4:30 to 7:30 pm.

Council member Tufts questioned the expense increase in the streets line item on the financial report. Mr. Owen stated that the town spent an additional \$46,000 on paving within the last month. Mr. Smith noted that there was an additional expense in regards to Highland Drive.

At 8:00 p.m. council member VonCanon motioned for council to proceed to closed session pursuant to NCGS 143-318.11, attorney client matters including Grandfather Home for Children vs. the Town of Banner Elk matter. Council member Tufts seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 9:04 p.m.

Other Business

Mayor Lyerly reported that in regards to a few of the town's vacant properties, she stated that she had a meeting with a woman from Elk River who stated that there are several members of Elk River interested in Banner Elk looking better. Some of these members are interested in purchasing the Corner Palate property, demolishing it and possibly making it a green space. Others are interested in purchasing the hospital property if we can get Mr. Wooten to sell it. Mayor Lyerly stated that we are looking forward to having a meeting with these interested parties next summer when they return.

Council member VonCanon stated that the town will miss Gail. All members agreed and thanked her for her service. Mayor Lyerly wants Ms. Draughon to attend December's meeting. Ms. Draughon stated that serving on council has been a tremendous experience for her and that in these past eight years (attending 98 out of the 100 council meetings) she has learned a lot about the town and enjoyed working with so many people. Ms. Draughon made the decision not to run again for council because of other commitments with family and community.

There being no further business, at 9:10 p.m. council member Draughon made a motion to adjourn the November 2013 town council meeting. Council member VonCanon seconded. All were in favor.

Adjourn

The town council meeting adjourned at 9:10 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: December 9, 2013