

BANNER ELK TOWN COUNCIL

November 10, 2014

MINUTES

The Banner Elk Town Council met Monday, November 10, 2014, 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, Charlie VonCanon, Robert Tufts and Mike Dunn.

Staff present: Town Manager Rick Owen, Chief Byron Clawson, Steve Smith and Attorney Four Eggers.

Others present: Rebecca Bolick, Penny VonCanon, Thelma McLean, Ted Silver, Tom McMurray, JoAnn McMurray, Mari-liis Smyth, Jamie Shell, Janet Spear and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for November 2014 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 the October 2014 Town Council minutes. Council Member Dunn motioned to approve the October minutes. Council Member Tufts seconded the motion. All were in favor and no one opposed.

Approval of the Stated Agenda

Mayor Lyerly asked Council for a motion to approve the November 2014 agenda as written. Council Member Bolick motioned to approve the agenda as written. Council Member VonCanon seconded. All were in favor. No one opposed.

Public Comments

Mayor Lyerly called upon Ted Silver, who signed up to speak at this evening's meeting. Mr. Silver thanked Council for the opportunity to speak. He reported that he attended an organizational meeting for the Beech Mountain Metric and the Banner Elk Breeze and discussed that they are looking forward to working with the Town for the upcoming race on May 16-17, 2015. They hope this will be Beech/Banner combined weekend. Mr. Silver stated that they hope to start the race at the Historic Banner Elk School with possible outdoor activities such as

camping, hiking, a fair, etc. They have over 300 already signed up for the Beech Mountain Metric and about 40 signed up for the Banner Elk ride. Mayor Lyerly thanked Mr. Silver for the update and all his organizational work.

Sewer Connection Request – McLean

Mr. Owen reported that at last month's meeting Council discussed a request for sewer connection for a business in a building owned by Thelma McLean which is located in the town limits of Sugar Mountain. Mr. Owen stated that at that meeting, Council determined that the Town did not wish to add that connection to our system and denied the request. Mr. Owen stated that he had discussions with Ms. McLean regarding two pieces of property she owns further down the road (a building with the business Thelma's Things). When the properties were purchased they had taps associated with them. Ms. McLean is asking if Council would consider moving one of those taps to the parcel located at the entrance of Sugar Mountain. Mr. Owen stated that staff researched the validity of those two taps being there. Much time was spent on this issue and its history. The main question Mr. Owen is posing to Council is whether they would allow a tap to be relocated from one property to another. If Council does decide to move the tap, more research would be required and Mr. Eggers would discuss in closed session the issues surrounding the time limits of taps. Mayor Lyerly asked if Ms. McLean would like to speak regarding this issue. Thelma McLean apologized to Council for not attending last month's meeting. She stated that she does own two properties: Thelma's Things and a lot between her business and Winelda Bishop that is used for parking. Ms. McLean would like Council to consider moving one of these taps and would be willing to sign an affidavit stating that there would be no building constructed on that second lot. Ms. McLean also stated that she owns property in Banner Elk beside the offices at Elk River. She recalled that at one time the Town of Banner Elk asked her about bringing the sewer line across her property. She noted that she let the Town and also worked with the Town on other properties she owns on Highway 194 and wasn't sure if anything was put down in writing. Ms. McLean asked Town Council to reconsider the request so that this new business can open at the bottom of Sugar. Mayor Lyerly stated that the issue foremost is consideration of transferring a sewer tap from a property located in Sugar Mountain ETJ to a property located in Sugar Mountain Town limits. Mr. Eggers noted that if Council wishes to take action to allow the transfer it will require a motion. However, if Council does not wish to allow a transfer then no action will be required. He reported that there is a question in his and Mr. Owen's mind as to whether there is a valid right to a water/sewer connection that would even be subject to being able to be transferred. Mr. Owen noted that his question to Council: Does the Town need to research it further? Council Members Tufts and Bolick expressed their concerns regarding the challenges involved in transferring from one parcel to another, their differences in location and density, along with the fact that properties are in Sugar Mountain town limits and ETJ which could result in problems for now and in the future. Council Member Lecka stated that the McLean's have done a lot of good things for the Town of Banner Elk and Sugar Mountain over the years and is in favor of accommodating what needs to be done to help the folks trying to get a business started. Council Member Lecka motioned to transfer the sewer tap. Council Member Dunn seconded the motion. Council Member Dunn asked if the adjacent building (Dereka's building) connected to the Town of Banner Elk occurred prior to the annexation or has it always been in Sugar Mountain. Mr. Owen stated that it was always in Sugar Mountain. Conversations continued regarding Life Care's connection, Carolina

Water, its pump station and its limited resources and the properties in question. Attorney Eggers wanted to clarify the motion. Was it to allow a transfer if there is a sewer tap that exists? Is it to grant them the right to transfer, saying one does exist? Or to allow them to transfer on the condition some payment or fee be required? Council Member Lecka noted the latter (to allow the transfer presuming a sewer tap exists condition upon some payment or fee). Mayor Lyerly questioned the fee. Mr. Owen stated that it would be a higher use fee (volume of flow vs. access to the system). Council Member Dunn questioned an expiration date and without this knowledge of this issue which will be discussed at closed session, he withdrew his second to the motion. Mayor Lyerly stated that with no second the motion is revoked. Mayor Lyerly asked for a motion to table this until further information is received from the Town's Attorney. Council Member Dunn made the motion. Council Member Lecka seconded the motion. Council Member Bolick opposed. Four were in favor and one opposed. Council Member Bolick stated that we are voting on an issue that involves another tap and extending the Town's sewer lines into the jurisdiction of Sugar Mountain. He stressed that we should be very careful in what we are doing.

Sewer Connection Request - Brittain

Mr. Owen addressed Council stating that this item is in regards to the Elk Hill subdivision located behind Avery Rent-All which is in the ETJ. There are currently 20 homes in the subdivision which is connected to the Town's system. Mr. Elmer Brittain is building a home on Lot #9 and is requesting a connection. Mr. Owen noted that it is basically for additional flow because it is connected to a private system which flows into the Town's system. The last connection which Council approved was in 1999 in the same subdivision and under the same terms. Council Member Lecka motioned to approve the sewer connection request. Council Member Tufts seconded the motion. All were in favor. No one opposed.

Consider Ordinance Amendment, Section §159.32

Mr. Owen reported that he and Mr. Eggers worked on this ordinance prior to this evening's meeting and for this reason he handed out a revised copy, different than the one in Council's packets. He noted that there are a lot of substantial changes to the document itself along with re-wording and clarification which would make the proposed ordinance read better. Mr. Owen also stated that Mr. Eggers prepared a resolution which can be passed in the future and also a Special Event Permit. Mr. Owen noted that he is not asking Council to adopt the ordinance this evening but is asking them to review it to make sure that we are on the right track for what the Town is wanting to do. The proposed amendment would allow beer and wine on designated Town property at a given event by way of special permit. Mayor Lyerly questioned why the fee amount was marked out. Mr. Owen stated he and Mr. Eggers discussed several options and determined that it would be better if it was in the permit. This way the permit could be modified as we go along and not have to come back to the ordinance. Before we listed the fee in the ordinance and if Council decided to raise or lower the fee, Council would have to come back to an ordinance amendment. With the permit, Council can come back and make revisions to the fee schedule. Changes would be simpler. Mr. Owen noted that an ordinance allows for a fee. It doesn't say what the fee will be. Council Member Tufts asked about item (3) *A special event permit must be submitted to the Town at least twenty days of the start of the proposed event.* He felt it should be 30 days in order to give Council enough time to review. Mr. Owen stated that

the wording in the ordinance has been slightly modified to leave the responsibility to the Town Manager. If desired, the permit could be worded to require Council to review it. The issues with Council reviewing the permit would be: being an agenda item, a specific time frame and the date of a council meeting. Council Member Bolick asked if each event has to come before Council (i.e. the Chamber has 13 Concerts in the Park during the summer). Mr. Owen stated that as Town Manager and if given the authority in the permitting process, he would consider each individual event. Mr. Eggers noted that it could be addressed by the Town's ordinance (it could be 13 or theoretically it could be 1 if it is a recurring item). He stated that this is something that needs to be addressed. For the purpose of a fee, this could make a significant impact. Further questions were addressed regarding: signage, beverage containers, event cut off time, noise ordinance, police department's involvement, etc. Mr. Owen handed out to Council a draft of the Special Event Permit application. It further shows how it meets the ordinance requirements. It also shows the overall direction we are heading and specifically meets the needs of Banner Elk. Mr. Owen asked Council to review the handouts and at next month's meeting it can be further discussed. Mr. Eggers stated he and Mr. Owen approached this ordinance by addressing all types of scenarios and what steps does the Town take to balance the needs of the promoters' interests vs. the interests in the tranquility of the Town of Banner Elk, the core of the Town. Mr. Eggers noted that the Town and this ordinance need some type of standards as to how we judge all applications. Mayor Lyerly asked if there were any further questions. Mr. Owen stated that he awaits feedback from Council and if there are any legal questions to email Mr. Eggers.

Consider Daily Deposit Policy – Reference G.S. §159-32

Mr. Owen addressed council. He reported that the Town receives funds on a daily basis (utility payments, tax payments, etc.). There is a general statute, NC G.S. §159-32, which requires a governing entity to make daily deposits of all funds it receives. Currently the Town is making daily deposits. Issues arise when the Town doesn't receive many funds or staff waits to the close of the day to make sure no more funds are received. Mr. Owen noted that the statute further allows us to hold \$250 before we make a deposit. However, Council needs to pass a resolution allowing Town staff to hold up to \$250. It is more of a mechanism of convenience and of time management. Council Member Lecka motioned to approve the resolution allowing for daily deposits on amounts over \$250. Council Member Tufts seconded the motion. All were in favor. No one opposed.

Historic Banner Elk School Project

Mr. Owen addressed council. He reported that the Town received approval by the LGC (Local Government Commission) for us to enter into a contract with Avery County to purchase the property. Mr. Owen reminded Council that a planning meeting is scheduled for November 18, 2014 at 6:00 p.m. to discuss a broad range of issues on "where we go from here". He noted that the Town has already received requests reserving dates for the summer of 2015. Mr. Owen and Mr. Eggers have discussed this project in great length. At some point, Council may need to give the Town Manager the authority to enter into short term leases with tenants or require that it come back to Council each time someone wants to enter into a short term lease. Mr. Eggers noted that a lease for a term less than a year does not require council approval as long as you give the authority to your manager. Mayor Lyerly stated that she wants Mr. Owen to have the

authority to handle this issue. All Council Members agreed. Mr. Eggers will prepare a resolution and will present it to Council on November 18th.

Manager's Update

Mr. Owen reported that included in Council Member's packet were the financial report, police report, planning, zoning and tax collection report. Also included is a copy of the Planning Board Meeting minutes of November 3, 2014 and the High Country ABC Board Meeting minutes for September 11, 2014. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Mr. Owen reminded everyone that Christmas in the Park will be Saturday, December 6th. Mayor Lyerly noted that JoAnn McMurray has several brochures regarding the event. Mr. Owen stated that he has met with JoAnn several times to go over a few issues like public parking in the field which will be determined by the weather. He noted that if the field is soaked due to rain, the field will be roped off to keep people from parking. We will be pro-active.

Council Member Tufts asked Mr. Owen about the sign ordinance and the time frame for being in compliance. He stated that letters were sent out on October 16 reminding people of the 30 remaining days to comply with the ordinance. How many are still not in compliance? Mr. Owen stated that the Town has heard from most of the people, but not sure of the number. If someone violates the sign ordinance that person can automatically be penalized \$25 a day.

At 6:55 p.m. Council Member VonCanon made a motion for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member Lecka seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 8:15 p.m.

Other Business

Mayor Lyerly reported that Council has determined that transferring sewer taps is not in the Town's best interest. Therefore no action will be taken on Item #1 Sewer Connection Request – McLean.

Mayor Lyerly stated that she and Council Members have reviewed the new contract between our attorney, Four Eggers, and the Town of Banner Elk. Council Member VonCanon motioned to approve the new contract. Council Member Dunn seconded the motion. All were in favor. No one opposed. Mayor Lyerly thanked Mr. Eggers for his service.

Mayor Lyerly asked if everyone was still interested in having a Holiday Reception for the Town employees, the Planning Board, Board of Adjustment and Town Council this year as we have done in the past. Everyone agreed in continuing the tradition. Council Member Dunn would like to have it at the Perry House but needs to check with Robin. Council Member Tufts stated

that his home will be the backup location. The date was set for Friday, December 19th . It will be a progressive party beginning at Dunn's Deli to accommodate the maintenance workers and move up to the Perry House.

There being no further business, at 8:23 p.m. Council Member Tufts motioned to adjourn the November 2014 Town Council meeting. Council Member Dunn seconded the motion. All were in favor.

Adjourn

The Town Council meeting adjourned at 8:23 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: December 8, 2014