

BANNER ELK TOWN COUNCIL
October 8, 2012
MINUTES

The Banner Elk Town Council met Monday, October 8, 2012 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

Council Members present: Mayor Brenda Lyerly, Charlie VonCanon, Robert Tufts, Gail Draughon and David Lecka.

Staff present: Town Manager Rick Owen, Steve Smith, Chief Bill Burleson, Lt. Byron Clawson, Cheryl Buchanan and Town Attorney Four Eggers.

Others present: Sara Brewer, Penny VonCanon, Derek Goddard, Brett Gardella, Donna Dicks, Bill Dicks, Tom McMurray, Ray Knowles, Jamie Shell of the Avery Journal and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for October 2012 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: Zoning Amendment - Incubators

Mayor Lyerly opened the public hearing. Mr. Owen asked Cheryl Buchanan to address council. Ms. Buchanan went over with council the changes the planning board made to the ordinance. She noted that since the ordinance would now allow existing businesses, several definitions were added such as: the definition for a distressed business and an anchor business and the definition for incubators, which would include anchor businesses. Ms. Buchanan also noted that there was a change in the criteria one would have to meet to allow anchor businesses. In addition, Ms. Buchanan noted that they struck from the introduction the intent that we would not allow existing businesses and would now allow up to 30% of the total heated floor space be used for anchor businesses. Mayor Lyerly asked if there were any comments or questions. Council member VonCanon thanked Ms. Buchanan, Mr. Owen, the planning board and all others who worked on this ordinance to make it amenable to the Town of Banner Elk and Avery County. Mayor Lyerly agreed and noted that there was a lot of time and effort put into this amendment. Brett Gardella stated that he was happy that we were able to bring it all back home and looked forward to moving forward with this project. Mayor Lyerly closed the public hearing.

Public Hearing: Zoning Amendment – Signs

Mayor Lyerly opened the public hearing and asked Cheryl Buchanan to address council. Ms. Buchanan stated that per council's request, she researched criteria for QR Codes with other local towns. Boone and Blowing Rock both thought it was a great idea, but they hadn't given it much thought as yet. Mayor Lyerly asked if she spoke with any larger cities. Ms. Buchanan said no, but that someone noted that on Interstate 40, on the way to Asheville, a billboard exists which is made up primarily of a QR code. Ms. Buchanan stated that the planning board recommended that a QR Code be allowed on a smooth flat surface, as an addition to or upon an existing sign not to exceed 4" x 4". There being no further comments, Mayor Lyerly closed the public hearing.

Approval of the Minutes

Mayor Lyerly asked council for a motion to approve the September 2012 minutes. Council member VonCanon motioned to approve the minutes as written. Council member Tufts provided a second. The September 2012 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 October 2012 agenda as written. Council member Tufts made a motion to approve the agenda as written. Council member Draughon seconded the motion. The agenda passed with all in favor.

Citizen Concerns

There were no citizen concerns.

Zoning Amendment – Incubators

Mayor Lyerly stated that Ms. Buchanan addressed council on the subject earlier and asked if anyone had any additional questions or could a motion be made for approval. Council member VonCanon made a motion to approve the amendment to Section 922 for incubators to include the allowance of existing anchor businesses at a percentage within the incubators. Council member Lecka seconded the motion. All were in favor. No one opposed.

Zoning Amendment – Signs

Mayor Lyerly introduced agenda item #2 and asked if there were any comments or was a motion at hand. Council member Tufts made a motion to accept the changes as written for the amendment for the signs. Council member VonCanon seconded. Mr. VonCanon asked that the town be the first to put a QR Sign on the front door of town hall. Mr. Owen said "done". All were in favor. No one opposed.

ABC Store Audit Report

Mayor Lyerly called upon Sara Brewer to address council. Ms. Brewer thanked council and shared with them a copy of the statement of revenues, expenses and changes in net assets for the twelve months ending June 30, 2012. She noted that a copy of the audit was given to Mr. Owen. She stated that this past fiscal year they were \$27,000 over the previous fiscal year. Although cost of sales has gone up this year, this was not a down turn. The economy just wasn't there for

us. Ms. Brewer noted that on page two of the audit, almost \$603,000 in taxes have been given to the state, which is revenue the store generated for the state which goes straight to their general fund. She also noted that the state ABC Commission is not a line item in the state budget. The ABC Commission is funded by monies that we generate through billing for services to our liquor store. Ms. Brewer stated that the \$603,000 is clear money for the state just from our store. She noted that the revenues to the towns have remained the same (\$80,000 per town). By the state's statutes we are mandated to pay out 3-1/2 % of our net profits to the towns. In reality, our 3-1/2% would have been \$71,400. We paid out \$240,000. So the towns are getting much more than the state mandates.

Ms. Brewer stated that Donna Dicks sent out invitations to the town for an ABC 101 Training this Friday morning at Sugar Mountain Town Hall, in which our state association will be holding a seminar to help educate town councils and county commissioners as to what the state ABC system does, what regulations we as a store have to follow, what regulations the board has to follow, etc. Ms. Brewer hopes that there will be good attendance.

Donna Dicks asked Sara to also report on the Roman Gabriel Program that the store is sponsoring. Sara Brewer stated that out of their net profits, they are mandated by the state to give 5% to alcohol law enforcement and 7% to alcohol education. In years past they have given the monies to New River Behavioral Health. Since they were having problems with their organization, they researched further where best to put the money. Roman Gabriel has several ministries throughout North Carolina to provide education to students of all ages on drug and alcohol abstinence, building self esteem, etc. Ms. Brewer believes it is a very worthwhile commitment.

Council member Tufts asked Ms. Brewer why the percentage of disbursements to the three municipalities was not equal. She stated that when it started in 1998 the disbursement was 50, 30 and 20, because of the way the merger was drawn up. Once we reached a certain point in distributions, it became equal, which it has been for about six years.

Mayor Lyerly thanked Sara Brewer. No action was taken.

Woolly Worm Festival

Mayor Lyerly asked Rick Owen to update council. The mayor recognized that several representatives from the Woolly Worm Committee were present. Mr. Owen reported that the town has been talking with the committee since early spring and that the town received a letter from the committee regarding their expressed interest in using an area of the park or the park expansion for the Woolly Worm Festivals. However, there were several questions and issues that surrounded using the park: heavy vehicles on the field and bridges, power supply, grading the field, the platform for the woolly worms, etc. Mr. Owen stated that the purpose of this evening's discussion was to see if council was still interested in their proposal and to let the committee state their interests. Tom McMurray, vice chairman of the Woolly Worm Festival and Ray Knowles, president of the Kiwanis Club and also a member of the Woolly Worm Festival Committee were introduced. Mr. McMurray reported that the festival is on its 35th year which has always been held at the Banner Elk Elementary School. Because of the changes

occurring to the school property and its uncertainty along with the way the festival has grown over the years, the committee has to look at options. He stated that the committee is made up of a joint venture with the Avery County Chamber and the Kiwanis of Banner Elk. All money that is raised and expenses that are incurred are divided equally. The Kiwanis disburses all their money to the community each year. It gave out over \$54,000 in grants and program funds to various entities throughout Banner Elk and the county. The demands on the committee keep growing. We need to look at what we can do to expand to make the event better so that we can serve the needs of the community. The Kiwanis understand the grant monies have been provided to the town for the park expansion and through conversations with Mr. Owen, we would like to be a part of it. He stated that discussions stalled because of concerns for the park, but wants to work together with the town. Mr. McMurray noted that the committee wants to keep the festival in Banner Elk, but that they need help. He said that the committee needs input from council to be able to achieve what they want to achieve. We need discussions to cover all options. Mayor Lyerly stated that she understood that any damage to the park would be covered by the committee. Mr. McMurray stated that they budget money each year for the repair of the field in front of the school. Of course, in the park we are looking at a broader scale of repair. Mayor Lyerly asked council if it was the consensus to keep the festival in Banner Elk. Council member VonCanon stated that he is in favor of keeping the festival in Banner Elk, but stated his concerns for using the park at the lower end of the field. He noted that the metal bridge is more than 50% on his property. He also noted that he gave an easement to the town to use it for a walkway. He stated his concern about beefing up the bridge to accommodate the heavy traffic. He also mentioned his concern about letting only one event using the park vs. other events. Another concern of his is that the area of the park the committee is looking at is prone to water. So the repair to that portion of the park from heavy vehicles is going to cost money. He'd rather see how the park expansion proceeds before the town commits to pursuing working with the Woolly Worm Committee. Mr. McMurray agreed that there were several questions that had to be resolved in regards to liabilities and obligations. He stressed that we need more discussion regarding options. The festival continues to grow. The committee wants to work with the town. Mayor Lyerly recognized Bret Gardella. Mr. Gardella stated that on behalf of the county, all discussions regarding the beautification of the Banner Elk School include that every festival that is there remain there. With the additional space that the county has created, the county wants it utilized. Mr. Gardella stated that unless there is a major change in the makeup of the Board of County Commissioners, which he doesn't foresee, the Woolly Worm Festival is always welcome there and hopes that it stays there. He noted that after this year's festival is over, the county plans on taking the basketball court out and create more green space there. They also have plans in the future to follow along the lines of recommendations from the town in putting a nice walkway in off of the sidewalk. The county wants to keep the area beautified in a manner that will benefit every event there. The county does not want to see Woolly Worm move. Mr. Knowles addressed council. He stated that the plan that was introduced and proposed to Mr. Owen and several board members was based on the restrictions that were given to the committee regarding access to the park and easements. He noted that Chief Burleson brought to the committee's attention the need for a second means of getting in and out of the area. There needs to be some sort of stabilization and improvement to the grounds to allow vehicles to come in. He noted that an important issue for the committee is not to have food vendors separated from the craft vendors and the woolly worm races. They feel they need a site with which they can have a

long term commitment. Mr. Knowles appreciated Mr. Gardella's statement on wanting to keep the festival there, but until they actually know what is going to happen to the school property they have to research other possibilities because the festival is a major undertaking. He stressed that is why we need to be able to work together with the town. Council member VonCanon asked whether the field at Lees-McRae could be an option. Mr. McMurray stated that if Lees-McRae offered, in size it would work, it being larger than the park. Logistically it would work, but there is no infrastructure in place. They would have to get electricity and plumbing to the area. That is a viable option. No dialog has been conducted between the committee and the college. Council member Lecka noted that what he is hearing is that the committee's ultimate goal is to have an alternative spot in case the school property goes away and to have more space readily available if the festival continues to grow. Mayor Lyerly stated that it is a monumental task and she and the town appreciate the work of the committee.

Park Expansion Project

Derek Goddard addressed council. He explained that over the past couple of months he has been going over the bids to establish why we are over budget. He and Mr. Owen have discussed the issues concerning the cost of the project. Mr. Goddard reiterated that the town bid the project in two phases: grading and site work and the building construction. Mr. Goddard recommended to council to proceed with awarding the grading portion of this work. This will get the project underway, the soil set up (the compaction that it needs) to begin the building portion, hopefully in the spring of 2013. He felt that it would give him and Rick time to look over cost study mechanisms to get the project back on budget. Mr. Goddard noted that based on his firm's commitment to the town and to the project, Blue Ridge Environmental has reduced its fee by \$20,000.00. Mayor Lyerly stated that it was very generous of him and his firm. Mr. Goddard stated that the lowest and most responsive bidder for the grading and site work phase of the project was M&M Construction here in Banner Elk, whose bid was \$120,300.00. He recommends to council to award this phase to M&M Construction. Mr. Owen stated for the record that when the town first took on this project, we had a 50/50 matching grant where the town was obligated to pay some funds. The town knew what features were needed to be included in the park that would come out of this grant. At that time, Derek helped the town come up with a very preliminary budget based on the items they wanted to be included in the park and knowing the budget would change once the town started to receive prices and quotes. He stated that PARTF understood that too, that the town could amend the budget. The town contracted with Derek's firm to provide us with design services, survey services, budget and management of the project. Mr. Owen stated that it is important for council to understand that it is not a matter of money being spent someplace else. The town designed the project based on the money that we had after Derek's contract. Mr. Owen also stated that he agrees with Mr. Goddard's recommendation to award the bid to M&M. The next step will be for the staff to put together an amended budget for the PARTF Board to approve, based on the two bid prices we already have in hand, knowing that we still hope to come in under that budget price. Mr. Owen stated that the town has looked at options; one of which that town staff could possibly do some of the work which would help lower the costs. Right now if we took the bid prices and based on what we anticipated, there is about a \$75,000 difference. Our goal is to save as much as possible. The grading is the lowest cost of the two parts of the project. Council member VonCanon asked Mr. Goddard what is involved in the grading project. Mr. Goddard responded

that the line items in the bid were grading, stone or gravel, silt fence, asphalt, erosion control, seeding, storm water management, water control, dangerous tree removal, beaver dam removal,, and all pipe and concrete necessary to get the site ready for the building construction. The main focus will be on the pad the building will sit on. We will have to de-water as we are working, undercut and fill back with gravel and engineered fabric, bring the soil up to test, compacting it, testing it to get it out of the flood plain. He stated that after all the prep work, the fine grading will take place to get the field on a 1-1/2% slope to a 2% slope down to the bridge area, so that the field drains in that direction. Council member Tufts motioned to approve the low bid contingent upon the PARTF Board approving the town's amended budget for the park project. Council member Lecka seconded the motion. All were in favor. No one opposed.

Council member Tufts asked Mr. Owen what was the time frame and when could the grading start? Mr. Owen stated that he hadn't talked to our regional PARTF representative in awhile, but she acted as if it would be a quick process to approve the amended budget.

Public Safety Request

Mr. Owen reported to council that the town is requesting approval from council to place two additional stop signs at the old elementary school. The traffic control sign of "do not enter" has been removed at Azalea Circle due to the school being closed. He noted that traffic is now using these roads as a by-pass around the stop light. He stated that he consulted with Chief Burleson and that they both agreed that two stop signs need to be installed at the intersection of Azalea Circle and Elementary Way. Council member Tufts asked if there is a stop sign at the intersection of Elementary Way and Shawneehaw Avenue. Mr. Owen confirmed there is. Mr. Tufts also asked about Whitesell Way and Shawneehaw. Chief Burleson stated that it was a private road, not a town road. Mr. Owen stated that the town is not trying to prevent traffic from entering, but wants to prevent traffic accidents by putting up the two stop signs. Council member Lecka made a motion to adopt the ordinance to install the two stop signs. Council member Draughon seconded. All were in favor. No one opposed.

Avery County CTP Appointment

Mr. Owen reported to council that a copy of a letter from Robert Wiseman was included in their packets. He stated that Mr. Wiseman is requesting the town to appoint a town representative to sit on a board for a comprehensive transportation plan that the High Country Council of Governments is heading up for NCDOT. Mr. Owen noted that it will be an 18-24 month process, meeting quite often which will include public meetings. The plans they are putting together will replace the thoroughfare plans which council went through several years ago. This is DOT's new transportation planning tool. Everyone will need a comprehensive transportation plan which will be county wide and takes in account all transportation needs around the county. Mayor Lyerly reported that Mr. Owen commented that he will attend all of these meetings, so council should appoint him for that spot. Council member VonCanon made a motion to appoint Rick Owen as the town representative for this project. Council member Lecka seconded. All were in favor. No one opposed.

Mr. Owen noted that the HCCOG has been through this process with a couple of other counties so they are learning as they go. There will be certain meetings where certain individuals are more likely to have more input. Mr. Owen told council that he will keep them informed of these meetings of interest (i.e. traffic patterns, history of the county, etc.)

Tax Release

Cheryl Buchanan reported to council that Phillip Barrier contacted her about a release on the Silver Springs' common areas based on an exemption form that he had filled out for the county and approved for the subdivision. The total amount for all the common areas affected by this agreement is \$102.60. Ms. Buchanan recommended the approval of the release of these taxes for the common areas. Council member VonCanon made a motion to approve the tax release. Council member Tufts seconded. All were in favor. No one opposed.

Preserve American Committee

Cheryl Buchanan reported that in 2008 the Preserve America Commission was adopted and appointed. She noted that there hasn't been a lot of activity in the area for this commission to work on. However, two major projects are coming up: the new building that will replace the old theatre building and the proposed nursing school at Lees-McRae as well as other projects that involve the Heritage Overlay District. Two members of the commission have to be replaced who no longer reside in Banner Elk and the existing members, Donna Dicks, Gail Draughon, Penny VonCanon, and Deka Tate will need to be reappointed. Four Eggers stated to Mayor Lyerly that since some items that could go before the Preserve America Commission could also go before the Board of Adjustment, she may not want to appoint a sitting board of adjustment member to that commission because it could pose a conflict and they would have to excuse themselves from one or the other committee. Ms. Tate has been appointed to the board of adjustment, so the Mayor will have to address this. Mayor Lyerly thanked Mr. Eggers and stated that now there are three spots that have to be filled. Mr. Owen reported that we have time to fill the three vacancies and that council shouldn't feel any pressure to make the decision this evening. Ms. Buchanan stated that a quorum for this commission is four. It would be nice to have at least one vacancy filled. Mayor Lyerly volunteered to fill one of the positions and council will have to think about the other two. No action was taken.

Funding Request Process

Mr. Owen reported that last year council started a process for people to request donations from the town. A form would have to be completed and then presented to council for review. Mr. Owen stated that comments were made to him that the form was a hindrance, did the form encourage or discourage requests because of the process, etc. Mr. Owen is asking input from council how they wish to proceed with receiving these requests. He questioned if putting together a pre-review committee to narrow the requests before brought to council. He noted that there are other options out there and that a decision didn't have to be made this evening. He just wanted to let council begin thinking about it. Some council members discussed and agreed that having a formal application and formal deadline is needed and that the option of having a pre-review committee was a good idea. Mr. Owen asked their suggestions as to who would make up the committee (i.e. staff, staff and council, etc.). Mayor Lyerly suggested some staff and council members. Council member Tufts asked what the time frame was last year. Mr. Owen noted that

it was right at the end of the budget year. Mayor Lyerly stated that we needed more time, possibly February or March as a deadline and that having a citizen/taxpayer on the committee was a good idea. She asked that Mr. Owen give it some thought and that council would also think on it. No action was taken.

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 minutes from the High Country ABC Board.

Mr. Owen told council that the council table is being worked on and hopefully October will be the month. He noted that the contractor had two questions, one referencing color. Dark (a cherry or walnut was their thought) works better for the curvature of the table, showing fewer flaws. The second question was regarding the table top. There were concerns about the longevity of the top and it getting wet. Mr. Owen and others want to avoid laminating it and would rather seal the natural wood top. Council members agreed. The discussion went back to color. They all agreed that they want the grain to show through, so preferred not too dark of a stain and they preferred a color similar to the existing cabinets in the chambers.

Mr. Owen reported that the town received a letter from the Banner Elk Heritage Foundation thanking the town for the \$1,000.00 donation.

Mr. Owen reported that the town will have a booth at the Woolly Worm Festival, which was also done last year. It will be teaming up with the Banner Elk Chamber and will have on hand items that are specifically related to Banner Elk.

Mr. Owen stated that there will be an ethics training class here at Town Hall on October 24th at 5:30. He noted that Mr. Tufts and Mr. Lecka are the remaining two that need the class. Pizza will be provided.

Mr. Owen reported that Lees-McRae is interested in renaming a couple of the streets on campus. One of them was Faculty Hill. Mr. Owen told Lees-McRae that it was not a town street. They have already taken up the issue with the county to rename it Bobcat Drive. Chief Burleson received an email about the college wanting to change another street which is a town street. It is Buena Vista Way which is in front of the library. Mr. Owen noted that in discussions prior to the meeting with Mr. VonCanon and Ms. Lyerly, there is some history behind the name. The college would like to rename it Lees-McRae Drive because they want people to see the street name as they enter town. They were unaware that it was a town street and already approached the county about having it changed and have made progress toward that. Mr. Owen noted that council will have to take some sort of action. Mr. Eggers stated that the town will have to have a public hearing in order to rename a street in the town. Council member VonCanon stated that he has mixed feelings about changing the name of the street. He stated that it has been Buena Vista since the incorporation of Banner Elk. Mr. Owen noted that council could option to take no action. Mayor Lyerly felt that a public hearing would be most helpful to see if any one would be opposed to it. Council member VonCanon made a motion to hold a public hearing on the name

change of Buena Vista Way at November's meeting. Council member Draughon seconded. All were in favor. No one opposed.

Mr. Eggers noted that he had nothing to report to council in closed session.

Mr. Eggers did want to clarify the first agenda item regarding incubators. He asked if the motion was to approve the text as presented or only the section related to the anchor space percentage? He noted that he wanted clarification so that the minutes would reflect the correct motion. Mayor Lyerly stated "as presented".

Mayor Lyerly asked if there was any other discussion. Council member Lecka noted that Chief Burleson invited him to play in the police golf tournament this month. He commented that it was a great tournament, commended Chief Burleson and his staff for all the work and said he looked forward to playing in it next year. Chief Burleson commented that except for one missed year in 2005, we've been holding the tournament for fifteen years and thanked Mr. Lecka.

Council member Draughon stated that our esteemed manager, Rick Owen, received a very prestigious award over the weekend. Mr. Owen said it was the Distinguished Alumni Award from Lees-McRae. Council members and all those present congratulated and applauded Rick for receiving the award. Mr. Owen thanked everyone and felt much honored.

At 7:23 p.m. council member VonCanon motioned to adjourn the October meeting. Council member Draughon seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: November 12, 2012