

BANNER ELK TOWN COUNCIL
October 14, 2013
MINUTES

The Banner Elk Town Council met Monday, October 14, 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, Steve Smith and Attorney Four Eggers

Others present: Sara Brewer, Penny VonCanon, Rebecca Bolick, Donna and Bill Dicks, Mike Dunn, Bill Schrum, Jeff McRee, Ted Silver, and other interested parties.

Call Meeting to Order

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for October 2013 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 – Rezoning Request: New Parcel Added to Fire Department

Mayor Lyerly opened the public hearing on the rezoning request. Mr. Owen addressed council. He noted that Avery County gave the fire department a .10 acre parcel of property which is currently zoned M/E (medical/educational). The planning board is asking council to rezone the gifted parcel to G/O so that the entire fire department property will be zoned the same. Mayor Lyerly asked if there were any questions or comments. There being no comments, Mayor Lyerly closed the public hearing.

Public Hearing–Zoning Ordinance Text Amendment: New Board of Adjustment Requirements

Mayor Lyerly opened the public hearing on the zoning ordinance text amendment. Mr. Owen reported that this public hearing is in reference to the changes made to the state statues. He noted that Attorney Four Eggers has prepared the ordinance with the necessary changes mostly for the Board of Adjustment and how they operate. Mr. Eggers addressed council. He stated that the changes to the voting of the board of adjustment are required by state statute. They changed the standards for approval. Variances still require a 4/5 vote in the affirmative for a variance to be granted. It does change the standard for what a variance is and sets forth the four reasons (there used to be five). Everything else by the board of adjustment is by simple majority vote. The other section which was added is proposed as a section on “intervention” (Section 1110(5)) which is a process that will allow staff to process paperwork on those who wish to

become party in addition to the applicant and allow us notice to make hearings flow in a smoother manner. Mayor Lyerly asked if there were any comments or questions. Council member VonCanon asked about the application and how the public would be notified. Mr. Eggers stated that it could be posted at town hall and if someone comes and inquires to the zoning administrator, she could direct them to that application form. The application requires 24 hours notice prior to the hearing or they can be entertained at the hearing. Mr. Eggers clarified that folks could still speak and comment either for or against an application with the board of adjustment. This process is for whom could become party to the suit and have a right to cross examine witnesses, make opening and closing statements and ultimately appeal to court if they don't get a favorable outcome. Mayor Lyerly asked if these forms are available on our website. Mr. Owen noted that some are and this one can be put on the site if approved. Mayor Lyerly asked if there were any more questions or comments. There being no comments, the mayor closed the public hearing.

Approval of the Minutes

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

Approval of the Stated Agenda

Mayor Lyerly reported that there were changes to the stated agenda. She noted that there was a request to move the ABC Store Audit up to Agenda #1 and we need to add an additional item #9 to "consider bids for bridge painting". Council member VonCanon motioned to approve the agenda with the noted changes. Council member Bolick seconded. All were in favor. No one opposed.

Public Comments

There were no public comments

ABC Store Audit

Ms. Sara Brewer thanked council for allowing her to present the audit and for moving her item up on the agenda. Ms. Brewer noted that attached to council's agenda there were select pages from the audit for the fiscal year ending June 30, 2013. She stated that the store finished the year at \$2.5 million, very similar to last year with no major changes. Ms. Brewer noted the continued distributions to the Town of Banner Elk. The ABC Board has voted that it will be giving an extra \$5,000 to the town in profit distributions for the upcoming year and also to the other two towns. Ms. Brewer reported that she likes to point out one figure on the audit and that is since the inception of the High Country Store when the three towns merged in 1998, to date we have given \$2,937,000 to the three towns. Ms. Brewer also reported that in July she was elected president of the NC ABC Association and the term is for one year. With this position she will be working closely with our lobbyists in Raleigh regarding such issues as privatization. For instance, there are bills on the house floor from small NC distilleries wanting to be able to sell from their distillery vs. going through the ABC Association. She noted that they are working hard on ways to calm those efforts and work on other ways these distilleries can benefit from

being a small business within the state. We are trying to help them make the revenue by assuring them that we would carry their product, rather than cut into our revenue in a controlled state. There are 13 distilleries throughout the state. The association is also working with the ABC Commission to help make the system in the state more efficient to where there is more money realized coming back into the local communities.

Rezoning Request

Mr. Owen noted that he had nothing more to add from his previous report at the public hearing. Mayor Lyerly asked if there was a motion to approve rezoning the .10 acre parcel belonging to the fire department from M/E to G/O. Council member Lecka motioned to approve the rezoning. Council member Tufts seconded the motion. All were in favor. No one opposed.

Zoning Ordinance Text Amendment

Mayor Lyerly asked if there was a motion to approve the changes and resolution for the board of adjustment zoning text amendment. Council member Tufts motioned to approve the zoning ordinance text change. Council member Draughon seconded the motion. All were in favor. No one opposed.

GDS Service

Mayor Lyerly recognized the two representatives from GDS, Mr. Bill Schrum and Mr. Jeff McRee. Mr. Owen reported that previously the town had a franchise agreement with High Country Waste Solutions to pick up and dispose of the town's solid waste. He noted that customers received notice that Republic Services, who GDS is a branch of, purchased High Country Waste Solutions and by doing so became our solid waste disposal provider. Mr. Owen stated that Bill and Jeff are here tonight to answer any questions or concerns council may have. He also noted that he sat down with these gentlemen and went over the contract and the intent is that they are bound by High Country Waste's contract that the town has with them at the present time. Mr. Schrum addressed council. He stated that GDS began servicing Banner Elk on October 1st. He noted that the transfer is not official until they receive written approval from council which is the reason for meeting with you tonight and to state that they will fulfill all terms of the agreement that High Country agreed to. Mayor Lyerly asked if there were any questions. Council member Bolick asked if part of the agreement included the tree limbs and yard waste pick up. Mr. Owen noted that this item was discussed as part of the contract. No dates were set with High Country waste, but they were going to pick up two days a year and any additional pick ups would be done at an additional cost. Mr. Schrum stated that they could accept a certain date or if it were more convenient, provide this service on a call in basis. Mayor Lyerly thanked the gentlemen for coming and asked for a motion. Council member Tufts motioned to accept the transfer of assignment with Republic Services and the Town of Banner Elk. Council member Lecka seconded the motion. All were in favor. No one opposed.

Elkmont Plat Approval

Mr. Owen reported that although the project has been finished for quite some time, a final plat has never been approved. The developer of the property received feedback from a former town manager that certain improvements did not have to be made that were on the preliminary plat and the POA was not in agreement. The POA negotiated with the developer to do some of the

improvements that had been promised on the preliminary plat. Mr. Owen stated that he indicated to the developer that the town would not entertain a final plat until all improvements were made. Three streetlights were not installed along Elkmont Lane. The developer would like to sell a unit, but needs a final plat to do so. The final plat has come before the planning board. It has the three lights indicated on it. They have not been installed as of this date. Mr. Owen noted that he discussed the town's options with Mr. Eggers. Mr. Owen stated that Mr. Eggers drafted a performance bond for 125% of the cost of the three streetlights along with the installment charges. The town will hold that 125% of the cost until the project is complete or for six months. If it is not done in six months, the town would have the money to complete the project at that time. We based the price on a quote from a local electrician that the developer received to put the lights in and a quote from the lighting company who supplies the lights. The planning board has approved this contingent upon receipt of the bond and they are asking for council's approval. Mr. Eggers stated to the mayor that she would need two votes. The first, to approve the bond (which in this case is cash). Upon that being received, council's approval for a final plat. Council member Tufts motioned to approve the performance bond for 125% for the cost of the three street lights. Council member VonCanon seconded. All were in favor. No one opposed. Council member Lecka motioned to approve a final plat contingent upon receipt of the bond. Council member Bolick seconded. All were in favor. No one opposed.

Tax Release

Mr. Owen reported that council discussed this release last month. This parcel has always been prorated for taxes because it is part in and part out of town. Last month the request was made for \$21.76 to be released. However, a typo was made and the amount should have been \$210.76. We are requesting that the difference of \$189.00 be released this evening. Council member Bolick motioned to approve the remaining \$189.00 on this tax release. Council member Lecka seconded. All were in favor. No one opposed.

Discuss Cell Tower Ordinance

Mayor Lyerly stated to council that the planning board is requesting a moratorium to review the cell tower ordinance. Mr. Owen reported that the planning board has been discussing making changes to the cell tower ordinance. The town has received good feedback from town residents and board members. This ordinance doesn't affect the current application before the board of adjustment, but it affects cell towers going forward. In trying to give the planning board more time in making changes to the ordinance, Mr. Owen recommended asking Mr. Eggers about a moratorium. Mr. Eggers stated that the recent changes to the wireless telecommunications tower ordinance has put some rather stringent requirements on what we can and cannot do. One of those is we have 45 days for staff to review an ordinance to determine whether it is complete under our ordinance before we say yes or no under the statutes and whether their application is complete or not. That would take place whether we have a moratorium or not. Mr. Eggers stated that if we have a moratorium we would probably have about 2 weeks to 30 days as far as what would be effective. It would not be a very productive use of staff time to have a moratorium because the town would be bound by a state law that has a completeness review within 45 days upon submission of an application. The statute binds us to do that whether we have a moratorium or not. Mr. Eggers stated that his recommendation is instead of staff working on moratorium language to work on language for proposed provisions that the town would

request for the cell tower ordinance. The regulations for both the federal and state governments have become rather strict on what we can and cannot do. There is even a movement by the telecommunication industry to try and make everyone be in compliance with very similar regulations. He noted that for what it's worth, every other town, city and county in North Carolina is faced with the same issues and concerns related to the changes that are involved with this issue. The League of Municipalities has also been involved with proposed changes and ordinances that would comply with the new law. Mr. Eggers noted that a moratorium will not necessarily give the town more time. He recommends that council direct staff, including him, and the planning board to work on a proposed ordinance change that council can consider and adopt. Whatever council adopts, it will not affect any application that is currently before the board. However, with any changes in state law, the current application does receive the benefit of what those changes will be. Mr. Eggers believes there will be a proposed document to work from that will come from the League of Municipalities that the town can use as a basis to work from. It is supposed to be "across the board" which all municipalities can use. Then Banner Elk can "fine tune it" to meet the needs of the town. Mr. Owen reported that he and Brenda attended the League of Municipalities' meeting in which a representative from AT&T was present and spoke about how they are working with the state and with the League to get a proposed ordinance that was uniform with state and federal law. Council member Bolick stated that every state and municipality is faced with the same issues. Mr. Sorrisfield, a representative with American Towers, spoke at the planning board and board of adjustment meetings. He said that AT&T and American Towers would abide by the zoning ordinance for the Town of Banner Elk. It is important for the town now and moving forward for the planning board to look at what we have and make all possible changes to it because it will be crucial to get it right moving forward. With all the new technology coming forward, cell towers could become a thing of the past. We need to look at what is good for Banner Elk and these towers do not need to be within town limits or the ETJ to get coverage. There is coverage out there. Mayor Lyerly recommends council send this back to the planning board. Council member VonCanon agreed and that the planning board needs to call for a special meeting to get this issue worked on as soon as possible before our next meeting. Penny VonCanon asked to speak. She stated that Allen Bolick has spent an incredible amount of time researching this subject and he has passed this information onto the planning board. Mayor Lyerly thanked Mr. Bolick for all his work.

Utility Line Acceptance

Mr. Owen reported that the town has come across an issue relating to two utility lines: one water line and one sewer line. The lines were installed to service the Apple Hill Planned Commercial Development on Orchard Lane across the street from the new elementary school. He noted that Bob Ingalls, the developer of the property, had these two lines permitted as private lines. While it is not unusual for a developer to begin with a private line that is then dedicated to the town, it is unusual for a private line to stay in the ground and then for the development to go unfinished and into foreclosure and the property be sold to private individuals who don't intend to finish the project as designed, but still need access to those utility lines. Mr. Owen stated that the recommendation by Mr. Eggers and David Poore is that the town accept the lines as an extension of the town's system which gives us access to and control over the lines. The lines have been certified by an engineer and approved by the State. Supposedly they are being maintained as privately owned lines which is less than ideal for the town. Our alternative is to cut them off

from the town's system, which would prevent the new landowners from using the lines. Upon acceptance, Mr. Poore would follow up with a proper letter to the State, indicating that the town has accepted the two lines as part of our system. Mayor Lyerly asked if the current owners have to be off of them before we accept them. Mr. Owen stated that because they are connected to our system and permitted, the State would like us to be operating these lines. At this point, no one is operating them. The lines are permitted under Bob Ingalls' name with the town's permit number, which is on file at the State level. Council member Tufts asked if the new owners paid impact fees? Mr. Owen stated that they did and this is how it came to our attention. Mr. Bullock asked if the lines were tested. Mr. Owen noted that the lines were certified several years ago. The town supervised the landowner putting in a 2" blow off hydrant on the line along with their taps so that the town could circulate water throughout. The water line is approximately 400 ft. The town participated in the cost of the water line when it was put in. The town paid Mr. Ingalls for the upgrade from a 6" to an 8" line. It was very clear that the town was working with Mr. Ingalls to own that line. Council member Tufts motioned to accept the two utility lines as part of the town's system. Council member Draughon seconded. All were in favor. No one opposed.

Consider Bids for Bridge Painting

Mr. Owen apologized to council for not getting this agenda item into their agenda packets. He noted that during the budget process he mentioned to council that several town bridges needed repair. Three of the bridges need to be sandblasted and painted (Dogwood Road, Balsam Lane and Shawneehaw Heights). David Poore gave the town a budgetary number or estimate on what the work would cost. Mr. Poore, upon working up the estimate, used DOT's cost basis. Mr. Owen noted that in years past, the work was done by town staff, but because of environmental issues and regulations, the town decided to source the project out. Three bids were received. Attached is a letter from David Poore with his recommendations along with the three bid tabulation sheets. Mr. Owen reminded council that the figure we discussed for the four bridges that needed work was \$90,000. What is not included in the cost estimate or the bid we have in front of us is the culvert work at Crooked Creek. The issues with this work is the retaining wall and the blocks along the culvert. Mr. Owen noted that the town received three competitive bids and recommends that council approve the lowest bid from Armen Construction Company of Charlotte, NC. for \$79,986.00. He also noted that at a later time, the town will receive bids for the culvert work at Crooked Creek. Council member Tufts asked when they would begin the work...this fall? Mr. Owen stated that after discussing this with David Poore, they felt it wise not to begin work this year because some of the materials and products used in the process aren't recommended at certain temperatures. Once council awarded the bid, the town would work with the contractor to see if the bridges could be cleaned and primed then wait till spring to paint. Council member asked the color. Mr. Owen stated that color wasn't discussed but presumed white or gray. Council member Lecka motioned to approve the bid. Council member VonCanon seconded. All were in favor. No one opposed.

Manager's Update

Mr. Owen reported that included in council member's packets were staff reports which includes the Drug Task Force Statistics from January through September. He noted that this report shows a lot of justification for what the drug task force does in and around our community. Mayor Lyerly stated that it was very impressive. 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 the culvert work at Highlands Drive has been completed and it turned out very well. The residents were treated well by the contractor during the process and were pleased to have it done.

Mr. Owen reminded council members that Josh Dobson will be at town hall on October 24th at 6:30 for a town hall meeting. He encourages the public to attend so as to have a good turn out from our community.

Mr. Owen noted that this coming weekend is the Woolly Worm Festival. The Halloween event that was typically held in the park will be held again as last year at the old elementary school due to cold temperatures. Christmas in the Park will be held on December 7th and as council members are aware, this event continues to grow. Joanne McMurray has even bigger plans for this event than last year.

Mr. Owen reported that the Preserve America Committee is meeting more often. He recommended to Cheryl Buchanan to set a regular meeting date. They have set the third Thursday of every month as their meeting date with the exception of November and December.

Mr. Owen noted that the High Country Council of Governments will be holding an economic development forum at Mayland (Spruce Pine campus) on November 1 from 9:00 a.m. until 2:00 p.m. If anyone is interested in going, we have until October 18th to RSVP. Mr. Owen stated that Council member Bolick will be attending.

Mr. Owen stated that the shelter in the park is under construction. The timber frame is up and it looks good.

Mr. Owen noted that the November council meeting lands on Veterans Day. Council member Tufts asked if this could be changed. Mr. Owen noted that it was up to council to decide. After discussion among the council members, it was decided to hold November's meeting on Wednesday, November 13, 2013 at 6:00 p.m.

Council member Tufts asked Mr. Owen if there was any update on the construction at Lees-McRae. Mr. Owen stated that he did email council members noting that the town gave them their permit after the engineer and architect agreed to the town's required provisions (i.e. widening Maple Court, re-working the sidewalk, etc.). They are probably not as far along as they would like to be, but they are moving along, and they will make sure the area is cleaned up by Friday for the upcoming weekend activities. Council member Tufts asked if the town was aware that a street light was hit across from the construction entrance. Mr. Owen was aware and it will be replaced.

At 7:05 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 7:25 p.m.

Other Business

Mr. Owen noted for the record that he has had several requests for speed bumps and stop signs at certain areas of town. He doesn't bring all these requests to council, but wants council to be aware of them, the biggest being at The Cottages at Hotel Drive and another at the Mill Pond. Mr. Owen doesn't know how council feels about speed bumps. He does know that it took a long time for them to be placed on Old Turnpike. He doesn't have a solution, but if council hears of any complaints or concerns to please let him know. Mr. Owen also noted that if you go up from the pantry (from the fire department) to the old hotel at the first intersection there is a stop sign. It is not a regulation stop sign. It wasn't approved by council. It wasn't on any plan. A certain citizen complained and a former town manager put one up. At some point it will be taken down.

Council member Draughon was questioned by a certain homeowner in The Cottages about the street lights. Mr. Owen stated that when developments are complete, there are certain items typically dedicated to the town (i.e. street lights, sidewalks, etc). There is no basis on what is accepted. It depends on the development. A gentleman came into town hall about a year ago who just purchased a condo at The Cottages. He is paying POA dues to the developer, Angelo Accetturo, and is not happy with what he is paying. He questioned where the dues go and found that they pay for street lights. Then he questioned why he is paying for town street lights. He was told that the lights were not dedicated to the town. Mr. Owen told the gentleman that he needed to get an accounting of the cost of the street lights (what is the history, the cost on the meters, etc.) from the owner so that they could sit down and discuss the issue of dedication. The man can't get any answers from the developer. Currently, Mr. Accetturo has stopped paying the street light bills. So for now, there are no lights (5 total). While it is an issue of safety, the lights belong to the development, not the town. Mr. Eggers noted that it is an issue of "dedication". He also stated that we should wait until the fight is over between the owners and the developer and deal with the victor.

Mayor Lyerly stated that in regards to speed bumps, it was determined that they are a nightmare in snow removal. The fewer we have the better off we are.

Council member Draughon also stated that the use of skateboards in and around The Cottages is very dangerous. Mr. Owen noted that if we see it, we can enforce it. If we don't, we can't.

There being no other business, at 7:38 p.m. council member VonCanon made a motion to adjourn the October 2013 town council meeting. Council member Draughon seconded. All were in favor.

Adjourn

The town council meeting adjourned at 7:38 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: November 13, 2013