

BANNER ELK TOWN COUNCIL

October 13, 2014

MINUTES

The Banner Elk Town Council met Monday, October 13, 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 and Attorney Four Eggers.

Others present: Donna Dicks, Sara Brewer, David Graham, Dean Ledbetter, Penny VonCanon, Jim Swinkola, Ted Silver, 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 October 2014 to order.

Pledge of Allegiance

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

Invocation

Council Member VonCanon opened the meeting with prayer.

Public Hearing – Term of Mayor

Mayor Lyerly opened the public hearing at 6:01 p.m. regarding the term of the mayor. She noted that presently the mayor's term is two years and because of the many new regulations involved in the election of mayor and its office, council is considering a 4-year term. Mayor Lyerly asked if there were any questions or comments regarding this term change. There being no comments, Mayor Lyerly closed the Public Hearing at 6:02 p.m.

Approval of the Minutes

Mayor Lyerly stated that there are three sets of minutes to approve: September 5, 2014 Special Meeting of the Town Council, September 8, 2014 Regular Meeting of the Town Council and September 22, 2014 Special Meeting and Public Hearing. Mayor Lyerly asked if there was a motion. Council Member VonCanon motioned to approve all three council 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 October agenda as stated. Council Member Tufts motioned to approve the agenda as written. Council Member Dunn seconded. All were in favor. No one opposed.

Public Comments

Mayor Lyerly called upon Jim Swinkola, who signed up to speak at this evening's meeting. Mr. Swinkola stated that on October 8th he spent 45 minutes in the May School of Nursing. When he left the building he was filled with very positive feelings and pride. Mr. Swinkola thanked council members for working with Lees-McRae in making the new nursing school a reality. Mayor Lyerly thanked Mr. Swinkola for his comments and stated that the new school will be an asset not only to Lees-McRae but to the Town of Banner Elk and Avery County.

Consider Approval of the Avery County Comprehensive Transportation Plan

Mayor Lyerly called upon David Graham who is a transportation planner with the High Country Council of Governments. Mr. Graham reported that he also works with the Rural Planning Organization (RPO) which provides cooperative and comprehensive transportation training services to seven western North Carolina counties which includes Avery County. Mr. Graham stated that the RPO is responsible for: prioritizing transportation projects within the seven counties, providing transportation information to local governments and other interested parties, providing a forum for public participation in the rural transportation planning process and developing comprehensive transportation plans in cooperation with the North Carolina Department of Transportation. Mr. Graham noted that included in council's packet was an overview of the plan and maps which describes the proposed Comprehensive Transportation Plan (CTP) which includes proposed transportation improvements, highway projects, new location projects, widening projects, bicycle and pedestrian plan projects, new sidewalk facility projects, etc. He stated that there is a lot of material covered in this plan. Mayor Lyerly thanked Mr. Graham for his thorough presentation and asked council members if there were any questions. Council Member VonCanon thanked Mr. Graham for coming before Town Council several times and giving us an opportunity to provide some input into this plan. Mayor Lyerly thanked David and Dean for all their work. Council Member Tufts asked, in terms of the list of projects, to explain the red projects listed as unfunded and the blue projects listed as partially funded. Mr. Graham stated that the Comprehensive Transportation Plan is a compiled list of unfunded projects, partially funded projects and planned projects. Council Member VonCanon motioned to approve the Avery Comprehensive Transportation Plan as presented. Council Member Lecka seconded. All were in favor. No one opposed. Council Member Bolick motioned to approve the Resolution Adopting a Comprehensive Transportation Plan for the Town of Banner Elk. Council Member Dunn seconded the motion. All were in favor. No one opposed.

ABC Store Audit

Mayor Lyerly called upon Sara Brewer. Ms. Brewer reported that in council's packet was a copy of the ABC Board Audit for the fiscal year ending June 30, 2014. She noted that the store was up approximately \$140,000 from the previous fiscal year for a total sales revenue of \$2,697,000. Out of this figure, the store paid out \$639,258 in taxes to the state for the past fiscal year. Ms. Brewer noted that the ABC Store has given to each of the three towns (Banner Elk, Seven Devils and Sugar Mountain) \$85,000 for a total distribution figure in the amount of \$255,000, which is approximately \$174,000 over the 3-1/2% that they are required to give back to the plain authorities per the state statutes. Ms. Brewer stated that since our inception in 1998, the ABC Store has returned profits of \$3,192,502 to the three towns. A good number and a good merger

for the store. She noted that our percent of the net income to total sales was 9.39% which is up from last fiscal year's figure of 8.90%. Any time there is an audit, a copy goes to each of the three towns. Ms. Brewer stated that the Town will be receiving a Performance Audit which is conducted on each ABC Store by the ABC Commission. It measures performance levels in areas such as inventory turnover, profit percentage to sales, working capital minimums and maximums, operating cost ratios, store appearance, administration, along with levels of compliance. She noted that our store had a very clean audit with no major recommendations of major improvements. Ms. Brewer also reported that as of July 1, 2014 they hired an ABC officer, Shane Vance, who works out of the Banner Elk Police Department and employed by the Avery County Sheriff's Department as a Drug Task Force Officer. As our ABC officer he has conducted 5-6 investigations or inspections of our mixed beverage outlets throughout the towns and is trying to inspect all the country clubs before the season is over. All is going well in this department. She noted that he is also working with RASP (Responsible Alcohol Servers Program). There will be training classes held throughout the year for all restaurants, their bartenders and wait staff. Ms. Brewer noted that because of our ABC officer the Board is still paying each of the three towns \$1,000 for law enforcement. Mayor Lyerly thanked Sara Brewer for her report.

Request for Out-of-Town Sewer Connection

Mr. Owen reported to council that this item is a request for sewer connection for a business in a building located in the Town of Sugar Mountain. The building is owned by Thelma McLean. The owner nor a representative of the owner is present this evening. Those that are present (Lynn Smith, Drew Wallace) are owners of the business located in the building that needs sewer service to be able to open their business (Fatty Maddy Beer Company). Mr. Owen noted that included in council's packet are documents showing that no connection fees have been paid or connection approved for the property in question along with letters, Town Council meeting minutes from September 1999 and June 2000. The basis of the request is that the business is located in another town's limits. The Town of Banner Elk has a sewer line that runs in proximity of the building. The owner of the building has leased a space to a tenant. The Health Department is requiring connection to a sewer system. The tenant had the understanding from the owner that connecting to the Town of Banner Elk's sewer system would not be an issue. After they made improvements to the building the owner came to Banner Elk to see about the connection. Mr. Owen stated that it was determined that a connection had never been approved or paid for. Mr. Owen noted that it is not a simple issue, not a simple sewer connection for one business located outside town limits. It involves a building which occupies two other businesses and potentially three apartments downstairs. Currently they operate on a septic tank, but according to the Health Department the current septic system could not handle the additional user. The issues that exist for the Town of Banner Elk is sewer availability for the Town within the Town limits. Mr. Owen noted that utility connection is a driving force for economic development. We need to encourage economic development within the town's limits, within our tax jurisdiction. Mr. Owen stated that per the Town's codes, we require that the person requesting sewer service to also request annexation. Council can either deny or accept the request. In this case, the business is in another town so it is not available for annexation. Council Member Dunn asked since the business is located in Sugar Mountain, why can't they connect to Sugar Mountain. Mr. Owen stated that Sugar Mountain does not own or operate its

sewer system. The system they have is privately operated. The system may have availability for users but, they don't have the infrastructure to get the flow to the plant. The location of this building is closer to the Town of Banner Elk's sewer line than to any infrastructure Sugar Mountain has. Council Member Lecka asked if their septic system could be increased. Mr. Owen stated that did not seem to be an option. According to the Health Department the only way to increase the flow to this building is to connect to Banner Elk or Sugar Mountain. Mayor Lyerly called upon the tenants of the new business to be heard. Ms. Lynn Smith addressed council. Ms. Smith had copies of Town Council minutes of 1999 when the owner at the time, Bobby McLean, came before council and asked to connect Dereka's Realty sewer to Banner Elk's system. She noted that the precedent has been set. She cited examples of businesses connected to the Town of Banner Elk's sewer system: The Painted Fish and the large building in front of it. Mr. Owen stated that council did have a copy of the map showing 13 locations or connections in the proximity of the building in question. Twelve of the 13 represents business connections and those 12 are approximately 19 businesses that are operating in that area most of which are in Sugar Mountain's tax jurisdiction. The 13th is Ski Country Condos with 76 connections. Ms. Smith stated that her concern is that the Town of Banner Elk operates a monopoly on sewer connections. The Town of Sugar Mountain is not an option for people to connect to. She asked that since the precedent has already been set, how the Town can deny us when a lot of businesses have been allowed to connect. Ms. Smith stated that they have spent a considerable amount of money to bring their business up to code. Then they hit this wall. Discussions continued regarding Sugar Mountain's privately owned sewer system, owners of the building in question, the number of connections to the Banner Elk system and the most recent business connected which is in ETJ. Mayor Lyerly addressed Ms. Smith and her partners stating that she and council were empathetic regarding the situation they were in but feels it should be the responsibility of Sugar Mountain and the landlord to resolve the issue. Council Member Bolick motioned to decline the request for sewer connection to Thelma McLean's property. Council member VonCanon seconded the motion. All were in favor. No one opposed.

Highland Pro Clean, Request to be released from Lease

Mr. Owen addressed council. He reported that since the Town has taken possession of the Historic Banner Elk School from Avery County, one of the conditions of the purchase requires the Town to maintain the current Incubator tenant leases. The tenant, Highland Pro Clean, is requesting to be released from its lease. A letter is included in council's packet in which Mr. Johansen notes that the reason is not related to the new ownership. Highland Pro Clean has a business structure change which requires their employees working in Banner Elk to return to their Newland office to help save the company money. Mr. Owen noted that they have paid October's lease. Mayor Lyerly asked if there were any questions. Council Member Lecka made a motion to approve Highland Pro Clean's request to be released from their lease agreement effective November 1st. Council Member Bolick seconded the motion. All were in favor. No one opposed.

Tax Release

Mr. Owen reported that per the list that was prepared, there are five taxes for release which were basically clerical errors. Two of the taxes have already been rebilled and a couple of them were misevaluations. Council Member Tufts made a motion to approve the tax releases. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Consider Planning Board Appointment

Mayor Lyerly reported that council will be considering Ms. Meredith Olan as an in-Town member of the Planning Board. Ms. Olan addressed council thanking them for reviewing her application and resume and that she is looking forward to working with the Town of Banner Elk. Attorney Eggers noted that this will take the first reading so no action is required. He stated that council can waive the second reading, but the vote would have to be unanimous. Mayor Lyerly asked for a motion to waive the second reading. Council Member VonCanon made the motion to waive the second reading. Council Member Lecka seconded the motion. All were in favor. No one opposed. Council Member Bolick made a motion to approve the appointment of Ms. Olan to the Planning Board. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Historic Banner Elk School Project

Mr. Owen reported that the Town's application for the financing of the purchase of the Historic Banner Elk School has been received by the LGC (Local Government Commission). It will be on the November 4th calendar for approval. Mr. Owen stated that the Town has been asked by Headwaters to use the property for parking. The Town has agreed to a \$500 rental fee for the day. He noted that the utilities have all been put in the Town's name. Mr. Owen stated that there are several broad issues that the Town needs to address as to where we go from here with fund raising, plans and use of the property. He proposed conducting a planning workshop in order to have a more in depth discussion approach with such issues. Mayor Lyerly stated that it was an excellent idea. Mr. Owen reported that he has been getting much feedback from the community and council members. He has three lists started: how to raise the money, uses for the building and questions/comments from the public. After much discussion, council decided to meet on Tuesday, November 18th at 6:00 p.m. Mr. Owen also noted that he was approached by a group in Banner Elk that does tai chi in the park twice a week. They are looking for a place to conduct their classes in the winter. They currently use Lees-McRae (\$50 a month), but would like to support the Town. Mr. Owen would like council to also think about having groups rent a space for classes (i.e. tai chi) to start up community use and involvement in the building.

Consider Changing Term of Office – Mayor

Mayor Lyerly asked if council had any questions. Mr. Eggers noted that the change would become effective at the next election. It doesn't extend to any existing term. Council Member Dunn reiterated that Mayor Lyerly's term is up November 2015 and whoever is elected to Mayor the term would then be for four years. All concurred. Council Member Dunn motioned to adopt the resolution (A Resolution of Intent by the Town of Banner Elk to Change the Mayors Term from Two to Four Years Pursuant to N. C. Gen. Stat. 160A-101). Council Member VonCanon seconded the motion. All were in favor. No one opposed.

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 September 2, 2014 and October 6, 2014 and the High Country ABC Board Meeting minutes for August 14, 2014. Mr. Owen noted that if there were any questions regarding these reports to let him or staff know.

Collection of Money at the Stop Light. Mr. Owen reported that he has communicated with the League of Municipalities regarding such things as liability insurance and he has been working with them to help come up with a resolution. Mr. Owen noted that he has also talked to several of the groups who in the past have collected money at the light to have them help come up with a resolution. All agreed that we need to abide by the State statutes.

New Shelter/Park. Mr. Owen reported that the Town has been approached by an individual wanted to rent the field by the new picnic shelter for a wedding in June of 2015. They had several questions which need council's thoughts and/or approval. One being, what should the Town charge for the use of this area? The group would also like to serve beer and wine. Mr. Owen noted that he and Mr. Eggers have been working on an ordinance to allow the use of beer and wine in the park for concerts and other events when rented by the Chamber or non-profit groups. There will be several issues to address: permits through the Town, license from the State to serve alcohol, special event permits through the police department, etc. Council members discussed several items relating to the serving of beer and wine. Mr. Owen stated that he will present at next month's meeting a draft ordinance stating the Town's intentions

At 7:25 p.m. Council Member VonCanon made a motion for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member Tufts seconded. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 8:28 p.m.

There being no further business, at 8:29 p.m. Council Member Bolick motioned to adjourn the October 2014 Town Council meeting. Council Member Lecka seconded the motion. All were in favor.

Adjourn

The Town Council meeting adjourned at 8:29 p.m.

Mayor Brenda Lyerly

Steven R. Smith
Finance Officer/Clerk

Approved: November 10, 2014