

# BANNER ELK TOWN COUNCIL

**October 10, 2016  
MINUTES**

The Banner Elk Town Council met Monday, October 10, 2016 at 6:00 p.m. at the Banner Elk Town Hall for their regular scheduled meeting.

Council Members present: Mayor Brenda Lyerly, Charlie VonCanon, Allen Bolick, Mike Dunn and Robert Tufts. David Lecka was absent.

Staff present: Town Manager Rick Owen, Cheryl Buchanan, and Attorney Four Eggers.

## **Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular monthly meeting of October 2016 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.

## **Public Hearing: Preserve America Committee, Considering Amending Board Structure**

Mayor Lyerly opened the public hearing with regards to the Preserve America Committee. Cheryl Buchanan reported that the Preserve America Committee is an advisory board that reviews projects located in the Historic Overlay District. The Planning Board also reviews the same projects. This creates redundancy in the review process. Ms. Buchanan stated that the Planning Board approved joining the two boards at their September meeting. In doing so the Planning Board will act as the Preserve America Committee. Mayor Lyerly asked if there were any questions or comments. Attorney Eggers reported that there was one proposed suggestion on Section 1130 to change the Preserve America Committee from serving the pleasure of the Council to be consistent with the terms of the Planning Board so there would be no risk of those two committees being out of sync with each other. Ms. Buchanan stated that she will make the change. There being no further comments, Mayor Lyerly closed the public hearing at 6:03 p.m.

## **Public Hearing: Sign Ordinance, Ordinance Re-Write**

Mayor Lyerly opened the public hearing with regards to the Sign Ordinance. Cheryl Buchanan reported that this re-write is due to a Supreme Court ruling which made it unconstitutional for sign ordinances to be based on the content of the sign. Signs can be regulated based on color, size or material, but they cannot be labeled. Ms. Buchanan noted that that the Planning Board has worked for months on modifying sections, eliminating excess and re-writing the Town's sign ordinance based on the Supreme Court's ruling. Mayor Lyerly asked if there were any questions or comments. Mayor Lyerly closed the public hearing at 6:05 p.m.

### **Approval of the Minutes**

Mayor Lyerly asked if there was a motion to approve or amend the September 6, 2016 Town Council Minutes. Council Member Tufts motioned to approve the September Town Council Minutes as written. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Approval of the Stated Agenda**

Mayor Lyerly asked for a motion to approve or amend the October 2016 agenda. Council Member Dunn motioned to approve the October 2016 agenda as stated. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Public Comments**

There were no public comments.

### **ABC Store Audit Report**

Mayor Lyerly called upon Sara Brewer. Ms. Brewer presented to Council a check in the amount of \$21,250 representing the distribution for the quarter ending June 2016 including the law enforcement distribution in the amount of \$250. She stated that in the October/November issue of the High Country Magazine a good article was written about the three ABC Stores in the high country. There are great pictures of our stores and staff, explains what the ABC system in North Carolina is all about and tells how the three stores have given back to their communities. Ms. Brewer reported that for the fiscal year ending June 30, 2016 the amount of sales was \$2.9 million, up \$167,600 from the last fiscal year. The amount of taxes paid to the State was \$691,815. She noted that they distributed \$9,867 to local law enforcement and \$13,813 to alcohol education in Avery County. Ms. Brewer went over the alcohol education programs conducted in the middle and high schools in Avery County and Blue Ridge Academy, for our at-risk students. She reported that all three towns received profit distributions in 2016 from the ABC Store in the amount of \$85,000 and a one-time bonus of \$5,000 totaling \$90,000 for each town. Ms. Brewer reported that since 1998, the ABC Store has distributed \$3,717,502 to the three towns. She also noted that the percent of net income to total sales was 9.49% and the percent of gross profits to total sales was 25%, basically where we should be. Council Member VonCanon thanked Sara Brewer and stated that it was a good and informative report. He also questioned the bailment surcharge. Mayor Lyerly thanked Ms. Brewer.

### **Art on the Greene Presentation**

Mayor Lyerly called upon Kimberly Tufts. Ms. Tufts distributed a report to Council Members which consisted of a sales summary, expenses and a comparison of the two years of Art on the Greene. She reported that this year there were 79 different artists who applied for all three shows. There is a one-time application fee. There is also a special request fee if a vendor has desires to be positioned in a certain location on the field. Ms. Tufts noted that there were two two-day events (Memorial Day and Labor Day) and the 4<sup>th</sup> of July show was a four-day event. She went over the different areas that were new this year which relate to the expenses report: the hospitality area, event material for new fencing, a tent for customers, on site banners for vendor registration, etc. Ms. Tufts noted that in comparing this year's shows to last, we increased quantity in all places which means more funds were raised for the school. She noted that this year \$26,915 was raised, the expenses were over \$6,000 and the net profit was \$20,072 compared to last year's net profit of \$15,400. Ms. Tufts stated that the committee enjoys working with the Town to help benefit the Historic Banner Elk School. She also expressed a

request from the committee to Council to change the 4<sup>th</sup> of July event to make it the 1<sup>st</sup> weekend in July regardless of the date the 4<sup>th</sup> falls and would follow the same structure as Memorial Day and Labor Day. It would be a two-day event with vendors setting up on Friday evening and opening for business on Saturday and Sunday. Mayor Lyerly noted that both she and Robert have worked extremely hard on these three events and appreciates all that they have done for the Town. Ms. Tufts noted that it was a team/committee effort.

### **Preserve America Committee Amendment**

Mayor Lyerly stated that Cheryl Buchanan previously reported on the change to the zoning ordinance and the Town Code to reflect a combining of the Preserve America Committee (PAC) and the Planning Board. She asked if there was a motion. Council Member Dunn questioned the committee members. Ms. Buchanan noted that two PAC members are also on the Planning Board. She also noted that the PAC was basically a “recommending” board. Council Member VonCanon motioned to approve the amendment combining the PAC and the Planning Board as presented. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Sign Ordinance Amendment**

Mayor Lyerly asked that before a vote is cast, that Cheryl Buchanan and Attorney Eggers share with Council what is allowed regarding a flag. Cheryl Buchanan reported that after doing research she can state that what is allowed is the United States flag per the Federal code. It is a living symbol and is not content based. It cannot be challenged and the same applies to the North Carolina flag and all government flags (federal, state, city, county). Ms. Buchanan stated that there were many discussions among the planning board regarding this item; we either allow everything or nothing. The Planning Board agreed on nothing. Attorney Eggers addressed Council stating that the Reed v Town of Gilbert case really did turn municipal restrictions on their head. In the past, commercial speech received no protection and political or religious speech received the highest protection. Attorney Eggers stated that in the Reed v Town of Gilbert case, the court essentially stated that speech is speech and all speech is protected. If you have to read what the sign says to determine what classification it fits in, the ordinance is no longer constitutional. All directional signs have to be treated the same, all on premises signs under a certain category the same, etc. Attorney Eggers noted that the same applies to flags. When you look at flags, you have to consider flags without any reference to the content that is on them with the exception of governmental flags. Attorney Eggers stated that there can be no distinction between a religious flag and a commercial flag; they have to be treated the same way as a political and commercial flag. He noted that the trouble with this issue is that the 60-70 years of framework that every municipality in the nation had used before they are now having to review, rework and rewrite their ordinances in favor of this ruling. Attorney Eggers stated that Council’s decision is going to be a very difficult judgment call. It is an all or nothing proposition. Discussions continued regarding banners, political signs, temporary signs, the new regulations, etc. Council Member VonCanon motioned to adopt the revised Sign Ordinance as written and passed on by the Planning Board. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Historic Banner Elk School Project Updates**

Mr. Owen reported that Bear Real Estate has been occupying space in the school since the Town purchased it from Avery County. Their lease is up in October and Kim Hyatt informed the Town that her business will be moving out. He noted that Kim purchased a space in the Village Shoppes in Town for her real estate office

Mr. Owen stated that the Town purchased nets, paddles and equipment for Pickle Ball which is being offered in the school's gymnasium. The group heading up this sport is enjoying it and the space. He noted that anyone interested in playing needs to contact Nancy Owen at Town Hall.

Mr. Owen stated that a young lady is conducting Zumba classes in one of the classrooms at the school on Mondays and Wednesdays at 5:15 p.m. She hopes to expand the classes and is paying the Town based on the number of participants.

Mr. Owen reported that at the beginning of the elk area project in front of the school it was discussed in making it a name right opportunity. Mr. Owen noted that Mrs. Wold donated the funds to improve the streetscape around that area. This portion of the project is complete and the Town has received a lot of positive feedback on the improvements to the elk area; the lights, flags and the landscape has all come together. Mr. Owen reported that the fall plants, flowers, etc. that are in the two planters have been donated by Allen Gregory, owner of Mountaineer Garden Center.

Mr. Fred Schmitt reported that it was discussed at last month's meeting to launch a committee that would oversee events held at the property in front of the school. He noted that to date the Town has the three Art on the Greene craft shows and the two shows organized by the Avery Chamber. This committee will develop a procedure for scheduling these and other events that want to be held on the school property. Mr. Schmitt stated that the members are: myself, Rick Owens, Melinda Pepple, Jo-Ann McMurray, Hallie Tucker, Les Broussard, Jessie Schmitt and Kim Tufts. He noted that this committee also wants to look at other creative uses for the property that would benefit the Town. Mr. Schmitt stated that the committee's primary objective is the Town and a secondary objective is to open an appropriate line of communication between all parties involved regarding scheduling of events and to promote some level of regional cooperation. Mayor Lyerly thanked Fred Schmitt for chairing this committee.

Council Member Bolick reported to Council that the golf tournament, held at the Elk River Club, was a success. They had 25 teams (100 players). He noted that charitable golf tournaments are a two-year rotating cycle. This is this is the second year the tournament was held at the Elk River Club, so we are in the process of looking for a new location. Council Member Bolick noted that the golf committee met to go over this year's tournament and we focused on several things: planning, organization and volunteers, the tenure and venue for next year and changing the name of the tournament to The Historic Banner Elk School Golf Classic sponsored by: followed by the three-tier sponsor that they are planning for next year (a main sponsor and two major sponsors). Council Member Bolick stated that letters of thanks were sent out to all players and to Elk River Club for being the host course for the past two years' tournaments. The letter also stated that over \$23,000 was raised for the Historic Banner Elk School.

Council Member Bolick reported that the matching grant's current balance is \$20,000. We need to raise \$5,000 of new money before the end of the year to qualify for this matching grant. Mayor Lyerly asked if someone pledged the money but could not pay this year, can it still go towards the grant. Council Member Bolick stated yes as long as he can list the amount of the pledge and when it will come in.

### **Consider Tax Release**

Cheryl Buchanan reported that she received a telephone call from the tax assessor's office stating that they have revalued a piece of property based on the deterioration of the house located on the property. \$407.86 needs to be released on account #33415 belonging to James Ernest Lafferty. Council Member Bolick motioned to approve the tax release. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen reported that included in Council Member's packet are the police report, planning, zoning, tax collection report and the financial report for 3 months ending 9/30/16. Also attached is the August 2016 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 sewer line cleaning has been completed. Jammco cleaned 20,482 feet of sewer line. They provided the Town with a binder and video of the work completed and the results. He noted that staff will review the video, note any issues and determine what repair work needs to be done. Mr. Owen also noted that the State mandates that we clean 10% of our lines annually (roughly 10,000 feet of line). The Town does have equipment to clean, but it cannot compare to the equipment Jammco used. Mr. Owen stated his goal is to have Jammco come out again next year to clean and camera another 20,000 feet of sewer line, keeping it up until all lines have been cleaned.

Mr. Owen stated that the Mountain to Coast bike ride event started in Town last weekend. It brought thousands of people into Town. There were approximately 1,200 riders. He reported that they camped out in the park, dined at Town restaurants, used the school property, etc. Mr. Owen noted that they had to end their ride a day early due to the hurricane. All in all the event went very well and the Town has received no complaints. Mr. Owen also stated that the community as well participated in this event (i.e. Dr. Kimmell allowed the group to use his parking lot for shower trucks, the Culver Street landowner let them use the lot for long term parking of cars, Bank of America's parking lot was used, etc.).

Mr. Owen reminded Council Members that the High Country Municipal Association meeting will be held on Thursday, October 13, 2016 at Seven Devils at 6:00 p.m.

Mr. Owen stated that he will be attending the annual North Carolina League of Municipalities' meeting which will be held on October 23 through 25, 2016 in Raleigh.

Mr. Owen reported that this weekend is the Woolly Worm festival. Chief Clawson is requesting DOT signs to be placed on Highway 184 and Highway 194, forewarning travelers of possible traffic delays

At 7:03 p.m. Council Member Bolick motioned for Council to proceed to closed session pursuant to NCGS 143-318.11. Council Member Dunn seconded the motion. All were in favor. No one opposed.

Mayor Lyerly thanked everyone for coming.

Council returned to open session at 7:37 p.m.

**Other Business**

Council Member Dunn posed a question regarding other opportunities to provide new money for the matching grant and the end of the year deadline. Mr. Owen reported that the mailings the Town includes with its utility bill has prompted several people to donate money towards the grant and several people to telephone the Town inquiring about the school project and money needed.

Mr. Owen reported that the Town will have a tent at the Woolly Worm festival. Matching grant information will be made available along with information about the Historic Banner Elk Elementary School.

Council Member Tufts questioned the construction process at the old Sunrise Center. Mr. Owen reported that the owner/developer did go before the Planning Board and they will be changing the façade of the building (timber framed). Mayor Lyerly noted that there will be a restaurant on one side, several real estate offices and rental spaces will be made available.

Council Member Tufts questioned the construction of the Banner Elk Presbyterian Church parking lot. Mr. Owen reported that the Planning Board approved the site plan. He stated that it will be a one level area (not two as they originally wanted) with 45 spaces, two entrances (one at the property line just past the basketball court and the other half-way down to the Methodist Church). Mr. Owen noted that the contractor is removing trees and bringing in dirt (800 to 1,000 truckloads) to create the parking pad. There will be no retaining walls, it will be landscaped and they will put in a sidewalk dedicated to the Town. Mr. Owen also noted that they have a permit from the County for soil and erosion control on that parcel.

There being no further business, at 7:50 p.m. Council Member Bolick motioned to adjourn the October 2016 Town Council meeting. Council Member Tufts seconded the motion. All were in favor. No one opposed.

**Adjourn**

The Town Council meeting adjourned at 7:50p.m.

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Mayor Brenda Lyerly

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Attested

Approved: November 14, 2016