

**BANNER ELK TOWN COUNCIL**  
**June 11, 2012**  
**MINUTES**

The Banner Elk Town Council met Monday, June 11, 2012 at 6:00 p.m. at the Banner Elk Police Department for their regular scheduled meeting.

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

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

Others present: Penny VonCanon, Rebecca Bolick, Ted Silver, Bret Gardella, Annie Pompsun, Gene Ormond, Linda Ormond, Doug Owen, Jamie Shell and other interested parties.

**Call Meeting to Order**

At 6:00 p.m. Mayor Brenda Lyerly called the regular monthly meeting for June 2012 to order.

**Pledge of Allegiance**

Ms. Lyerly led those in attendance in the Pledge of Allegiance.

**Invocation**

Council member VonCanon opened the meeting with prayer.

**Public Hearing: Zoning Ordinance Amendment: Incubators**

Mayor Lyerly opened the first public hearing. Cheryl Buchanan addressed council. She noted that in order to assist the county in their efforts with the incubator, the planning board made a provision in the town's ordinance which would help that development in supporting the old Banner Elk School property. She stated that in council member's packet were the proposed changes which included a change in the definition which is "existing businesses in the Town of Banner Elk are not eligible for relocation to an incubator location for such site to qualify as an incubator". The planning board's suggestion is to state "existing businesses" which would include businesses within the county as well and not single out Banner Elk. She stated that the purpose of an incubator is to assist people starting a new business. Another change Ms. Buchanan noted was to the Table of Uses (308) which would add incubator as a conditional use. This permit process would require that the start up business would have to come before the planning board with their plans and the planning board would make their recommendation to the board of adjustment who would in turn make final approval. Ms. Buchanan stated that because this is a conditional use process, the remaining Section 922 is new text that will be incorporated in the zoning ordinance. Mr. Owen stated that the changes to the ordinance will help facilitate what the county wants to do, but these changes are not being made specifically for what the county wants to do. He said that it will affect all medical/educational zoning areas in the town. Mr. VonCanon asked if this change would apply to businesses that are failing or closed and wanted to be part of an incubator.

Mr. Eggers stated that if the business is an ongoing business it would not be eligible the way the ordinance is written. You could get into the issue of whether a business is financially in trouble and then if it would be eligible. He stated that council may want to require the board of adjustment to start looking into the existing business's financial data. Mr. VonCanon then stated that we should leave it as it is. Ms. Buchanan noted that council could consider adding "and Avery County" so that it would be all businesses. Mr. Tufts stated that he thought it would be best to delete "within Banner Elk". Bret Gardella asked if he could be heard on this matter. Mayor Lyerly agreed. Mr. Gardella stated that he was not informed of any changes to the zoning ordinance and did not agree with them. He stated that he agreed that council has the power and ability to control what happens in Banner Elk, but it does not have the power and ability to control what happens in the rest of Avery County. Mr. Gardella stated that he guarantees that if a failing business approaches him he will do everything in his power to help the business even if it means him moving the business to Banner Elk in an incubator. He stated that this is not about low cost rent or low cost overhead. It is about training and teaching people how to run a successful business not trying to control businesses that go into the incubators just because they are pre-existing. Mayor Lyerly appreciated his comments and stated that she thought this subject had been discussed at other meetings. Ms. Buchanan stated that it was not a new statement. Her only concern was that we didn't single out businesses in Banner Elk. Mr. Eggers suggested making the definition and the intent read the same. Mayor Lyerly asked if there were any other comments. Ted Silver stated that this is a general ordinance and it is up to the council to decide how they want it to be governed in the future for incubators. Ms. Lyerly recognized Doug Owen, president of the Avery County Chamber of Commerce. He stated that like Mr. Gardella he is in favor of growing and promoting business in Avery County. His concern was for new businesses wanting to grow but were hindered because of the process involved. Mayor Lyerly stated that Banner Elk is all for promoting new business as well. Council member Tufts asked that if a business is already established, but needs help, can't help be given through education, management assistance, where the business is already located. Mr. Gardella stated that he would help and do whatever he could. He also stated that this is applicable to only medical and educational zoning. Council member Lecka stated that council should look at the intent of the business for wanting to move to the incubator and that the wording needs to be looked into. Mayor Lyerly closed the public hearing.

### **Public Hearing: Land Use Plan**

Mayor Lyerly opened the hearing and asked Ms. Buchanan to address council. Ms. Buchanan stated that there have been several grammatical and text changes which have now been incorporated. She stated that the Land Use Plan is the foundation of all the other plans within the town including the zoning ordinance. The plan looks at different segments of the town: zoning, transportation, utilities, public services, recreation, etc.. She stated that it could be used as a planning tool for the town (i.e. to expand its recreational facilities, work on its roads, water quality and capacity, open and green space, etc.).

Ms. Buchanan stated that the last section of the plan is a conceptual plan which includes three maps. One map showing how the town stands today and what it would look like if it didn't change or ever grow. The second map showed the importance of tourism and its promotion.

The third map took a look at the beautification of Banner Elk with the Highway 184 corridor its starting point, which includes a pedestrian and bicycle plan. Ms. Buchanan stated that this plan took a lot of time (two years in the making) and a lot of voluntary man hours and involvement with local and non local groups. She said it is a 153 page document. Ms. Buchanan stated that after several public hearings and drafts, that the Land Use Plan is ready to be adopted. She suggested that it should be reviewed every five years. Mr. Lecka stated that it was a great document. Ms. Buchanan stated that the Land Use Plan can also be viewed and read on the town's web site. She also mentioned that the last revision to this plan was in 1967. Mayor Lyerly stated that this document is something to be proud of. Mayor Lyerly closed the public hearing.

### **Public Hearing: 2012 – 2013 Budget**

Mayor Lyerly opened the public hearing and asked Rick Owen to address council. Mr. Owen stated that the 2012-2013 tax rate is still posed at \$.38 per \$100 of valuation, the same rate that the town has had for the past five years. He noted that based on a 94% collection rate each penny generates \$24,645.00. He also stated that the total General Fund revenue and expenditures are projected to be \$1,541,862. In the General Fund the capital outlay that the town is expecting this year is in relation to the park expansion project which the town has a 50/50 match PARTF grant. The town also has budgeted for a new town hall server and computer upgrades and renovation of the council chambers. He noted that the projected revenue and expenditures for the Water and Sewer Fund are projected to be \$588,230. He said that in this budget there is no proposed rate increase at this time. The capital outlay that is in this fund is for approximately 250 radio read meter heads. Currently the town has a combination of manual and radio read meter heads. This will make the staff more productive and the reads more accurate. He noted that the proposed budget under salaries and benefits includes a 2.7% cost of living increase for employees. Last year the town gave a 1.5% increase which was below the current rate. Other benefits for town employees which include health insurance, dental, life insurance, and 401K are proposed to stay the same. Currently there is an increase to the town's health insurance. Council is aware that staff will be checking with several other plans for pricing. Mayor Lyerly stated that council held two budget meetings on the proposed budget and that Mr. Owen and Mr. Smith spent a lot of time also on the budget. Mayor Lyerly closed the public hearing.

### **Approval of the Minutes**

Mayor Lyerly asked council for a motion to approve the May 2012 minutes. Council member Bolick motioned to approve the minutes as written. Council member Draughon provided a second. The May 2012 minutes passed with all in favor and no one opposed.

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

Mayor Lyerly asked council for a motion to approve the June 2012 agenda as written. Council member Tufts made a motion to approve the agenda. Council member VonCanon seconded the motion. The agenda passed with all in favor.

### **Citizen Concerns**

There were no citizen concerns.

### **Zoning Ordinance Amendments – Business Incubators**

Mayor Lyerly asked council if this item needs more time or if there was further discussion. Cheryl Buchanan stated that as the town's planning director she would like this amendment passed with the one noted change. She reiterated that council needs to remember what the purpose of an incubator is, that if we allow businesses that are already established to go into an incubator, how many new businesses do we knock out of being in the incubator. Ms. Buchanan noted that there are other avenues that can help struggling businesses (i.e. the Economic Development Director, Mayland Community College small business program, etc.) Council member VonCanon agreed with Ms. Buchanan but was still concerned about excluding failing businesses and was concerned about the benefits to the town as well as Avery County. Council member Draughon stated that her concern is the additional permitted uses in the medical/educational zoning district (bakeries, florists, coffee shops, etc.). Ms. Buchanan stated that these businesses won't stay in that district, but will start there. Mayor Lyerly stated that the reason they are going in is to get educated in starting a new business. Mr. Gardella addressed council stating that the approach is to have a reasonable new business fit into the small space provided and all will fall under the educational component. Mr. Owen clarified that it wasn't a change but that it was worded two different ways. The town was looking into a point of clarification on businesses. He stated that the planning board along with attorneys worked very hard in getting this amendment done so that we would have a product for Mr. Gardella to start putting businesses in the old school. He understands that this amendment doesn't answer all the questions. It could take another six months to get it all figured out, but that it wouldn't be beneficial for the project. Mayor Lyerly asked if once this amendment is adopted, is it changeable. Mr. Owen stated yes. Mr. Eggers noted that if there was a substantial change, a public hearing would be required, but a minor change can be made without the hearing. Mr. Gardella addressed council that his concern was Banner Elk trying to stretch its abilities to any business in Avery County. Mr. Gardella stated another matter that needed to be addressed and defined is a business going out of business or purchased by someone else. Is this an on-going business or a new business venture? His goal is to keep what we have, especially if they are failing, give them an opportunity to grow in an incubator or anywhere else. Mayor Lyerly stated that her understanding is that if it is a new business, the business is able to stay in the incubator. Mr. Eggers stated that ultimately the issue would come down to what the staff would determine is the intent and purpose of the ordinance, its language as to whether it meets that definition, and if there is a disagreement, the board of adjustment sits as your court to determine whether it complies with the ordinance or not. Mr. Gardella reminded council that there would be a committee that the businesses have to appear before and present their business plan. Council member VonCanon expressed his concern that the town should accommodate a business that really needs education in an incubator. Council member Tufts noted that the town should eliminate the sentences that deal with the definition and intent having to do with existing businesses. Then it would be up to the planning board and board of adjustment to determine if the business is eligible to be in an incubator. He also questioned the three year time limit. Mr. Gardella noted that the time limit was originally a 24 month program but that it was extended by the planning board. Mr. Tufts asked Ms. Buchanan what her understanding was to the phrase existing business when it was placed in the ordinance. Ms. Buchanan noted that the very nature of an incubator is to help a business to start. She also noted that the resources at Mayland Community College are always available for existing businesses that are failing. The board's

focus was to protect the very nature of the incubator in an ordinance. Mr. Owen stated that currently Banner Elk has retail space available, but the location is their issue and not the help that Ms. Buchanan is referring to. If location is the issue then we need to rezone that property commercial. He also noted that there was a business in Banner Elk that was talking to Brett about moving to the school for the location. The town did not feel that the intent of an incubator was its location. It goes along the lines of the county being an incubator/operator to being a landlord. He felt that the ordinance should leave out any geographic designation, just maintain an existing business. Council member VonCanon addressed council with this sentence: Existing businesses are not eligible for relocation in an incubator location. If after time, Mr. Gardella finds that there are a lot of failing businesses, then the subject could then be readdressed to town council. Mayor Lyerly stated that right now we are just projecting and that we don't know the outcome of this new venture. Mr. Gardella again stressed the definition of existing business, for example a person who makes pottery in her garage. Is the town going to keep this person from coming to an incubator? A common sense approach will help determine what business is eligible versus defining what a business is. Mr. Gardella also noted that training is part of the incubator. It is a requirement. Mayor Lyerly asked if council had a motion. Council member Tufts questioned whether a federal grant (A.B.Tech) for a brand new business would interfere with the incubators or affect the potential of someone receiving the grant. Mr. Gardella responded that a grant is specific to an organization. Council member Lecka stated that there are disagreements on both sides and felt that council is not in a position to make a vote on this. Mr. Gardella responded that possibly the compromise is to place a time frame on the business that has been in existence. If there is a pre-existing business in Banner Elk that has been in business for three years or longer, then the business would have to petition to move into the incubator and come before the planning board and town council. If the town stops a business on the front end by saying no pre-existing businesses then does it help us? Council member Tufts addressed council and made a motion to accept the zoning amendment as is with the wording "no existing businesses" and take out any reference to Banner Elk and Avery County. Mr. Eggers stated that if changes are made to the language council should be as specific as possible to give the board of adjustment direction on how to interpret what council tells them to do. Council member VonCanon seconded the motion. Mayor Lyerly asked if it is possible to keep the wording as is and rely on the planning board to make the determination. Council member Lecka stated that if it is passed council needs to be kept informed of the number of times existing businesses have approached the incubators. Council member Draughon stated that she couldn't vote on this item because it is too fuzzy. She said that this issue needs more study. Her concern is that it may weaken the town's medical and educational zoning ordinance. There is too much controversy. Council voted with three members in favor (Council members VonCanon, Tuft and Bolick) and two members against (Council members Draughon and Lecka). The motion passed to accept the wording in the definition with one change, deleting "within the Town of Banner Elk".

### **Land Use Plan**

Mayor Lyerly asked if there was any further discussion regarding the Land Use Plan. Mr. VonCanon made a motion to accept the Land Use Plan as presented. Mr. Lecka seconded the motion. All were in favor. No one opposed.

### **2012-2013 Budget Ordinance**

Mayor Lyerly asked if there was a motion to approve the budget ordinance. Council member Lecka motioned to accept the 2012-2013 Budget Ordinance as presented. Council member Draughon seconded. Council member Tufts questioned the bike and pedestrian budget. Mr. Owen responded that it was in the zoning budget, the last item "other" in order to create an account for it. All were in favor. No one opposed.

### **Call for Public Hearing – Speed Limits**

Mr. Owen addressed council stating that the town needs to update its list of all town streets and their speed limits. The town is required to maintain this list and keep on file with the town clerk. The staff would like to produce a new comprehensive list that council could adopt at the next meeting. The staff requests council call for a public hearing at the July meeting. Mr. Bolick made a motion to call for a public hearing in July on this issue. Mr. Tufts seconded the motion. All were in favor. No one opposed.

### **ABC Board Appointment, Donna Dicks**

Mayor Lyerly addressed council stating that the town is recommending that Donna Dicks be appointed for a second term. Ms. Lyerly asked if there were any other nominations for this position or if there was a motion. Council member VonCanon made a motion to reappoint Donna Dicks to the ABC Board. Council member Lecka seconded the motion. Council member Tufts asked to confirm that Ms. Dicks was willing to serve for another two years. Mr. Owen answered that she was. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen noted to council that the financial reports, police reports, planning, zoning and tax collection reports were included in council's packets along with the minutes from the planning board meeting and board of adjustment meeting. Mr. Owen passed out to the council members thank you notes from Lees-McRae for the town's donations to the New Opportunity School for Women and Summer Theater.

Mr. Owen presented to council the park plan update. He stated that he has the latest revisions for anyone to review. Mr. Four Eggers is working with Derek Goddard on putting together the bid documents and get them approved. The town is hoping to get the documents out for advertisement on June 13, 2012. On June 26<sup>th</sup>, two weeks from advertisement, there will be a mandatory pre-bid conference. On July 11<sup>th</sup> there will be the bid opening. Mr. Owen asked that council call a special meeting around July 18<sup>th</sup> to award the appropriate bid. Mayor Lyerly asked that Mayor Pro Tem Von Canon lead the meeting since she will be out of town. Mr. VonCanon agreed. Mr. Lecka stated that he too will be out of town. Council member Bolick made a motion to hold a special meeting on July 18, 2012 at 3:30 p.m. at town hall. Council member Tufts seconded the motion. All were in favor. No one opposed.

Mr. Owen reported to council that the storm water vault cleanout project turned into a large project and that it did not go as well as hoped. There was a lot of water and a lot of sediment. Once we were able to control the flow of the water, we were able to view the amount of sediment in the vault. Derek Goddard is researching options for the town to clean and/or replace the vaults.

Mr. Owen stated that the school clean up went very well and thanked the council members and staff who showed up to help. Mayor Lyerly noted that Brett Gardella along with county commissioners were very complimentary of all the help the town supplied along with the equipment and the volunteers.

Mr. Owen also noted that at last month's meeting he reported that the Woolly Worm Committee was interested in the park. He stated that he will be meeting with the committee later this week and will report back to council.

Mayor Lyerly asked Mr. Owen about the bids for the council's table. Mr. Owen stated that he received one bid, one person is quoting it and he has one other place to go to request a bid. He will have multiple bids to present to council at next month's meeting.

Mr. Owen stated that the council chambers is moving along and looks really good. Council member VonCanon asked if the TV location has been decided. Mr. Owen stated that it was discussed earlier about putting an outlet behind council and one in front of council. We are now wiring it and planning a mount for the same side wall the screen is currently on. AV wiring will also be installed behind the council table. Mr. VonCanon asked if the lights are on a dimmer. Mr. Owen stated that they are.

At 7:35 p.m. council member VonCanon motioned to have council proceed to closed session pursuant to NCGS 143-318.11 (a)(3) Attorney-Client Privilege and pursuant to NCGS 143-318.11(1)(6) Personnel Matters. Council member Bolick seconded. All were in favor.

Mayor Lyerly thanked everyone for coming.

At \_\_\_\_\_ p.m. council member VonCanon motioned to exit closed session. Council member Allen Bolick seconded. All were in favor.

### **Other Business**

Town council addressed the town manager's rate of pay at which time council voted unanimously to increase the manager's salary by 10% and directed this change to be reflected in the 2012-2013 budget. They thanked Mr. Owen for all his efforts, hard work and dedication to the town and its people.

At \_\_\_\_\_p.m. Mr. Tufts made a motion to adjourn the June meeting. Mr. Lecka seconded.  
All were in favor

**Adjourn**

The town council meeting adjourned at \_\_\_\_\_ p.m.

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Mayor Brenda Lyerly

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Steven R. Smith  
Finance Officer/Clerk

Approved: July 9, 2012