

BANNER ELK PLANNING BOARD MEETING  
MONDAY, 04 MAY 2015  
MINUTES

Members Present: Allen Bolick, BR Hoffman, Will Mauney, Meredith Olan, Joel Owen, Penny VonCanon

Staff Present: Zoning Administrator Cheryl Buchanan, Town Manager Rick Owen

Others Present: Rebecca Bolick, Bill and Donna Dicks, Bobby Duke, Mike Halus, Ginger Hanson, Martha Laura Miller, Jillian Rosato, Don & Deborah Rice, Duane Schell, Bill & Nancy Stevenson, Charles B. VonCanon, Jr

Chairman Joel Owen called the meeting to order at 6:02 pm. The Chairman opened with the pledge of allegiance to the flag and noted that there was a quorum present.

Consideration of the April 2015 Minutes

Chairman Owen asked if anyone had changes to the minutes from April 2015. Penny VonCanon moved to approve the minutes as submitted. Allen Bolick seconded. The vote was unanimous and the minutes were approved.

Sign Ordinance Requests

Grandfather Home for Children

Grandfather Home for Children has merged with another Non-profit organization. The Home will retain their name but will also add the wording "Children's Hope Alliance". The colors they have chosen to use are teal and orange. These particular colors are not on the approved color chart. Ms. Buchanan told the Board that Mr. Dicks has said he cannot get the milk paints anymore. I told him that we could ask the Planning Board for their thoughts on revising the color chart.

Martha Laura Miller asked if the colors could be toned down. Mr. Dicks said they could be toned down but that is not what this company is looking for. Penny VonCanon commented that this is such a drastic change from the chart. Joel Owen said he thought using a blue from our chart and the orange would be acceptable. He felt that the orange was enough to be considered an accent color. Bill Dicks admitted that he can still get the milk paints from Olde Century, but because they are not enamel, he has to go back over them at least five or six times to get a good coat of paint. The final census of the Board was not to change the color chart but to have the Zoning Administrator time locate some samples that can be bought locally.

### Lees-McRae College

The college is appearing before the Board with a new sign to replace the old marquee sign. Ginger Hansen and Jillian Rosato were present to speak to the request. The new proposed sign is to keep the same spot as the old sign along with the same footprint. The new sign will have the same dimensions as the old sign and will be made of high density foam with Lees-McRae College as a relief. The colors are neutral as well. The only item on this sign that is outside of our ordinance is a digital display screen. The ordinance allows a digital display of time and temperature only. The exact wording is: *“Signs displaying blinking, flashing, or intermittent lights, animation and moving parts or electronically displayed messages, with the exception of LED Reader Board style signs which display the time and temperature.”*

Mrs. Hansen stated that the letters would be 6” to 12” in height and would be static, no movement, no blinking, and that the brightness of the light can be adjusted. The life expectancy on the LED bulbs is 11.5 years. The background would be black and the lettering would stay white, no color, and no graphics.

Penny VonCanon stated that she knows that technology is changing at a rapid pace and that this type of tasteful progression needs to be given serious consideration. Joel Owen said all the businesses in town would want one and Ms. Buchanan suggested they only allow them in the M/E Zoning District. The census of the Board is that they would be supportive but would like to see some wording at the next meeting.

### Telecommunication Tower Structures – Discussion with Planning Board

Allen Bolick had proposed 6 topics at the last Planning Board meeting and the Zoning Administrator ran them by the Town’s Attorney, Four Eggers. His responses are included in the packet. Following are the points and any new discussion:

- *Increase the filing fee. Currently it is \$5,000, not enough to cover our costs.*

*Attorney’s response:* We recently raised this fee from a nominal amount to the \$5,000 figure. Our fee for such structures has to be reasonably related to the actual costs incurred by the Town in a 'normal' situation involving a cell phone tower. This would include my time preparing for and attending the Board of Adjustment meeting, Cheryl's expenses, and expenses of the Board in hearing the case. The fee should not include 'unusual' expenses, such as costs related to appeals and further hearings in the same case. When this was last discussed, Cheryl and I were of the opinion we could justify a fee of \$5,000 related to hearings involving these towers. I would be uncomfortable being able to justify a higher fee in our ordinance as it must be reasonably related to our actual costs.

*Planning Board Discussion:* Allen Bolick said he would still like to push for the \$10,000 because of the expenses incurred by the Town recently. Martha Laura Miller said she agreed with the Attorney and thinks \$10,000 is too much. Allen Bolick suggested asking for \$7,500 and see what the Attorney says to that. Mr.

Bolick said no one had really looked at the expenses incurred by the Town in reviewing a petition. Mr. Bolick does not feel \$5,000 is enough and could the Board recommend \$7,500 and see what the Attorney says. BR Hoffman said if we could present the expenses broken down we might convince the Attorney that this request is reasonable.

- *Section 10 deals with tower removal. Mr. Bolick said that we now require a bond to be posted with no set fee. Mr. Bolick suggested \$10,000.*

*Attorney's response:* Likewise, the bond we would require a company to post should be reasonably related to the actual cost to the Town of removing the tower in the event the Company fails to remove the tower in accordance with the ordinance. Anything more than that could result in a risk that our ordinance is invalidated as a whole. As the ordinance is currently written, the amount of the bond is set by the Board of Adjustment according to the evidence received. If we want to set a fixed amount for the bond, we need to gather information about how much it costs to actually remove such a tower and have that information available to support the reasoning behind the amount we set for the bond.

*Planning Board discussion:* Heeding the Attorney's advice, the Planning Board directed Ms. Buchanan to call around and get some quotes on what it would cost to tear down, remove, and put the ground back to the way it was before construction. Mr. Bolick said he believes there should be a number there. Other members were concerned that as costs inflate, we would need to change the ordinance each time this figure increases. It was also mentioned that each case may be different depending on location, etc....

- *Our ordinance requires one acre of wooded property to put a cell tower on. Mr. Bolick suggested a 200' setback, which translates to 4 acres.*

*Attorney's response:* While we could potentially include this amendment, my concern would be how many potential sites for a cell tower would be left for practical use by an applicant. In other words, how many wooded four acre tracts exist in the Town jurisdiction which could potentially meet the other requirements of the zoning ordinance. We must have potential sites within the town limits, not only in our extra-territorial jurisdiction, that meet the requirements of the ordinance.

*Planning Board Discussion:* Joel Owen asked how many 4 acre wooded lots are there in Banner Elk and asked the Zoning Administrator to identify them on a map. Martha Laura Miller said she was worried that we were making ourselves too restrictive and this wouldn't hold up in court. Mr. Bolick said one acre would not provide a 200' setback. Penny VonCanon said one acres is 208' by 208' and one acre would work.

- *The building for generators has no guidelines for materials used to build it. Mr. Bolick suggested the exterior materials be made to blend with other structures in the area and require a pitch roof.*

*Attorney's response:* These considerations are certainly appropriate for the Board to impose additional standards in relation to these applicants. The default requirements would be those in the general zoning ordinance, but the Board may include other reasonable requirements as they see are appropriate.

*Planning Board discussion:* The members agreed that whatever the regulations are for a building in the ordinance for that zoning district, then that is what they would use as a guideline. They also considered that cell towers are a CUP and can have most any reasonable conditions added to the final decision. Rick Owen said that the ARG's do not apply to any building that cannot be seen from Hwy 184 and Hwy 194.

- *No towers can be located within 1,320 feet of a transmission wire or substation.*

*Attorney's response:* By federal law, we cannot address or review interference standards for towers and other electrical devices, other than requiring them to have an engineer certify they do not interfere with each other. I would also be concerned with the practical result that this would eliminate all or most potential sites in our jurisdiction and invalidate our ordinance in its entirety.

*Planning Board's Response:* Allen Bolick stated that this applies to easement issues and wanted to make sure that towers are kept away from transmission wires and substations. Most of the members did not think this needed to be added because there was no clear why for considering this.

- *Restrict them from the R-1 and R-2 zoning districts.*

*Attorney's response:* While this could theoretically be done, it would involve a major overhaul of the ordinance provisions in order to comply with the requirement that sites be available within our jurisdiction as described above. If you wished to restrict telecommunications towers from R-1 and R-2 zones, that would mean allowing the towers along your major commercial thoroughfares and removing the minimum one acre wooded lot requirement. My concern is that this would make the towers more visible instead of less visible, and result in these towers being prominently located by the major roadways.

*Planning Board response:* Joel Owen stated that we will look at 4 acre tracts to see if there are any in any other zoning districts and most did not believe it could be removed completely from the R-1 or R-2. Bill Stevenson said he would like for someone to point out to him in the current ordinance where it states "1 acre wooded lot" in those exact words. The ordinance actually reads: "All free standing Towers shall be located upon a lot or leased property area consisting of a size of at least one acre. The enclosed fencing area around the tower shall be set back from all property lines or the boundary of the leased area not less than thirty feet. The remaining area of the lot or leased area of the tower shall, with the exception of access roads and other utility lines and their respective setbacks, consist of existing or planted tree growth sufficient to reasonably screen the tower from view." I believe existing or planted tree

growth on 1 acre of land sufficient to reasonably screen the tower from view could be interpreted by the simplest of persons to mean “wooded lot”.

### Discussion of Trees as Buffers

Ms. Buchanan stated that Mr. Will Mauney asked that this be placed on the agenda for discussion. Mr. Mauney said that some buffers in his subdivision are growing so tall that he cannot see the scenery around his home. He asked if there was anything in the ordinance that regulates what happens to them after they’ve grown so tall. When do they become a problem or a danger to personal property? Diseases have wiped out some types of trees that were previously on the charts. The Town Manager said that trees that present a danger on an individual person’s property is between property owners. The Tree Ordinance address trees that are a danger to public property. At this point the Town can step in and mitigate or remove a threatening tree.

Penny VonCanon said she had a few thoughts. Perhaps mixing the buffers with deciduous and evergreen trees. Perhaps a bond to maintain a buffer could be included in a permit. Replacing and changing out once they become overgrown. Martha Laura Miller said she could not locate white pine in the tree ordinance. Meredith Olin said intentional plantings are one thing, but forested lots are natural and should be left alone. No action was taken on this topic.

### Definitions of a Wooded Lot

Previously Town Manager Rick Owen had asked what defined a wooded lot. Penny VonCanon said she had given this some thought and offered a definition: “Low to high density forest including an understory of live and herbaceous plants with a mixture of deciduous and evergreen trees, a percentage of which shall be in excess of at least 75 feet tall. Not too sure about the percentage. Penny said she used 75 feet because the ordinance permits an 80 foot tower and she felt this would be enough to blend with the tower.

Martha Laura Miller asked if this is another restriction that would support a ban of cell towers and put us into more litigation. No decision was reached on this topic, just general conversation followed.

With no further business before the Board, Penny VonCanon moved to adjourn at 8:32 pm. Allen Bolick seconded. The vote was unanimous and the meeting came to an end.

Respectfully submitted,  
Cheryl Buchanan  
Zoning Administrator, Town of Banner Elk