



APEX TOWN COUNCIL MEETING

TUESDAY, SEPTEMBER 20, 2016

Lance Olive, Mayor
Nicole L. Dozier, Mayor Pro Tempore
Eugene J. Schulze, William S. Jensen, Denise C. Wilkie,
and Wesley M. Moyer, Council Members
Drew Havens, Town Manager
Timothy L. Donnelly, Assistant Town Manager
David Hughes, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 20, 2016, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Lance Olive, and Council Members William S. Jensen, Eugene J. Schulze, Denise C. Wilkie, and Wesley M. Moyer
Also in attendance were Town Manager Drew Havens, Assistant Town Manager David Hughes, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe
Absent was Mayor Pro Tem Nicole L. Dozier

COMMENCEMENT

Mayor Olive called the meeting to order, gave the Invocation, and led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations made.

CONSENT AGENDA

- Consent 01 Minutes of the September 6, 2016 Regular Council Meeting
- Consent 02 Apex Tax Report dated 8/12/2016
- Consent 03 Amendments to the Town of Apex Code of Ordinances Section 20-164 (21), (22), (23), (24) and (25) to establish No Parking zones
- Consent 04 Resolution of support for the Town of Apex to pursue a comprehensive bicycle planning grant through the North Carolina Department of Transportation (NCDOT) Bicycle and Pedestrian Planning Grant Initiative. If awarded, the bicycle plan would have a total cost of \$40,000-\$70,000 and would require a 30 percent match of \$12,000-\$21,000 in local funds.

- Consent 05 Construction contract and authorization for the Town Manager to execute same, and to approve the budget ordinance amendment and capital project ordinance amendment for U-5118 AF Kelly Road Operational Improvements
- Consent 06 Developer agreement with Meritage Homes of the Carolinas, Inc. for Deer Creek subdivision
- Consent 07 Resolution and associated "Second Inter-local Agreement for White Oak Creek Greenway" with The Town of Cary for construction, ownership, operation, maintenance, and repair of the White Oak Creek Greenway extension from Green Level Church Road west to the Wimberly Road Trailhead at the American Tobacco Trail and authorization for the Town Manager to execute the same
- Consent 08 Set the Public Hearing on October 4, 2016 for rezoning application #16CZ22 (Bee Safe Storage) to rezone 6.69± acres located at 2500 Creekside Landing Drive from Planned Unit Development Conditional Zoning (PUD-CZ) to Tech/Flex Conditional Zoning (TF-CZ)
- Consent 09 Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of September 6, 2016
- Consent 10 Resolution to Abandon a Portion of Existing Public Utility Easement

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

REGULAR MEETING AGENDA

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA. COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

PUBLIC FORUM

J.C. Knowles indicated the plaques he'd made for and distributed to Council with the new Town logo were given with his appreciation for allowing him to serve the Town as its Ambassador.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega, Principal Planner

Public Hearing and Rezoning Application #16CZ17 (Villages of Apex). The applicant, Peter Crossen, Jones & Crossen Engineering, on behalf of NC II LP LTD Partnership, True Homes, and North Carolina Office I LP seeks to rezone approximately 50.42 acres located

at 1960 Apex Peakway and 56 Hunter Street from Planned Unit Development - Conditional Zoning (#14CZ04) to Planned Unit Development - Conditional Zoning, to change conditional zoning conditions.

Staff oriented Council to the site. A neighborhood meeting was held. The Planning Board recommended unanimous denial due to incompatibility and detriment to the surrounding environment. Staff recommended approval if the story height went to five, as this is the highest the fire truck ladders can reach.

Peter Clossen, Jones and Clossen Engineering, representing the owner, detailed the three requested amendments, stating that they were in agreement with reducing the story height to the staff recommendation of five. Mr. Clossen answered Council questions on residential density and open gathering space.

Mayor Olive declared the Public Hearing open.

Speaking in opposition were Barbara Collins, Mike Chirico, Ally Jurgens, James Muccioli, Coit Weaver, and Laura Holley with the following concerns/comments: the community standard is represented in the current zoning, retail space is high in the Food Lion area, the developer's idea of marketability, the developer is more interested in market profit, want to see what was promised for the site in 2008, agreement with Council comments about the live/work environment and what would be a good use of space, the plan should be stuck to, no one wants to live beside an office park, don't want to see Apex turn into another Cary with houses in every available spot, retail was given up in Trackside 1, have lost keeping a continuous downtown feel, and Council should stick to its guns with the original plan.

Mr. Clossen stated he realized this was a sensitive issue. The developer is sticking to their guns and believe in what they're proposing. He will, however, take the public comments and those of Council back to the developers and see what happens.

Mayor Olive declared the Public Hearing closed.

Council briefly discussed density and retail space.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO DENY
THE REQUEST; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 02 : Brendie Vega, Principal Planner

Public Hearing and Rezoning Application #16CZ18 (Old Mill Village). The applicant, Peter Cnossen, Jones & Cnossen Engineering, on behalf of Apex First Development, LLC seeks to rezone approximately 2.84 acres located at 400 and 450 N Mason Street from Planned Unit Development - Conditional Zoning to Planned Unit Development - Conditional Zoning (amended).

Staff oriented Council to the site. A neighborhood meeting was held. The Planning staff recommended denial of the request. The Planning Board unanimously recommended denial due to incompatibility and detriment of the surrounding environment. Staff answered Council questions in regards to live/work.

Peter Cnossen, Jones Cnossen Engineering, representing the owner, clarified what they were seeking in their request. Mr. Cnossen requested removal of the live/work units for a total of ten townhouses.

Mayor Olive declared the Public Hearing open.

Speaking in opposition were Barbara Collins, Scott Carrier, Ally Jurgens, Kathy Muccioli, Lisa Weaver, and Laura Holley with the following comments/concerns: there is a logic problem in this scenario, the live/work/play factor is being lost, losing retail is a concern along with the number of townhouses and additional traffic, there will be additional people using the pool, appreciation for comments from Council, opposition to anything over four stories in downtown as it would be out of place and out of character, and the original concept for this site has worked in Morrisville.

Mr. Cnossen stated he will take all comments to the developer and hopefully put things on the right track.

Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO DENY THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

Council stated it wanted to see what was in the original plan.

THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 03 : Brendie Vega, Principal Planner

Public Hearing and amendment to the 2030 Land Use Map chart as recommended by the Town Council Planning Committee to remove B1 and B2 zoning districts from the Office Employment Land Use Classification

Staff detailed the proposed amendment. The Planning Board unanimously recommended approval of the change which would remove B1 and B2 from Office Employment in the 2030 Land Use Map.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE
THE AMENDMENT; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 04 : Dianne Khin, Planning Director

Public Hearing and Ordinance on the Question of Annexation – Apex Town Council’s intent to annex David and Barbara Yates, Kenneth and Carla Markham and for William L. Yates Heirs (Gayle Y. Reid, P.O.A.) (Green Level Estates) property containing 18.22 acres located on Green Level West Road, Annexation #580 into the Town’s corporate limits

Staff oriented Council to the site, stating staff recommended approval.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed.

Staff answered Council questions on exploring park land in this area.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE
THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 05 : Dianne Khin, Planning Director

Public Hearing and Ordinance on the Question of Annexation – Apex Town Council’s intent to annex County of Wake, Attorney Scott W. Warren (South Wake Landfill) property containing 137.680 acres located at 6000 Old Smithfield Road, Annexation #582 into the Town’s corporate limits

Staff oriented Council to the site. Staff recommended approval of the request.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE
THE ORDINANCE; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 06 : Shannon Cox, Transportation Planner

Public Hearing and amendment to the Transportation Plan’s Thoroughfare and Collector Street Plan map as requested by the Town of Apex Planning Department

Staff detailed the proposed amendment. The Planning Board and staff recommended approval.

Mayor Olive declared the Public Hearing open.

Dan Brubaker wanted to know the nature of the original conservation easement. With staff's response, Mr. Brubaker stated he had no concerns.

Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE AMENDMENT; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

At the request of Council,

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION TO RECEIVE ADVICE FROM THE TOWN ATTORNEY.
COUNCIL MEMBER MOYER MADE THE MOTION; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR OLIVE CALLED FOR THE RETURN TO OPEN SESSION WITH AGREEMENT OF COUNCIL.

Public Hearing 07 : Brendie Vega, Principal Planner

Public Hearing and amendment to the Unified Development Ordinance regarding the Sustainable Development Conditional Zoning District (Veridea)

Staff oriented Council to the request. The Planning Board recommended approval by a vote of 5-1. The applicant agreed to staff's change in language, and staff's position was neutral since this was a procedural vs. a planning issue.

Jason Barron, Morningstar Law Group, on behalf of the applicants, stated they share and embrace the Town's vision for this site and are anxious to bring this to reality. They wished to put the owners back in control of their property. Mr. Barron presented background on the appointing of a responsible person, stating that person owns no property and has no agreement with the owners. The Ordinance created the opportunity for the owners to be deprived of their rights – it's fundamentally flawed. Even if the parties were getting along, this Ordinance would still need to be corrected. The SD Plan would not change as part of the process of making the change they were requesting. Mr. Barron enforced that his clients have the right to use their property.

Mayor Olive declared the Public Hearing open.

Tom Hendrickson, Lookout Ventures (responsible party), stated they have been involved with Veridea since prior to 2011. He spoke about the number of hours they've worked with Hudson, the professional team, and staff. At this point, they have had no formal requests to review any plans. Mr. Hendrickson was concerned about Town processes being terminated without following the appeal process.

Perry Reader stated his company has been working with Hudson over four years as advisors. They have been asked by Hudson to be the responsible party, and he presented their credentials and the developments in which they've been involved.

Richard Ortiz, co-founding member of Hudson Realty Capital, explained what it is they do. He stated they want to do what they want to do with the land that they own. They can't be denied the right to do what they can do within the guidelines of the UDO.

Allen Maness stated he was not present as a paid consultant, but he was at earlier meetings. He spoke about how Hudson was part of the Ordinance that was crafted. An intermediary is common across the country, and some Council Members were adamant about Hendrickson. Hendrickson has not tied anyone's hands and would approve any request that fit the SD Plan.

Mayor Olive declared the Public Hearing closed.

Council stated he did not feel Hudson's rights were taken away but that they were given away. It is not for the Town to solve Hudson's problem. Council understood both sides, but the responsible person concept was to ensure the SD Plan was followed. Council believed that if the uses were consistent with the Plan, then Hudson's rights were not taken away.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO DENY
THE AMENDMENT; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.

Council stated that if a plan was submitted, Mr. Hendrickson would have submitted it to the Town. He wanted the one point of contact so everything would match the SD Plan. Council wondered how it would work if things were to stay as they are. Let's see if a plan does get submitted to Lookout Ventures. Leaving the Ordinance as is would give the party's time to consider where they are.

Mr. Barron stated that if Council denied their request, they would be happy to engage through the process. But if it didn't work, he would want this matter to be considered pending instead of going

through the planning process again. There was discussion about what it would change if the matter were continued.

COUNCIL MEMBERS WILKIE AND SCHULZE VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS
JENSEN AND MOYER VOTED IN THE NEGATIVE.

IN ORDER TO BREAK THE TIE VOTE, MAYOR OLIVE VOTED IN THE AFFIRMATIVE.

THE MOTION CARRIED BY A 3-2 VOTE.

Mayor Olive stated he's looked at this very seriously as he was here from the very beginning. He voted in favor of the denial, but believed there are still avenues to be pursued. The role of responsible person was reviewed very carefully back in 2010. There is no demonstration that the current responsible person is not doing his job. The Mayor stated he wants the right projects and economic development, and we need to see what these are and move forward.

OLD BUSINESS

There were no Old Business items for consideration.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

NEW BUSINESS

New Business 01 : Amanda Bunce, Senior Planner

Townes at North Salem Master Subdivision Plan for the properties located at 0 N. Salem Street containing 39.54 acres and 196 townhome lots and 2 nonresidential outparcels

Staff oriented Council to the site. A neighborhood meeting was held. The Planning staff recommended approval with condition. The Planning Board unanimously recommended approval as recommended by staff. Staff clarified Council questions on buffers, uses, and number of townhomes.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE
THE PLAN; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

New Business 02 : Liz Loftin, Planner

Whitehall Village Reserve Phases 1 & 2 Master Subdivision Plan for the properties located at 0 Apex Peakway containing 3.48 acres and 9 single-family lots

Staff oriented Council to the site. Two neighborhood meetings were held. The Parks and Recreation Commission recommended the developer work with the Town to provide a greenway connection, which has been constructed. The Planning Board recommended approval as did staff. Staff answered Council questions on buffers and lot size.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE PLAN; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

CLOSED SESSION

Closed Session 01 : to consult with the Town Attorney related to handling of the matter of the City of Fayetteville and the Public Works Commission of the City of Fayetteville v. NC Environmental Management Commission, NC Department of Environmental and Natural Resources and the Town of Cary and the Town of Apex

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO RETURN TO OPEN SESSION WITH NO OBJECTION FROM COUNCIL.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR OLIVE ADJOURNED THE MEETING.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Lance Olive
Mayor