



## TOWN COUNCIL MEETING

TUESDAY, APRIL 15, 2014

**William M. Sutton, Mayor**  
**Eugene J. Schulze, Mayor Pro Tempore**  
**William S. Jensen, Scott R. Lassiter, Nicole L. Dozier,**  
**and Denise C. Wilkie, Council Members**  
**Bruce A. Radford, Town Manager**  
**Donna B. Hosch, CMC, NCCMC, Town Clerk**  
**Henry C. Fordham, Jr., Town Attorney**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 15, 2014, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor William M. Sutton, Mayor Pro Tempore Eugene J. Schulze, and Council Members William S. Jensen, Scott R. Lassiter, Nicole L. Dozier, and Denise C. Wilkie.

Also in attendance were Town Manager Bruce A. Radford, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

### COMMENCEMENT

Mayor Sutton called the meeting to order, Mayor Pro Tem Schulze gave the Invocation, and Mayor Sutton led the Pledge of Allegiance.

### PRESENTATIONS

**Presentation 01 : Mayor Bill Sutton**

**Presentation of Proclamation to the Police Department for National Telecommunicators Week**

Mayor Sutton presented this Proclamation to Police Chief John Letteney and Communications and Technology Manager David Boggs. He expressed his appreciation for the exceptional work that the Telecommunicators perform.

**Presentation 02 : Mayor Bill Sutton**

**Recognition of the Apex High School Men's Basketball Team as the 4-A State Champions!**

Mayor Sutton presented this Proclamation to Coach Neal and members of the Championship Team. Council Member Wilkie offered words of praise along with Mayor Sutton to all members of the team and to the coaches for their exemplary performance. This is the first 4-A State Championship for the Apex Men's Basketball Team.

## CONSENT AGENDA

- Consent 01** Minutes of the April 1, 2014 Closed Session and Minutes of the January 9, 2014 Finance Committee Meeting (Closed Session Minutes recorded separately)
- Consent 02** Public Hearing for the May 6, 2014 Town Council Meeting regarding Rezone #14CZ03, 3.08 acres located at the southwest corner of Olive Chapel Road and Kelly Road from Rural Residential to Office and Institutional Conditional Zoning
- Consent 03** Public hearing on May 6, 2014 for rezoning application #14CZ04 to rezone 46.83± acres located 1960 Apex Peakway (PIN 0742-63-2404) from Planned Unit Development-Conditional Zoning to Planned Unit Development-Conditional Zoning, revising some conditions of approval
- Consent 04** Public Hearing for the May 6, 2014 Town Council Meeting regarding Rezone #14CZ05, 133.1 acres located at 0, 8312 Ragan Road and 2505, 2428, 2504, 2510 Richardson Road from Wake County R80-W and Rural Residential to Low Density Residential Conditional Zoning
- Consent 05** Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council’s intent to annex Charles Womble, Clarence Goodwin, Mark Esposito, Ashley Gasiorowski and Kenneth and Sue Marks properties containing 133.411 acres located west of Richardson Road, northeast of Ragan Road, Annexation #505 into the Town’s corporate limits
- Consent 06** Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council’s intent to annex JVI Development II, Inc. property containing 8.948 acres located off Old Raleigh Road, south of New Dover Road, Annexation #508 into the Town’s corporate limits
- Consent 07** Standard encroachment agreements for the encroachment of irrigation systems, communication lines, natural gas lines and landscaping into street rights-of-way and other town owned easements

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER WILKIE SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## REGULAR MEETING AGENDA

There were no requested changes to the Agenda.

## PUBLIC HEARINGS

### **Public Hearing 01 : Shelly Mayo, Planner**

**Public hearing and motion on rezoning application #14CZ02 to rezone 7.38 and 0.34 acres located at the southeastern quadrant of the intersection of NC-55 and US 64 Hwy (PIN 0732-77-7095 and 0732-76-9930) from Residential Agricultural and Planned Commercial zoning to Planned Commercial Conditional zoning, and motion on rezoning ordinance**

Staff oriented Council to the site of these Town-owned properties. A neighborhood meeting was conducted, and 37 uses were proposed. Two additional conditions were proposed. Staff and the Planning Board recommended approval with the added conditions.

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

Council entered into discussion about the possibility of a precedent being set regarding wetlands. Staff explained how the land would be sold and its uses, stating a precedent would not be set as this is a use consistent with the UDO. The condition was there so the neighboring properties would understand the land could be bought by a developer for RCA and that the land would not be owned by the Town. After further discussion about RCA,

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE REZONING AS PRESENTED; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.  
COUNCIL MEMBERS WILKIE, SCHULZE, LASSITER, AND DOZIER VOTED IN THE AFFIRMATIVE;  
COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE.  
THE MOTION CARRIED BY A 4-1 VOTE.

### **Public Hearing 02 : Dianne Khin, Planning Director**

**Public Hearing and motion to adopt an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex JVI Development II, Inc. property containing 78.120 acres located at located off Holland Road, east of Walden Road, Annexation #509, into the Town’s corporate limits**

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

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

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER WILKIE SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 03 : Brendie Vega, Principal Planner**

**Public hearing and motion to adopt the Ordinance attached to this item regarding various amendments to the Unified Development Ordinance**

Staff detailed the three minor amendments being proposed.

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

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE A MOTION TO  
ADOPT THE ORDINANCE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

*An audio recording of the following Quasi-Judicial Public Hearing made by the Town Clerk is incorporated into these Minutes by reference. The audio recording or transcript of the Hearing should be used as the verbatim record of the questions, testimonies, evidentiary rulings, and discussions that occurred at the Quasi-Judicial Hearing.*

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**Public Hearing 04 : Lauren Simmons, Planner II**

**Quasi-Judicial Public Hearing and motion regarding a Major Site Plan for 540 Flex and Business Park, 10.74 acres located at 1604 & 1640 Olive Chapel Road**

Council Member Jensen asked to be recused as he had business interests in this property.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO RECUSE  
COUNCIL MEMBER JENSEN; COUNCIL MEMBER WILKIE SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

The Town Attorney read the Statement detailing the procedures of the Hearing.

Mayor Sutton questioned Council as to their ability to make an impartial decision in this matter. All Council stated they would be able to do so.

**APPLICANTS IDENTIFIED:** David Godfrey introduced himself as Attorney for the applicant/owner, Iaone, LLC. Also introduced was Stuart Jones, Engineer; Jaclin Wawak and Rick Raynor, Architects; Kimberly Siran, Landscaper; and Joshua Reinke, Traffic Engineer

**OPPONENTS IDENTIFIED:** No one identified themselves as being opposed to the request.

All those wishing to speak during the Public Hearing were sworn in by the Town Clerk.

Staff stated their credentials and oriented Council to the site. A neighborhood meeting was held, and staff had reviewed the request for consistency. Submitted into evidence was a materials board provided by the applicant, the materials being consistent with site plan and zoning conditions.

There were no questions for staff by Council or the applicant.

Mayor Sutton asked Council had any of them visited the site, to which all answered in the negative.

**EVIDENCE PRESENTED BY THE APPLICANT:** Stuart Jones stated his credentials and work history. He presented impacts of the property, detailing the buildings and space requirements, buffers, and traffic patterns. A neighborhood meeting was held and there was no opposition. Jones mentioned a few site improvements they wished to make including a larger pond which was requested at the neighborhood meeting.

Jaclin Wawak presented her credentials and experience. She commented on the look that they've established and their lighting plan.

Kimberly Siran presented her credentials and experience and spoke on the parking lot area, buffers, and fencing.

Joshua Reinke presented his credentials and experience. He was contracted to do the traffic study, coordinating with the Town. A traffic impact analysis was not required since the flow was below the standards.

**EVIDENCE FROM OPPONENTS:** Irina Dayal began questioning Jones, asking with whom the neighborhood meeting was held. This was the first time she'd heard about this request. Jones responded that anyone within 300 feet of the rezoning and site plan were contacted. With her questions and comments continuing, the Town Attorney called Dayal out of order.

Lauren Marsale stated she was not notified of the meeting and neither was anyone else in her development. She pointed to 35 signatures on a petition from residents in opposition. Marsale detailed her neighborhood and stated why this use is not compatible. There was concern about young children and the traffic, the character of the surrounding area, and no one being properly notified.

Godfrey objected to Marsale's testimony as being hearsay as well as objecting to the petition being entered into evidence since Marsale was not sworn in. Marsale asked that this Hearing be continued so that those unaware of the request could be present. Council asked Planning had signage been placed on the property. Planning answered in the affirmative and stated that there was proper noticing as required by the law and the UDO.

Ginger Bennett spoke on the traffic issue, stating they work with PD about this issue on a regular basis – especially at Chapel Elementary. Was it taken into consideration that this area is highly used by walkers when doing the traffic study. Reinke explained how this use is not a high trip generator during peak school hours. Jones clarified the primary use will be boat storage.

Dayal gave further testimony on the amount of high traffic on Olive Chapel and how this use will affect that traffic. The Town Manager stated that a crossing guard for the school was being recommended in the FY14-15 budget. The applicant stated there would be 256 storage units and parking for 108 cars/employees.

**CLOSING STATEMENTS BY THE OPPOSITION:** Marsale stated that Council must find the use consistent with the character of the surrounding land use in order to approve the request. This is not compatible.

**CLOSING STATEMENTS BY THE APPLICANT:** Godfrey restated his objection to testimony from the opposition and the petition since none of the individuals were sworn in. This would also apply to any verbal statements.

The Town Attorney instructed Council on not considering the petition. Marsale asked for the information deeming the information not permissible to be mailed to her home.

Godfrey made formal tender of all evidence previously submitted to staff for quasi-judicial record purposes.

Mayor Sutton declared the Public Hearing closed.

The Town Attorney read the Statements, which Council agreed had been met.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO  
APPROVE THE REQUEST; COUNCIL MEMBER LASSITER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Council Member Jensen returned to Council.

## OLD BUSINESS

There were no Old Business items for consideration.

## PUBLIC FORUM

No one wished to speak during Public Forum.

At this juncture, the Mayor called a ten minute break.

## NEW BUSINESS

### **New Business 01 : Lauren Simmons, Planner II**

**Motion approving Arcadia Ridge West - Master Subdivision Plan - for the property located at 2526 Olive Chapel Road containing 28.96 acres and 71 lots**

Staff oriented Council to the site. A neighborhood meeting was held; the Parks and Rec Commission recommended a fee in lieu; the Plan is consistent with the Apex Transportation Plan; it is compliant with the UDO, and staff and Planning Board recommended approval.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE  
THE PLAN; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**New Business 02 : Bruce Radford, Town Manager**  
**Town of Apex's Legislative Agenda**

Town Manager Radford explained staff's items, providing detail where necessary, which will go to our legislative body. Council offered their opinions and further discussed several of the items which appeared to be more State than local concerns. Council reworded the sweepstakes item, disregarded the item about mopeds, and added an item relating to education: Support legislation that provides each child access to quality, well-funded schools where educators have what they need to serve the community. The Mayor Po Tem expressed his opposition to the Jordan Lake item.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE THE LEGISLATIVE AGENDA WITH THE STATED REVISIONS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## CLOSED SESSION

**Closed Session 01 : to receive legal advice from the Town Attorney and to discuss a potential claim**

**Closed Session 02 : to discuss a personnel matter**

The Town Attorney stated that Closed Session 01 could be postponed to the next regular Council Meeting.

MAYOR SUTTON CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER WILKIE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN CLOSED SESSION. COUNCIL MEMBER LASSITER MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## WORK SESSION

There were no Work Session items for consideration.

## ADJOURNMENT

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With there being no further business,

MAYOR SUTTON CALLED FOR A MOTION TO ADJOURN. COUNCIL MEMBER JENSEN MADE  
THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

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Donna B. Hosch, CMC, NCCMC  
Town Clerk

ATTEST:

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William M. Sutton, Mayor

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