



TOWN COUNCIL MEETING

TUESDAY, OCTOBER 21, 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
Drew Havens, Assistant 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, October 21, 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 Tem 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, Assistant Town Manager Drew Havens, 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 Sutton

Presentation of the 2014 North Carolina Marvin Collins Planning Award to Planning Director Dianne Khin

Mayor Sutton read the award and presented it to Dianne Khin, Planning Director, praising her for the work being done in the Planning Department.

CONSENT AGENDA

Consent 01 Minutes of the October 7, 2014 Regular Council Meeting, the October 7, 2014 Closed Session (Closed Session Minutes recorded separately), the October 8, 2014 Personnel Committee Meeting, and the October 9, 2014 Economic Development Committee Meeting

- Consent 02 Apex Tax Report dated 09/14/2014
- Consent 03 Cancelling the November 4, 2014 Regular Council Meeting in light of it being Election Day and calling a Special Meeting for Wednesday, November 5, 2014 at 7:00 p.m.
- Consent 04 Statement of the Town Council for Rezoning Case #14CZ11 (Manors at Bella Casa Phase 8B), Jones & Crossen Engineering, PLLC/JVI Development II, petitioners for the property located 2801 Walden Road
- Consent 05 Construction contract and authorization for the Town Manager to execute same for U-5530 AB Tingen Sidewalk
- Consent 06 Construction contract to Span Builders for the construction of a greenway connection between Whitehall Subdivision and Beaver Creek Greenway
- Consent 07 Resolution ratifying the Interlocal Agreements Related to the Western Wake Regional Water Reclamation Facilities
- Consent 08 Resolution approving the “Grant of Access and Use for Water Intake Structures, Water Pipelines and Aeration System in Conjunction with a Water Storage Agreement and Water Supply Agreement Located on B. Everett Jordan Dam and Lake Project, Chatham County, North Carolina”
- Consent 09 Resolution authorizing condemnations related to the Second Street Community Development Block Grant project
- Consent 10 Resolution authorizing condemnation related to the sewer line connection to manhole on Norwood Lane

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

REGULAR MEETING AGENDA

Town Manager Radford requested the addition of an Old Business item in regard to an extension of a contract to purchase Real Property from the Town. Council was in agreement with this addition.

PUBLIC FORUM

John Gasiarowski thanked Council for looking at his property or speaking with him via telephone. Gasiarowski explained that the lower area of the property has four-to-five acres of easements. 50-100 feet of the southernmost portion is unsaleable. The adjoining properties have been sold, and the collector road bisects his property almost in half. He has been consulting with Stewart Jones, and this minimizes the number of houses that can be put on the property. Gasiarowski explained his need to

move and his desire to get the Land Use Plan amended to medium density in one area and low density in another area.

Gordon Eakes, Gasiarowski's neighbor, also asked that his two acres be changed to medium density so that townhomes could be established there. This would improve his financial status and allow him to move to a more suitable home.

PUBLIC HEARINGS

Public Hearing 01 : Reed Huegerich, Senior Planner

Public Hearing and amendments to the Thoroughfare and Collector Street Plan map and the Bicycle, Pedestrian, and Equestrian Plan map

Staff detailed the requested amendments to the two Plans.

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 THE MOTION TO APPROVE THE AMENDMENTS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 02 : Lauren Simmons, Planner II

Public hearing and rezoning application #14CZ13 (Bradley Commons) to rezone 1.10± acres located at 950 Windy Road from Planned Unit Development-Conditional Zoning to Planned Unit Development-Conditional Zoning, adding a use, microbrewery

Staff oriented Council to the site, giving a brief history of the rezonings. Staff recommended approval of this request, as the addition of a microbrewery is an allowed use. Staff defined microbrewery as included in the UDO.

Mayor Sutton declared the Public Hearing open.

Jeff Roach, Peak Engineering, representing the applicant, presented a history of the rezonings and explained how the microbrewery would operate.

Mike Urban, resident of the Villages of Apex, stated he was familiar with microbreweries and didn't see the distinction between them and a bar. This seems to be an unprecedented use inside a residential neighborhood. Urban spoke about the in and out accesses, and stated his concern about people drinking and driving through the neighborhood.

Mayor Sutton declared the Public Hearing closed.

Staff defined the difference between a tasting room and a bar according to the UDO. There would be no change to access, since this request is just for the addition of a microbrewery. Staff stated there are no bars within the corporate limits. Staff from the Police Department responding to questions from Council, stated there have been no incidents of drunk driving since the opening of another microbrewery in Apex. If it was to become a problem, a traffic enforcement team would be put in the area to control the problem.

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

Council briefly discussed the possibility of a mixed use neighborhood with a restaurant and its advantages.

Public Hearing 03 : Lauren Simmons, Planner II

Public Hearing and rezoning application #14CZ14 (Deer Creek PUD) to rezone 103.06± acres located at US Hwy 64 W and New Hill Olive Chapel Road from Rural Residential to Planned Unit Development-Conditional Zoning

Staff oriented Council to the site, detailed the request, and gave a history of past rezonings. The Planning Board unanimously recommended approval as did staff.

Mayor Sutton declared the Public Hearing open.

Glenda Toppe, Glenda S. Toppe Associates, on behalf of the applicant, complimented staff on their presentation. She hit the high points showing how the plan is in compliance with Town Plans. Changes were made due to comments from neighbors at neighborhood meetings; this will be a high-quality development. Council asked if Phase II could be started earlier, Toppe stating this would be market driven and could happen if the demand is there for office space.

Mayor Sutton declared the Public Hearing closed.

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

Public Hearing 04 : Shelly Mayo, Planner

Public Hearing and rezoning application #14CZ18 (Hope Community Church) to rezone 12.66± acres located at 2080 E. Williams Street from Light Industrial Conditional Use to Tech-Flex - Conditional Zoning

Staff oriented Council to the site. A neighborhood meeting was held; the applicant offered a proposed list of uses and architectural conditions. Staff recommended approval with conditions offered by the applicant. Planning Board unanimously recommended approval.

Mayor Sutton declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering, on behalf of the applicant, stated that the rezoning request is due to the church wishing to open a daycare facility.

Mayor Sutton declared the Public Hearing closed.

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

Public Hearing 05 : Lauren Simmons, Planner II

Public Hearing and rezone #14CZ20, 10.75 acres located at 1604 & 1640 Olive Chapel Road (540 Flex) from Tech Flex-Conditional Zoning (TF-CZ) to Tech Flex-Conditional Zoning (TF-CZ) adding the uses of microbrewery, microdistillery, and medical or dental office or clinic

Staff oriented Council to the site and gave a history of its rezonings. The site plan has been approved; the applicant is asking for additional uses. The Planning Board recommended approval as did staff, the uses being consistent with tech flex uses. Staff defined microbrewery and microdistillery; a restaurant would not be allowed in this district. Staff did not believe fumes from a distillery would reach the school.

Stuart Jones, Jones Crossen Engineering, stated he would be willing to remove the tasting room from each of the two uses, seeing as the request is mainly about production. There will be no loading docks or big trucks coming in. The school can't be seen from the site and vice versa.

Mayor Sutton declared the Public Hearing open.

Ann Barta stated that children would, in fact be able to see this site. She was concerned about the physical presence of a microbrewery and microdistillery on the children. Johnnie Barta, the son, spoke about the visibility of this site from school property. Kids may be influenced if they see drinking and smoking at the facility.

Rachel Cessna spoke about additional vehicles on their streets. She presented statistics on pedestrian accidents, and how this use might increase the risk of accidents. Staff confirmed there is a crossing guard in the area.

Stephanie Cessna stated she was worried about a microbrewery and drinking and driving. Traffic will become heavier, and she talked about the intersection being dangerous.

Ronald Yadusky spoke about alcohol addiction, escalation, and density, and how these might have an effect on children.

Mayor Sutton declared the Public Hearing closed.

Staff touched on the impact of residential vs. commercial traffic. After some short discussion, Stuart Jones agreed to remove the request for microbrewery and microdistillery uses.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE A MOTION TO APPROVE
THE REZONING WITHOUT THE MICROBREWERY AND MICRODISTILLERY USES;
COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 06 : John Brown, Parks & Recreation Director

Public Hearing on loan contract and Resolution authorizing the purchase of the 92.16 acre Progressive Farms, LLC property and authorizing a contract for a loan from The Conversation Fund in the amount of \$2,225,600.00 which will be secured by the purchased property

Staff stated this was a culmination of discussions over the past few months. We have been looking for land in this area, and this site hopefully answers the question. This meets the goals of the Master Plan for significant parkland in the southwest quadrant, it addresses current and future program needs, and the price/acre is not arguable.

Mayor Sutton declared the Public Hearing open.

Greg Coley, Chair of the Parks, Recreation, and Cultural Resources Advisory Commission, recognized attending members of the Commission. He thanked the team for their efforts in this project and outlined how this will benefit Apex. A significant amount of subdivision fees are being committed to this acquisition.

Mayor Sutton declared the Public Hearing closed.

Council stated this was a milestone day for Parks and Recreation and thanked John Brown, Director, for his contributions.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE A MOTION TO APPROVE
THE RESOLUTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

OLD BUSINESS

Old Business 01 : Council Member Scott Lassiter

Discussion regarding the crediting of private recreation open space against the Town's Public Recreation requirements

Council referred to a previous request from Council Member Jensen to provide for open space within neighborhoods. Stated were the concerns of the Parks and Recreation Commission in how this could be accomplished as new neighborhoods are developed. The Commission agreed with this being a requirement, but they are not interested in seeing it take away from their funding source or being a way to acquire new lands.

The Town Attorney explained exactions and what standard applies to them, exactions being one of most vexing areas of the law. Overlooked was how the Supreme Court has ruled on these types of cases.

After further conversation, Council stated it wished to see this go back to the Commission and then back to Council. Staff responding to Council questions stated that the UDO specifies what type of land can be used and its conditions. Land cannot be arbitrarily picked, and we don't have to accept it.

Consensus of Council was for this to be referred back to the Commission and staff with their findings coming back to Council.

Old Business 02 : Bruce Radford, Town Manager

Discussion on extension of a contract to purchase Real Property from the Town

Staff stated the Town entered into an agreement to sell property at 54 and 55. The land adjacent is under contract for commercial development. The purchaser is asking for a 120-day extension in order to try to recruit tenants. Staff recommends doing this.

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

NEW BUSINESS

New Business 01 : John Brown, Parks & Recreation Director

Changes to the Parks, Recreation, Greenways and Open Space Master Plan Map

Staff explained this would sync with the Pedestrian and Bicycle Plan.

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

New Business 02 : Brendie Vega, Principal Planner

Approval of Crestmont - Master Subdivision Plan - for the properties located east of Green Level Church Rd and south of Roberts Road containing 68.87 acres and 167 lots

Staff oriented Council to the site. A fee in lieu was recommended; a greenway is proposed. Staff recommended conditions relating to preserved trees and tree protection fencing. The Planning Board unanimously recommended approval.

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

New Business 03 : Brendie Vega, Principal Planner

Approval of Germaine Village - Master Subdivision Plan - for the properties located north of the end of Germaine Street and south of Herbert Street containing 3.6 acres and 15 lots

Staff oriented Council to the site. The Parks and Rec Commission recommended a fee in lieu. The Planning Board unanimously recommended approval, as did staff.

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

New Business 04 : Lauren Simmons, Planner II

Approval of revisions to James Street Station - Master Subdivision Plan - for the property located at 0, 100, 104, & 120 James Street containing 32.92 acres and 60 lots

Staff stated the applicant wished to make two changes to the Plan regarding connections and grading. The Planning Board recommended approval as did staff.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE A MOTION TO APPROVE THE REVISIONS; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 05 : Lauren Simmons, Planner II

Approval of Manors at Bella Casa Phase 8B - Master Subdivision Plan - for the property located at 2801 Walden Road containing 22.7 acres and 47 lots

Council Member Dozier asked to be recused from this item since it could affect her property value.

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

Staff oriented Council to the site. A fee in lieu was recommended, and TIP recommended no changes. Staff recommended approval with two conditions: (1) additional connectivity in the area, and (2) the addition of a stub street. The Planning Board recommended approval with only the first condition. Staff recommended approval with both conditions. Staff detailed the reasoning for requesting the stub street.

Stuart Jones, Jones and Clossen Engineering, stated they are against a stub street because they would lose a lot. There is also a house on one of the lots. If the property were ever sold and the house removed, it might affect the value of the property. Alternate recommendation was presented to staff of not having the stub because of how it affects the properties.

Ms. Curry, property owner, spoke to being in favor of the stub street and how it would benefit her family in the future.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE PLAN ACCORDING TO THE RECOMMENDATION OF THE PLANNING STAFF;

COUNCIL MEMBER WILKIE SECONDED THE MOTION.

COUNCIL MEMBERS WILKIE, SCHULZE, AND LASSITER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 3-1 VOTE.

Council Member Dozier returned to Council.

New Business 06 : Bruce Radford, Town Manager

Funding for the painting of the caboose in downtown as requested by the Apex Historical Society

Staff stated the Town has traditionally assisted with the painting of the caboose. We would pay \$2,600 for the painting and the Historic Society would pay for the decals. The money would come from the General Fund.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE EXPENDITURE; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

New Business 07 : Drew Havens, Assistant Town Manager

Budget ordinance amendment to transfer \$1,227,316 from the Recreation Reserve Fund to the Recreation Capital Project Fund and amend the Recreation Capital Project Fund to fund the initial expenditures in accordance with the loan agreement Resolution to purchase land for Pleasants Park

Staff stated this would simply put the money where it needs to be.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE AMENDMENT; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

CLOSED SESSION

Closed Session 01 : to receive legal advice about a potential claim and to provide legal advice

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

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

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE TOWN ATTORNEY LOOKING AT A ROADWAY ISSUE AND SUPERVISING THE PERSON ASSISTING WITH DOING SO; 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

With there being no further business,

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

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

William M. Sutton, Mayor