



## TOWN COUNCIL MEETING

TUESDAY, SEPTEMBER 2, 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, September 2, 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, Council Member Wilkie gave the Invocation, and Mayor Sutton led the Pledge of Allegiance.

### PRESENTATIONS

**Presentation 01 : Hassan Aden, CALEA Commissioner and Chief of Police, Greenville**

**Presentation of CALEA certification to the Apex Police Department**

Police Chief John Letteney introduced Greenville Chief of Police and CALEA Commissioner Hassan Aden and presented his credentials and background. The Apex PD Command staff and retired Police Chief Jack Lewis stood with Chief Letteney. Chief Aden stated it was his honor to be present both as a friend and colleague to Jack Lewis and to John Letteney. Earning the CALEA certification is a huge accomplishment encompassing meeting over 400 standards which Apex has accomplished brilliantly. Chief Aden presented the framed certification to Mayor Sutton and Chief Letteney.

Chief Letteney stated that the CALEA process set in motion other levels of service in Apex. This accomplishment was a result of the work of all department employees, but particularly of Captain

Stevens and Corporal Critcher who spearheaded the process. Both were presented with certificates of appreciation. Chief Jack Lewis was also presented a plaque, expressing appreciation for his getting the CALEA process started. Council thanked the department leadership and all those involved in the effort.



## CONSENT AGENDA

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- Consent 01** Minutes of the August 19, 2014 Regular Town Council Meeting and the August 19, 2014 Closed Session  
*(Closed Session Minutes recorded separately)*
- Consent 02** Resolution authorizing the Finance Director to file an application for State revolving loan funding for water plant improvements
- Consent 03** Set Public Hearing for the September 16, 2014 Town Council Meeting regarding Rezone #14CZ12, approximately 11.15 acres located at E. Williams St. and Eddie Creek Dr. from Light Industrial Conditional Zoning to Light Industrial Conditional Zoning
- Consent 04** Set Public hearing on September 16, 2014 for rezoning application #14CZ13 to rezone 1.10± acres located 950 Windy Road (PIN 0742-66-2535) from Planned Unit Development-Conditional Zoning to Planned Unit Development-Conditional Zoning, adding a use, microbrewery
- 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 Lewis and Mindy Cooke, Glenn and Joy Futrell, Ten Associates Limited Partnership, Inez Mann, Ann Freeman Gazenbeek and Terry Slate properties containing 52.75 acres located along US 64 Hwy, east of Laura Duncan Road and Pine Plaza, Annexation #512 into the Town’s corporate limits
- Consent 06** Findings of Fact, Conclusions of Law, and Decision approving Major Site Plan for Saint Mary Magdalene Church

- Consent 07** Set Public Hearing for the September 16, 2014 Town Council Meeting regarding various amendments to the Unified Development Ordinance
- Consent 08** Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of August 19, 2014
- Consent 09** Development Agreement with CRP – Apex II, LLC related to Nichols Plaza Shopping Center, authorizing the Town Manager and Town Attorney to make minor modifications to the agreement, and authorizing the Town Manager to execute the Agreement
- Consent 10** Purchase of Lot 276 Plots E, F, and G from the Apex Town Cemetery
- Consent 11** Purchase of Lot 216 Plots A and B from the Apex Town Cemetery
- Consent 12** Transfer of Lot 51 Plot G in the Apex Cemetery to David J Sears

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

## REGULAR MEETING AGENDA

Council Member Jensen requested the addition of a New Business item regarding UDO standards. Town Manager Radford requested the addition of a New Business Item regarding exemption from the noise ordinance for the jazz festival.

Council was in agreement with the addition of these items.

## PUBLIC HEARINGS

### **Public Hearing 01 : Dianne Khin, Planning Director**

**Continuance of the Public Hearing to September 16, 2014 regarding an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Milton Richardson & Vedia Jones-Richardson property containing 10.01 acres located at 2324 Mt. Zion Church Road, Annexation #516, into the Town’s corporate limits**

Staff stated this property was noticed with the developer being the owner, but some of the properties have since been sold meantime. This needs to be heard at the same time as the related rezoning.

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

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

**Public Hearing and Ordinance on the Question of Annexation – Apex Town Council’s intent to annex The Pantry Inc. property containing 1.59 acres located at 2105 Ten Ten Road, Annexation #518, into the Town’s corporate limits**

Staff oriented Council to the site and stated it recommended approval of the annexation.

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  
THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER LASSITER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## PUBLIC FORUM

No one wished to speak during Public Forum.

## OLD BUSINESS

**Old Business 01 : June Cowles, Senior Planner**

**Hempstead at Beaver Creek Townhomes Residential Master Subdivision Plan for the property located south of Beaver Creek Crossing Shopping Center containing 24.1 acres and 193 townhome lots**

Staff stated this Hearing was being continued from two weeks ago and oriented Council to the site. The landscaping area was clarified; it is shown as Type B on the plan, but it actually meets Type A landscaping standards. A water line will be included. In response to Council, staff explained the RCA and its buffers.

The Parks and Recreation Commission recommended a fee in lieu for the recreational area because of the Beaver Creek Crossing PUD. Council asked if there could be more recreation requirements since there has been an increase in the number of housing units. Staff explained this has not gone back before the Recreation Commission because the developer will be building based on the approval of the Commission for the entire PUD. Council stated traffic may be reduced if more recreational space was provided because then there would be more to do in the area. Staff read the original Recreation Commission requirements, which stated payment of a fee in lieu based on density. The currently shown recreation area would be programming and a shelter area. The Town Attorney stated he agreed with

Planning's interpretation of the original PUD fee in lieu, and that the developer can't be made to do what is not in the UDO.

### **COMMENTS FROM THE AUDIENCE**

Mike Bishop stated that in reference to green space, another similar sized development has two swimming pools. This is a missed opportunity to connect to the bicycle greenway. It seems there is a picking and choosing from fees in lieu, but the same is not done for road connectivity. He gave a PowerPoint presentation on the history of the subdivision, showed pictures of the neighborhood, and outlined the present situation speaking specifically about road connections and the traffic study being flawed. Suggestions on alternate proposals were presented. There were no questions of Mr. Bishop from Council.

Andrew Kenney spoke about alternate road connections. Additional traffic will further degrade the street which was unsuitable for traffic years ago. He read from a communication from the Town Engineer from 10 years ago. The proposed connection would change the character of the neighborhood. Mr. Kenney presented several connection options which he thought would be more suitable and beneficial. He pointed out there is no Type A buffer on the plan; it's really a Type B which is virtually useless.

Rita Boykin stated their concerns and solutions have been presented by the previous citizens and asked Council to work with them on their requests. She cited Mayor Weatherly's previous communication, even though she understood it is not legally binding.

David York, attorney for applicant NVR, stated that last week an email was sent indicating they'd looked at alternate connections. The Code requirements and the alternatives presented by the public do not meet Code requirements. NVR has spoken again with NC DOT regarding its responsibilities for the condition of the road. While the applicant's request may not be popular, it meets the UDO. The suggestion to get a variance from the Board of Adjustment will not comply with the requirements necessary to go before that board; they could not get a variance even if they requested to do so. Mr. York reminded Council that the Planning Board unanimously recommended approval even though they knew it was not popular. They have looked for options but could find none that are legal.

Council asked about the buffers on the plan. Staff explained the applicant is meeting Type A standards, this just needs to be noted on the plan. The applicant has also added more trees to the plan. Responding

to Council regarding the berm, staff stated the berms are where they should be and where they fit within the buffer as stated in the UDO. Staff stated the applicant agreed to a three year road maintenance plan the last time they were before Council and will still be willing to do this as long as it's reasonable.

Council commented on the previous commitments of Council and asked the Town Attorney what would be this Council's options; could Council vote 'no' without opening the Town to a lawsuit. The Town Attorney stated that if every single applicable requirement is met, then Council is supposed to vote in favor of the request. The Town Attorney reminded Council this was not a quasi-judicial hearing, so there was no room to make conditions. Council asked what would be the chances of winning in court if the request was turned down, the Town Attorney explaining that if the request met all the standards, we would lose. Council was also reminded that the connections were per the Transportation Plan, and the suggested alternate routes did not meet the standards.

Council asked about a connection to a bike greenway, and staff explained where a greenway will go. Staff also explained discretionary ROWs and why they're done. Staff stated that adequate roads are provided; the main concern being 20 feet of clear width for emergency vehicles. Additional widths are usually for sidewalks, and there is not one in this neighborhood nor is it required. Staff stated the UDO does not give a standard road width, it uses typical standards which are flexible.

Council asked about the increased density, staff responding the approval was for up to 300 units, this being the second piece of the larger project.

Mayor Pro Tem Schulze stated that if a request meets the UDO, then Council should approve the request even in light of comments from previous Boards.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO  
APPROVE THE REQUEST WITH A THREE YEAR AGREEMENT ON STREET REPAIR AND A TYPE A BUFFER.

Further discussion ensued on how the deterioration of the road would be handled and at what cost. NVR stated it was willing to deal with the condition of the road as of this day. Staff stated the Town would certainly advocate for DOT to repave the road if necessary.

Council asked about a fire gate, staff stating this would not be possible because there were not two other accesses which would make the gate legal. There was brief discussion about Appendix D, the Fire

Chief stating Appendix D doesn't apply to this project, because the project meets the UDO. The project is compliant with Appendix D without the gate.

MAYOR PRO TEM SCHULZE REVISED HIS MOTION TO APPROVE THE REQUEST ADDING A \$30,000 MAXIMUM ON STREET REPAIRS FROM THE DEVELOPER TO BE WORKED OUT WITH NC DOT AND/OR THE TOWN, AND THE PLAN TO SHOW A TYPE A BUFFER ALONG THE WESTERN SIDE OF THE CHAPEL RIDGE NEIGHBORHOOD. COUNCIL MEMBER WILKIE SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

Mayor Sutton called a five-minute recess.

**Old Business 02 : Tim Donnelly, Public Works Director**

**Property Acquisition Reimbursement Agreements Nos. 1-5 and a Representation and Confidentiality Agreement and Engagement Agreement with outside legal counsel related to each, and authorization for the Town Manager to make minor modifications to, fill-in necessary information on, and execute the same, and authorization of the engagement of the services of outside real estate acquisition agents and outside legal counsel to acquire the lift station parcel and the water, sewer, and electric easements for the White Oak Basin Utility Project**

Staff stated this item was in reference to the White Oak Basin and assistance to the Town in building a regional pump station. The developers will help pay the cost of the easements, but we will be responsible for the procurement process. For those which are just water or sewer, the developer will pay; for just power, the Town will pay; for those which are combined, there will be a proportionate split in payment.

There are safeguards in the documents drafted by the Town Attorney. The Town will have control of the process which will ensure people are treated as fairly as possible and ensure that the process goes smoothly. The five agreements were explained. We are working with Parks and Rec and Planning to see if we can obtain greenway easements and connectivity. Parks and Rec will gain this later in the process; these easements don't envision that. Council asked that staff explain the process to property owners, stating that we will ask for greenway easements down the road.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE THE AGREEMENTS SUBJECT TO STAFF'S EXPLORING INCLUDING GREENWAY EASEMENTS WHERE FEASIBLE BUT WITH AUTHORITY TO PROCEED WITH AN AGREEMENT IF ADDING GREENWAYS IS NOT FEASIBLE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Old Business 03 : Drew Havens, Assistant Town Manager**

**Budget ordinance amendment and capital project ordinance amendment for acquisition of water, sewer, and electric easements in the White Oak basin**

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

**NEW BUSINESS**

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**Add on New Business 01: Council Member Bill Jensen**

**Amendments to the UDO to provide for recreational facilities in subdivisions exceeding 50 homes**

Council stated the objective was to have staff look at setting aside recreation land for subdivisions of a certain size. The Parks and Recreation Commission will also look at this later on.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO AUTHORIZE STAFF TO LOOK INTO THIS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**New Business 02: Bruce Radford, Town Manager**

**Exemption from Apex Ordinance 14.33(3) – Noise Prohibited During Night Time Hours**

Staff stated this would be a one-time exemption for amplified music until midnight at the upcoming Jazzfest. The Police Department saw no problem with the request since there were no complaints from last year.

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

**CLOSED SESSION**

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**Closed Session 01 : to discuss a personnel matter**

MAYOR SUTTON CALLED FOR A MOTION TO GO INTO CLOSED 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 TO RETURN TO OPEN SESSION. COUNCIL MEMBER SCHULZE MADE  
THE MOTION; COUNCIL MEMBER LASSITER 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 JENSEN SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 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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