



TOWN COUNCIL MEETING

TUESDAY, FEBRUARY 18, 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, February 18, 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, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Interim Mayor Schulze called the meeting to order, gave the Invocation, and led the Pledge of Allegiance. Interim Mayor Schulze thanked Town employees who, under the leadership of the Town Manager, did an outstanding job clearing the roads during the last weather storm. He has received many emails complementing staff efforts.

Swearing in of newly-appointed Mayor, William "Bill" M. Sutton

Mr. Sutton was sworn in by Donna B. Hosch, Town Clerk, his wife, Pat, by his side. Mayor Sutton took his place on Council.

PRESENTATIONS

There were no Presentations to be made.

CONSENT AGENDA

Consent 01 Minutes of the February 4, 2014 Regular Meeting, the February 10, 2014 Special Meeting, and the January 3, 2014 Economic Development Committee Meeting

- Consent 02** Amendment of Chapter 9 of the Town of Apex Code of Ordinances to restrict the use of Sky Lanterns in the Town of Apex
- Consent 03** Construction contract and authorization for the Town Manager to execute same for Chatham & Moore Street Sidewalk Project
- Consent 04** Assignment, Assumption and Release of Encroachment Agreement with Wake Broadstone Associates, LLC and to authorize the Town Manager to execute same

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

REGULAR MEETING AGENDA

Mayor Sutton presented the Regular Meeting Agenda, to which there were no requested changes.

PUBLIC HEARINGS

Public Hearing 01 : June Cowles, Senior Planner

Public Hearing and motion regarding Rezone #13CZ28, 0.98 acre located at 1009 North Salem Street from Residential Agricultural to Office and Institutional Conditional Zoning

Staff oriented Council to the site. Staff recommended approval.

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 REZONING. COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 02 : Lauren Simmons, Planner II

Public Hearing and motion regarding rezone #13CZ33 from Rural Residential to Medium Density-Conditional Zoning and a 2030 Land Use Map Amendment from mixed use: Commercial Services, Office Employment and High Density Residential to Medium Density Residential for, 85± acres located at 400 New Hill Olive Chapel Road

Staff oriented Council to the site.

Mayor Sutton declared the Public Hearing open.

Jason Baron, on behalf of the applicant, stated he was before Council in January. A lively conversation resulted. They have been studying their request to determine if it could be revised to be more consistent with the Long Range Plan. Mr. Baron asked for a continuance to the March 18th Regular Council Meeting.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO CONTINUE THE PUBLIC HEARING TO THE MARCH 18TH COUNCIL MEETING; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 03 : Lauren Simmons, Planner II

Public Hearing and motion regarding rezone #13CZ34 from Rural Residential to Neighborhood Business-Conditional for, 14± acres located at 400 New Hill Olive Chapel Road

Jason Baron, on behalf of the applicant, asked for the same continuance as the Public Hearing 02 since this is a companion case.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO CONTINUE THE PUBLIC HEARING TO THE MARCH 18TH REGULAR COUNCIL MEETING; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 04 : Lauren Simmons, Planner II

Public Hearing and motion regarding Rezone #14CZ01, 14.78± acres for the property located at 532 Wimberly Road and 4325 Green Level West Road from Rural Residential (RR) and Low Density Conditional Zoning (LD-CZ) to Low Density Conditional Zoning (LD-CZ)

Staff oriented Council to the site. A neighborhood meeting was held. The applicant asked for additional conditions, and staff recommended approval with these conditions. The Planning Board unanimously recommended approval.

Tom Bebe stated a berm may be created at some point; this could be an added condition. Discussed was traffic flow, changing the character of Castleberry Road, and further discussion on berms. Due to Council wishing verbiage to be included regarding berms,

MAYOR SUTTON DECLARED THE PUBLIC HEARING CLOSED, TO BE RE-OPENED AND CONTINUED LATER IN THIS MEETING.

Public Hearing 05 : Brendie Vega, Principal Planner

Public Hearing and motion regarding rezone #13CZ35, 70.12 acres located at 8012 Green Level Church Road and 7529 Roberts Road from Rural Residential to Medium Density-Conditional Zoning

Staff oriented Council to the site. Two neighborhood meetings were held, and the applicant offered additional conditions. The Planning Board recommended approval; staff recommended approval with the conditions offered by applicant.

Mayor Sutton declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering, stated this is part of the White Oaks sewer consortium and that they are cooperating with the design for the basin and staying with the Land Use Plan.

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 UNANIMOUS 5-0 VOTE.

Public Hearing 06 : Brendie Vega, Principal Planner

Public hearing and motion to enact an Ordinance for various amendments to the Unified Development Ordinance

Staff stated an applicant requested a change to the UDO concerning buffers; staff was in agreement with the change. Staff proposed other changes which were clarifications of terms.

Mayor Sutton declared the Public Hearing open.

Ben Kuhn, Attorney, on behalf of property owner Steven Blaugh, stated Mr. Blaugh feels an additional study should be done before going forward, particularly as it applies to mass grading projects that will affect his client's property with 22 feet of fill. Staff explained that Council has always allowed mass grading if it was in the public's interest. The Town Attorney explained the current mass grading policy.

Steve Blaugh stated he does not want 22 feet of fill against his property. Planning briefly explained grading plans, and the Town Attorney read the applicable standards concerning this.

Mayor Sutton declared the Public Hearing closed.

Planning clarified its interpretation of mass grading, stating that this same interpretation was made on two blue ribbon groups over the years. Planning stated they have stabilization measures. The Town Attorney stated Council could vote on the issues separately.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE ORDINANCE AS SUBMITTED AND THAT STAFF IS TO LOOK AT MASS GRADING AT THE SUBDIVISION LEVEL; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 07: Dianne Khin, Planning Director

Continuance of Public Hearing to the March 18, 2014 Town Council Meeting regarding the adoption of an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Donald and Sharron Lawrence, Edith Lawrence, Billy Rogers, Jr., Gail T. Mooney, and Hal A. Lawrence properties containing 295.383 acres located at north side of Horton Road, west side of Country Acres Road and north of Old US 1 Hwy, Annexation #498, into the Town’s corporate limits

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO CONTINUE THE PUBLIC HEARING TO THE MARCH 18TH REGULAR TOWN COUNCIL MEETING; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Mayor Sutton called for the reopening of Public Hearing 04. Staff and the applicant agreed to the following condition: the developer shall provide a 30 foot Type E thoroughfare buffer along Green Level West Road where there are no existing trees present. The developer shall provide a 4-foot high earthen berm planted to the Type E standard with no steeper than 3-to-1 slopes.

Mayor Sutton declared the Public Hearing closed.

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

OLD BUSINESS

There were no Old Business items for consideration.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01 : Lauren Simmons, Planner II

Motion approving Lake Castleberry - Master Subdivision Plan - for the property located at Green Level West, Wimberly and Castleberry Roads

Staff stated this is the companion to Public Hearing 04 and oriented Council to the site. A Traffic Impact Analysis was done, a neighborhood meeting was held, and the applicant requested the condition that no mass grading be permitted. Conditions were recommended by the Parks and Recreation Advisory Commission. The Planning Board recommended approval with conditions to 1, 3, and 4; condition 2 was debated and decision left to the Town Council; condition 5 was recommended to be reworded; and one condition was added after the Planning Board meeting, condition 6. Staff recommended approval with conditions.

Staff made a case for widening of the road. The applicant stated they see this as rural residential; staff stated that is not the Town's perspective. Since there will be no curb and gutter, the Town wants to provide some type of widening for pedestrians, bikes, etc. There could be a fee in lieu, which might make more sense in the short term.

The developer, Tom Bebe, stated they are continuing to work on the park aspect of this request. Last Fall there was a lot of opposition from the Castleberry Road neighborhood as they wished the road and atmosphere to remain as undisturbed as possible. Mr. Bebe and Craig Dewer talked about the effect of widening the road and their meeting with DOT.

Mr. Dewer stated they will co-locate with the power line so tress will not have to be removed. If not, they will dedicate the easement. There will be an 8" water line with an easement 5 feet inside the right of way; Public Works will not allow planting inside of this. Conversation pursued about sidewalks and buffers.

Staff discussed putting a power line down Castleberry Road and why this condition was needed. Waterlines aren't designed and approved yet, and we don't want these lines in the DOT right of way. Staff explained the reasoning why. The applicant agreed to his condition and asked for an additional condition – a 15-foot public access and maintenance agreement instead of a right of way dedication on Wimberly Road. Staff was in agreement with this.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE SUBDIVISION PLAN WITH THE 7 CONDITIONS AND A FEE IN LIEU FOR CONDITION 2;
MAYOR PRO TEM SCHULZE SECONDED THE MOTION.

Staff further discussed condition 2, which the Town would prefer the language to read as a 27' back to back with sidewalk, residential standard.

The Town Attorney asked for a short Closed Session in order that Council receive legal advice.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO GO INTO CLOSED SESSION; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER JENSEN MADE THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Staff offered additional language for condition 5, which the applicant agreed to.

FOR CLARIFICATION, COUNCIL MEMBER LASSITER RESTATED HIS MOTION: MOTION TO APPROVE THE MASTER SUBDIVISION PLAN WITH ALL 7 AGREED UPON CONDITIONS WITH CONDITION 2 REQUIRING A FEE IN LIEU OF RESIDENTIAL STANDARD OF CURB AND GUTTER ON THE DEVELOPER'S SIDE OF THE FRONTAGE.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 02 : June Cowles, Senior Planner

Possible motion approving Willow Creek Master Subdivision Plan for the properties located at a portion of 6501 Old Jenks Road, 0, 6613, 6633, 6609 Old Jenks Road containing 43.6 acres and 151 lots

Staff oriented Council to the site. The Town Attorney stating there was a mass grading issue, it is a discretionary standard, and it would need to be a quasi-judicial proceeding. The parties have not been given notification of that. It would be advisable to continue this matter so the applicants will have time to address the issue properly.

Jason Baron, attorney for the applicant, stated they have not had an opportunity to prepare their materials. This case received unanimous approval from the Planning Board, but he has not been able to come to agreement with the property owner, Mr. Blaugh. Ben Kuhn, attorney for Mr. Blaugh, stated sticking points are legal requirements regarding liability, the pond and its aesthetics, and the 22' of fill.

Jewell Morris, owner of a part of the acreage, stated that Mr. Blough has been aware of the subdivision since the start, and the developers have worked diligently with the land owners. At this point, delays are inconvenient and detrimental.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO CONTINUE THIS ISSUE TO THE MARCH 18, 2014 COUNCIL MEETING AS A QUASI-JUDICIAL PUBLIC HEARING. COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

CLOSED SESSION

There were no scheduled Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

Mayor Sutton stated he'd asked Mayor Pro Tem Schulze to call a Personnel Committee Meeting to discuss the classification of an Economic Development Director position. The Town Manager stated that a special workshop meeting is asked for on February 26, 2014 to discuss the 2030 Land Use Plan. Immediately following that meeting, there will be an Economic Development Committee meeting to discuss economic development awareness initiatives.

ADJOURNMENT

With there being no further business,

MAYOR SUTTON ADJOURNED THE MEETING.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

William M. Sutton, Mayor

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