



TOWN COUNCIL MEETING

TUESDAY, AUGUST 19, 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, August 19, 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, and Nicole L. Dozier. 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. Absent was Council Member Denise C. Wilkie.

COMMENCEMENT

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

PRESENTATIONS

There were no presentations made.

CONSENT AGENDA

- Consent 01** Minutes of the August 5, 2014 Regular Meeting, the August 5, 2014 Closed Session (*Closed Session Minutes recorded separately*), the August 12, 2014 Special Workshop Meeting, and the August 4, 2014 Economic Development Committee Meeting
- Consent 02** Apex Tax Report dated 07/08/2014
- Consent 03** Budget ordinance amendment for payment of fines and forfeitures to school system

- Consent 04** 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 The Pantry Inc. property containing 1.509 acres located at 2105 Ten Ten Road, Annexation #518 into the Town’s corporate limits
- Consent 05** Resolution adopting and issuing the official Code of Ordinances book retained permanently in the Office of the Town Clerk including any supplements or replacement pages contained therein
- Consent 06** Allocation of recreation subdivision fees to connect the Whitehall Subdivision to the Beaver Creek Greenway

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

REGULAR MEETING AGENDA

Town Manager Radford requested moving New Business 01 regarding Hempstead at Beaver Creek to immediately following the Public Forum and adding a New Business item – Fire Condition Report. Town Attorney Fordham requested removing Old Business 01 regarding Agreements and Old Business 02 regarding budget amendments due to pending changes.

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

PUBLIC FORUM

Steven Brown, Chapel Ridge Road; Dan Corey, Chapel Ridge Road; Mike Bishop, Chapel Ridge Road; and Rita Boykin, Clark Farm Road all spoke concerning Hempstead. Several were fine with the development, but there was concern about street connectivity. There should be a better way to address the narrow, rural road which is in poor condition and still come up with a solution that would be beneficial to all. There were also concerns about the traffic study numbers, berms, jeopardizing quality of life, and changing the character of the neighborhood. Mayor Weatherly made a commitment that a connection would not be made to their street, his email having been shared with Council. Council was asked to take more time to look into the matter and to honor Mayor Weatherly’s commitment.

Lisa Burlison, Salem Village Drive; Rita Boykin, Clark Farm Road; and Elizabeth Hanna, Salem Village Drive spoke regarding the traffic calming medians in their neighborhood. These medians leave a large footprint on a street that is only 25 feet wide. Concerns centered on the locations seemingly not being carefully considered, the limiting of guest parking spaces, ineffectiveness, large vehicles not being able to navigate the medians, and there being no data backing up the need for medians. There was no opposition to an alternative of speed bumps or less intrusive measures. Several neighbors are finding it hard to back out of their driveways, noting that plans on paper don't always equate to what happens in real life.

NEW BUSINESS

New 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 oriented Council to the site and spoke briefly about types of buffers and buffer conditions, zoning conditions, berms, utility connectivity, storm drainage, architecture, and parking. The Parks and Recreation Commission recommended a fee in lieu. The Plan is in compliance with standards of the UDO and Peak Plan. Staff and the Planning Board recommended approval of the Plan.

Council stated that a previous Council did agree not to connect to this street unless there was a major change from rural density to something high density. Council asked were there any other alternatives, staff expressing concerns over safety and non-compliance with the UDO. DOT looked at the road, and the district engineer presented information which caused staff to look at the routes. As we grow, we are going to have to start connecting to these roads anyway. Council stated it wanted to do its best to honor statements by past Boards, a portion of previous Mayor Weather's letter being read aloud. The Town Attorney stated this letter was not legally binding and did not cause a contract or vested rights; it is not legally binding on future Councils. He explained what Council would be voting on this evening.

Staff stated density has increased and explained why this was easier to make a determination on earlier. The applicant's Plan follows the current set of facts. Staff explained the difference between this and Castleberry. The Fire Chief stated the Plan meets fire code regulations.

Council stated this is a tough decision, but approval is favored since the facts have changed. It's a good project, and we should trust that the traffic study is correct.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO
APPROVE THE SUBDIVISION PLAN.

The Town Attorney described how the legal principles could not be denied if the Plan met all the standards. Council asked if they could postpone this for it to go before the Board of Adjustment for a connectivity variance. The Town Attorney stated he had not researched this. Briefly discussed was the building of a parallel road. Staff stated that would need to go through the developer, and there was not a way to build another public street without going across private property.

Attorney David York, on behalf of the developer, addressed the connection issues. He distributed a subdivision map and discussed what has transpired in the past. The applicant has met the code in every way possible, and it would be a hardship to change the transportation plan. The developer has addressed neighbor concerns as best he could; he has done what he has to do under Apex law. Therefore, the developer requested this be approved.

The Town Attorney explained it was important not to act arbitrarily on the Transportation Plan. It would be difficult to legally deny this request if the connection is on the Transportation Plan. Council asked what would happen if the request was denied, the Town Attorney stating that the developer could do further research and come again before Council or sue.

WITH THERE NOT BEING A SECOND TO THE MOTION, THE MOTION FAILED.

Council asked the Attorney would the developers agree to delay this in order to further evaluate alternatives. The Attorney stated he was not sure they could do that and comply with the code. In responding to Council, the Town Attorney stated the Plan would have to be judged on the law at this point. The Attorney stated they would offer a letter of credit to make repairs on the road the first three years of the road being opened, if it would be needed, since the DOT stated the road doesn't need repairs now.

COUNCIL MEMBER JENSEN MADE A MOTION TO CONTINUE THIS TO THE SEPTEMBER 2ND COUNCIL MEETING.

The Attorney stated this would be fine but the code was not going to change before the next meeting.

MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

To continue Public Hearing to September 2, 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

and

Public Hearing 02 : Lauren Simmons, Planner II

The item will be re-noticed to the property owners within 300 feet of the subject property and re-advertised on the Town’s website for the September 2, 2014 Town Council meeting. The Public Hearing is regarding rezoning #14CZ10, rezone from Wake County Residential-80W District (R-80W), Low Density Conditional Zoning (LD-CZ), Rural Residential (RR) and Planned Unit Development Conditional Zoning (PUD-CZ) to Planned Unit Development Conditional Zoning (PUD-CZ) district classification for the property located at Milano Avenue and Blazing Trail between Venezia Way and Mt. Zion Church Road containing 153.8± acres

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO CONTINUE PUBLIC HEARING 01 TO THE SEPTEMBER 2ND COUNCIL MEETING; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 03 : Dianne Khin, Planning Director

Public Hearing regarding an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex 540 Flex & Business Park property containing 10.744 acres located at 1604 & 1640 Olive Chapel Road, Annexation #517, into the Town’s corporate limits

Council Member Jensen stated he’d spoken with the developer about solar energy and asked to be recused from the Public Hearing.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO RECUSE COUNCIL MEMBER JENSEN; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 3-0 VOTE.

Staff oriented Council to the site.

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 LASSITER MADE THE MOTION TO APPROVE THE ANNEXATION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 3-0 VOTE.

Council Member Jensen rejoined the Council.

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.

Public Hearing 04 : June Cowles, Senior Planner

Quasi-Judicial Public Hearing regarding a Major Site Plan for Saint Mary Magdalene Church, 30.65 acres located at 625 Magdala Place and 6450 Apex Barbecue Road

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

Mayor Sutton addressed Council asking if they'd had any discussion on this matter with outside sources and if they could be impartial in their decisions. All Council Members stated there had been no discussion with outside sources and that they could be impartial in their decisions.

Mayor Sutton declared the Public Hearing open.

Staff oriented Council to the site and the architecture of the buildings. A neighborhood meeting was held and a Traffic Impact Analysis was prepared. The applicant has agreed to conditions and the Plan meets all standards.

There was no cross examination of staff by Council, the applicant, or opponents.

Mayor Sutton asked Council had anyone viewed the site. All Council Members answered there was no viewing of the site other than passing by in a vehicle.

TESTIMONY BY THE APPLICANT: Amanda Mann, Attorney from Raleigh representing the church, introduced Father Donald Staib, Pastor of the church. He presented a brief history on the property and the development of the church. He thanked the staff for their assistance with this project and two previous projects. Ms. Mann presented the zoning history of the property and the project history.

Alan Maness, Project Engineer with BB&M Associates, presented his credentials. He gave an overview of the site, the layout plan, landscaping plan, and traffic improvements.

Diane Brown, Traffic Engineer, and Franco Mann, with Davenport, introduced traffic conditions, builds, peak periods, circulation patterns, and recommended improvements.

CROSS EXAMINATION OF APPLICANT’S TRAFFIC ENGINEERS BY COUNCIL: Council asked if there were any plans to try to direct traffic not to go through the neighborhoods. Mr. Mann stated this has been asked by the Pastor.

Captain Blair Myhand, Apex Police Department, stated they completed traffic studies, enforcement efforts, speed measuring trailers, traffic checkpoints, and special attentions. They found a high percentage of speeding vehicles but not at speeds high over the speed limit. Citations and warning tickets have been issued. A child was hit recently, but the vehicle was not speeding and the child basked into the street while playing. The Police Department has concluded there is not a significant speeding issue.

Ms. Mann stated an additional neighborhood meeting was held and about six folks attended. Roger Cannon, Architect with Cannon Architects, detailed the floor plan, elevations, and renderings.

CROSS EXAMINATION OF APPLICAN’T ENGINEER BY COUNCIL: Council asked if the building would double the size of people into the area. Mr. Cannon stated there will be more seating and accommodations than are currently in the gym that is being used.

There was no cross examination by any opponents.

Mayor Sutton asked opponents to come forward, of which there were none.

SUMMATIONS: Ms. Mann presented approval factors and conclusion factors. There were no opposing summations.

Mayor Sutton declared the Public Hearing closed.

Staff stated all standards had been met; Council stated it thought this project will be a great enhancement to the area.

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

Mayor Sutton called for a five minute recess.

Public Hearing 05 : Brendie Vega, Principal Planner

Public Hearing and Ordinance regarding various amendments to the Unified Development Ordinance

Staff stated these were mainly clean-up amendments and described those amendments.

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 DOZIER MADE THE MOTION TO APPROVE THE AMENDMENTS; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

OLD BUSINESS

There were no Old Business items for consideration; these items were removed earlier in the meeting.

NEW BUSINESS - CONTINUED

New Business 02 : Mark Haraway, Fire Chief

2014 Municipal Fire Condition Report

Staff stated we are required to send this report to the Department of Insurance each year, this year's report being the same as last year's.

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

CLOSED SESSION

Closed Session 01 to consider the purchase of real property

MAYOR SUTTON CALLED FOR A MOTION TO GO INTO CLOSED SESSION. MAYOR PRO TEM SCHULZE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN SESSION. MAYOR PRO TEM SCHULZE MADE
THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.

THE MOTION CARRIED BY A 4-0 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 JENSEN MADE
THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.

THE MOTION CARRIED BY A 4-0 VOTE.

Donna B. Hosch, CMC, NCCMC

Town Clerk

ATTEST:

William M. Sutton, Mayor