



TOWN COUNCIL MEETING

TUESDAY, APRIL 1, 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 1, 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, Council Member Wilkie gave the Invocation, and Mayor Sutton led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : Department Heads/Supervisors

Introduction of newly-hired employees

- Parks and Recreation Director John Brown introduced Taylor Wray, new at the Halle Cultural Arts Center; Andrew Baker, Parks & Recreation; Max McCaffrey, Parks & Recreation; and Kyle Kelly, Parks & Recreation
- Planning Director Dianne Khin introduced Shelly Mayo, Planner; and Liz Jones, Planning Technician
- Engineering Director Kent Jackson introduced Brooke Stevenson, Building Code Enforcement Officer

CONSENT AGENDA

- Consent 01** Minutes of the March 18, 2014 Regular Council Meeting and Minutes of the Closed Sessions of March 7, 2014 and March 18, 2014 (Closed Session Minutes recorded separately)
- Consent 02** Apex Tax Report dated 02/06/2014
- Consent 03** 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 Deeta Morris, Diane Tyrrell and Wayne & Jewel Morris properties containing 35.58 acres located at the north and south side of Old Jenks Road between Castleburg Drive and Sandy Hills Court, Annexation #504 into the Town’s corporate limits
- 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 JVI Development II, Inc. property containing 78.120 acres located off Holland Road, east of Walden Road, Annexation #509 into the Town’s corporate limits
- Consent 05** Public Hearing for the April 15, 2014 Town Council Meeting regarding Rezone #14CZ02, 7.38 acres located at the southeastern intersection of NC-55 and US 64 Hwy from Residential Agricultural and Planned Commercial Zoning to Planned Commercial Conditional Zoning
- Consent 06** Statement of the Apex Town Council and Ordinance for Rezoning Case #13CZ30, Donald and Sharron Lawrence, Edith Lawrence, Billy Rogers, Jr., Gail T. Mooney, and Hal A. Lawrence, petitioners for the property located at Old US Hwy 1 and Horton Road
- Consent 07** Public Hearing for the April 15, 2014 Town Council Meeting regarding various amendments to the Unified Development Ordinance
- Consent 08** Budget ordinance amendment and project ordinance amendment for construction of public works building expansion and capital outlays for improvements/expansion of the electric system
- Consent 09** Amendment to Chapter 20 Section 118 to remove James Street (NC 55 to Schieffelin Road) from the list of streets where through trucks are prohibited
- Consent 10** Ratify Minutes of the March 4, 2014 Regular Meeting

MAYOR SUTTON CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. MAYOR PRO TEM

SCHULZE MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

There were no requested changes to the Regular Agenda.

PUBLIC HEARINGS

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 01 : June Cowles, Senior Planner

Quasi-Judicial Public Hearing and possible motion regarding 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

Town Attorney Fordham gave a brief description of how the Town would handle this request.

The Mayor asked that those who planned to speak for or against the Plan introduce themselves. In favor of the Plan, Jason Baron, Attorney, stated he was representing the applicant. Brandon Finch, Engineer of Record, and Bill Bryan, Co-Council, were also present. Wishing to speak against the Plan were Jim Conner, Attorney representing Steve Blough, and Patrick Smith and Patrick Schillington, Engineers.

The witnesses were sworn in by the Town Clerk.

Mayor Sutton questioned each Council Member as to their ability to make an impartial decision on this matter: Council Members Jensen, Wilkie, and Dozier stated they were able to make impartial decisions; Mayor Pro Tem Schulze stated his conversation with the applicant has been within the confines of the previous hearing and a few telephone calls and that he would be able to make an impartial decision. Council Member Lassiter asked to be recused as prior to this quasi-judicial hearing, he had communication with the applicant and stepped into area where it could be perceived that he could not be impartial.

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

Barron asked for the circumstances surrounding Council Member Lassiter's recusal. Council Member Lassiter stated that there was email correspondence between him and Blough where Blough talked

about possibly using his professional services not related to the Council; there was, however, no financial connection.

Staff presented its credentials and provided a brief overview of the Plan. A neighborhood meeting was held, and the Plan meets TIA recommendations. Mr. Blough's objections were stated. There were no questions for staff.

Mayor Sutton asked if any Council Member had viewed the site. Mayor Pro Tem Schulze stated he'd driven by the site; the other Council Members stated they had not. There were no questions for Mayor Pro Tem Schulze resulting from his drive by.

Mayor Sutton declared the Public Hearing open.

EVIDENCE PRESENTED BY THE APPLICANT: Jason Barron, Morningstar Law Group, gave a brief history of this request since February as well as outlining Mr. Blough's concerns. He was offered options, but they were not rejected or accepted. When going into the territory of settlement discussions, Jim Connor, Attorney representing Steve Blough, objected due to these questions being irrelevant. Barron stated they were willing to install stormwater pipe to redirect stormwater and presented their Plan for such. Brandon Finch, John McAdams Company, presented his background and explained their concept drainage plan for the site.

Barron spoke about the rezoning process and their subdivision Plan and mass grading that needs to be satisfied. Finch stated mass grading is fairly routine on projects. He overviewed the site plan and how they approached issues which arose. He believed the Plan as proposed was reasonable and provided a balance. He spoke on pond level concerns and presented a model from Duke upon which their Plan was based. The aesthetic impact was explained. Finch concluded with going over the pertinent points in the UDO and how they have complied with those points.

Connors cross examined Finch asking for clarification on elevation numbers, sewage outfall, compliance with applicable laws, modelling of the pond, and the retaining wall.

Barron redirected to Finch asking questions on the information he just clarified for Connors. Finch reiterated the conditions they offered to the Plan. The Town Attorney reminded Council that the conditions would need to be stated very clear if they were to be a part of a motion.

EVIDENCE PRESENTED BY THE OPPONENTS: Connor presented evidence from Patrick Smith and Patrick Shillington related to the UDO on mass grading. He distributed information which was objected to by Barron as he had not seen the documents. The Town Attorney stated he had not seen the information either. After looking over the documents, the Town Attorney explained why it was acceptable for the information to be distributed. Barron then offered into evidence their Agenda package documents. Connor objected to Barron's PowerPoint renderings which were not part of the original application, the Town Attorney stating these came into evidence without objection.

Patrick Smith, Environmental Consultant, stated his background, Connor offering him as an expert in his field. Smith explained his concern for noncompliance with the UDO. He outlined the existing site conditions, topography/drainages, proposed layout and site impacts, and results of the proposed grading. Connor asked to move their Exhibits B and C and E into evidence, Smith attesting to their validity.

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

Smith was cross examined by co-council Bill Bryan for clarification of the information he presented. Several objections were made by Connor. Connor redirected to Smith, primarily related to grading and the modeling of the pond, the bypass pipe, a well, and the sight line.

Connor called Pat Shillington who stated his qualifications and credentials, Connor offering him as expert in his field. Shillington spoke on the sewer system in relation to cut and fill construction. Connor offered Exhibits F and G into evidence.

Barron cross examined Shillington on the depth of sewer lines. Connor then questioned Shillington further on the depth of the sewer lines.

Council asked questions about the depth of sewer lines under certain conditions, and staff stated the preference of Public Works. Staff started discussing mass grading, which Connor objected to since that

would be a decision of Council. Staff explained Public Works' role in reviewing subdivision plans and how they come about recommending sewerage.

Barron asked for rebuttal testimony from Finch based on his previous testimony. Council asked about the stream coming out of the pond. Connor explained the drainage illustrations as they related to the stream. For the record, Barron gave the definition of the by-pass pipe. Finch corrected Barron on his definition and detailed specifically where the pipe would run.

With no further questions or evidence to present, Mayor Sutton declared the Public Hearing closed.

With questions from Council for Barron, Mayor Sutton reopened the Public Hearing.

Council questioned the amount of drainage into the pond now and in the future. Barron stated they offered a well subject to agreement by Blough which would be a normal, residential well at a location agreed to by Blough. Barron stated where they would plant Cypress trees, staff suggesting they be Cedars instead to which Barron agreed. Barron clarified that the well would be dug up to 400 feet in order to provide 10 gallons/minute and Red Cards would be planted at the spacing of the size as required by the Planning Department.

SUMMARIES: Connor summarized why certain provisions of the UDO were not being met and why Council should deny the Plan. Barron summarized with how they have complied with the requirement of the ordinance and why what they're doing is reasonable and makes sense.

Mayor Sutton declared the Public Hearing closed.

The Town Attorney clarified Standards 8 and 9. Council expressed its concern regarding the wall, lowering the sewer line, how to decide which engineer had the correct scenario and who is on the hook if things don't work as stated, not wanting to do harm to the property, water flow, land preservation, storm water and surrounding streams, and the preservation and enhancement of the area.

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

Council Member Lassiter returned to Council.

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 : Dan Miller, Level 3 Communications

Possible motion to allow an encroachment in the public right of way through the Waterford Green Subdivision to accommodate Level 3 Communications fiber optic cable

Staff explained Level 3 Communications' purpose and the service they provide. Level 3 wished to connect to 500 Gregson, the American Airlines Reservation Hub. There is some service in the area, and they want to connect the lines together. Staff stated there was no staff recommendation on this item and introduced Dan Miller from Level 3 Communications.

Mr. Miller, Contract Manager, explained his job at the company. Bryan Kaye was introduced as a part of this request. Miller explained the installation process of the optic cable, stating that Apex Tool is currently their only Apex customer. Level 3 provides service only to enterprises. This project would take about a week to install.

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

New Business 02 : David Hughes, Assistant Public Works Director

Possible motion to approve and award the contract for expansion of the Cary/Apex Water Treatment Plant and the contract for the Raw Water Pumping Station Improvements and the associated Budget Ordinance No. 12 and the Capital Project Ordinance Amendment

Staff explained the gravity of the work needed in support of this this expansion which will take Apex well into the future for water capacity.

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

New Business 03 : Bruce Radford, Town Manager

Possible motion to adopt a Resolution declaring surplus the Town owned tracts of land identified as PIN #0732-77-7095 and #0732-76-9930 which are located in the southeast quadrant of the intersection of Hwy 64 and Hwy 55 and which together comprise approximately 7.72 acres

Staff detailed the dimensions and location of this land which, at this time, is not being used by the Town. A developer has is under contract to redevelop property in close proximity to the Town's land, for which we have no current use. The request was to declare the entire acreage surplus. There would be five acres left after the portion desired by the developer upon which we can put a buffer. Staff explained the developer will not buy all of the land. The amount of payment will be negotiated and brought back to Council for approval.

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

CLOSED SESSION

Closed Session 01 : To discuss the acquisition of real property

Closed Session 02 : To receive legal advice from the Town Attorney and to discuss a potential claim

Closed Session 03 : To discuss a personnel matter

It was the consensus of Council that item 01 would be discussed on this evening and that the remaining two items would be moved to the next regular meeting.

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

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

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

William M. Sutton, Mayor