



TOWN COUNCIL MEETING

TUESDAY, NOVEMBER 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
Drew Havens, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Laurie L. Hohe, Interim Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 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, Assistant Town Manager Drew Havens, Town Clerk Donna B. Hosch, and Interim Town Attorney Laurie L. Hohe.

COMMENCEMENT

Mayor Sutton called the meeting to order, Council Member Wilkie gave the Invocation, and Mayor Sutton led the Pledge of Allegiance.

PRESENTATIONS

There were no Presentations to be made.

CONSENT AGENDA

- Consent 01** Minutes of the November 5, 2014 Regular Council Meeting and the November 5, 2014 Closed Session
- Consent 02** Apex Tax Report dated 10/07/2014
- Consent 03** Ordinance and Statement of the Apex Town Council for Rezoning Case #14CZ04, NC II LP LTD Partnership, petitioners for the property located at 1960 Apex Peakway
- 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 Willow Michael property containing 2.772 acres located at 1508 Kelly Road, Annexation #523 into the Town's corporate limits

Consent 05 Non NFPA compliant Personal Protective Equipment declared surplus and donation of the equipment to the REDS team for the Guatemala project in which the team is involved

Consent 06 Identity Theft Prevention Program Annual Risk Assessment 2014

Council Member Dozier asked for Consent 05 – Budget ordinance amendment to fund additional costs related to the purchase of Pleasant Park – be removed and discussed as New Business 03.

MAYOR SUTTON CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. MAYOR PRO TEM SCHULZE
MADE THE MOTION TO APPROVE THE CONSENT AGENDA MINUS CONSENT ITEM 05;
COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Sutton called for modifications to the Agenda from Council or staff. Council Member Lassiter requested the addition of reconsidering an action taken by Council on October 21, 2014 regarding the *Approval of the Manors at Bella Casa Phase 8B - Master Subdivision Plan - for the property located at 2801 Walden Road*. The parties have come up with alternate options to pursue. He wished to place this item on the Agenda for the December 2, 2014 Regular Meeting. Town Manager Radford requested the addition of a Closed Session item to discuss a personnel matter. Interim Town Attorney Hohe requested the removal of the Closed Session item regarding potential eminent domain claims since settlement was reached.

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

PUBLIC FORUM

Gary Cartwright, representing six land owners, stated his delight with the eminent domain issue being resolved [which was removed from Closed Session]. He commended the employees and staff for their professionalism and transparency of information. He was proud of the Town for protecting their property rights and continuing to do so throughout the process.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

Public Hearing and adoption of an Annexation Ordinance – Apex Town Council’s intent to annex Charles Womble, Clarence Goodwin, Mark Esposito, Ashley Gasiorowski and Kenneth and Sue Marks properties containing 133.411 acres located west of Richardson Road, northeast of Ragan Road, Annexation #505 (Stillwater Subdivision), into the Town’s corporate limits

and

Public Hearing 02 : June Cowles, Senior Planner

Public Hearing and Rezone and Ordinance #14CZ05, Stillwater (formally known as Richardson Forest) 133.1 acres located at 0, 8312 Ragan Road and 2505, 2428, 2504, 2510 Richardson Road from Wake Count

Staff oriented Council to the site. The applicant is proposing low density residential conditional rezoning and annexation of the Wake County portion of the property. The applicant offered additional conditions. Two neighborhood meetings were held. The Planning Board and staff recommended approval.

Mayor Sutton declared the Public Hearing open.

Speaking in opposition, James Moore was somewhat surprised at the request for low density residential seeing as how the area is mostly rural. If two units/acre are allowed, this would not be in keeping with the neighborhood. Previously, it was stressed that the reason for the density being so low was to maintain the water quality. If a higher density were approved, there would be more people, and more pollution going directly into the lake.

Vann Moore stated this is a rural habitat. She spoke about the history of the area, the different generations of people living there, and the wildlife. Moore wondered about Council’s long range goal to maintaining the home feeling of Apex and to what it will look like in 10-15 years. This request is exploiting one of God’s gifts. Moore asked Council to search their souls and ask is this what the people in the area really want.

Speaking in favor, David Goracke, developer, stated he thought it important to delay the annexation and rezoning to allow the site plan to catch up. It will address some of the comments made by the Moore’s. The rezoning is in accordance with the land use plan; Goracke gave the zoning densities. They are working to make something that Apex will be proud of long term.

Council asked about the neighborhood meeting concerns about the cemetery, road flooding, and the school. Goracke stated he researched the cemetery, and it is not of national historical preservation value. The bridge flooding is a NCDOT issue and out of his control; he was not aware of the bridge being up for improvements or upgrade. What is being built will be limited density, so this will comply with the school population. Council stated it would like to see the developer commit to developing a higher stormwater standard.

Mayor Sutton declared the Public Hearing closed.

After brief discussion of this being the appropriate time to ask the developer about stormwater standards, Mayor Sutton stated the annexation would be voted on and then the Public Hearing would reopen for the zoning portion.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE ANNEXATION ORDINANCE. COUNCIL MEMBER LASSITER SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, JENSEN, WILKIE, AND LASSITER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 4-1 VOTE.

Mayor Sutton declared the Public Hearing reopened to the rezoning request only.

Council asked the developer for a minimum 25-year flow control. Without knowing the calculations, the developer stated he would make the condition to investigate and do the best he could for improvement above the UDO standards. He did not know what impact a 25 year level would have on the ponds. Council asked would the developer commit to expanding the pond size by 25%; the developer committed to 15%. Council was in agreement with this.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE REQUEST ADDING THE 15% EXPANSION OF THE POND AND NOTING THAT THE 2030 LAND USE PLAN LETS EVERYONE KNOW HOW APEX WILL GROW AND IN A WISE AND FAIR MANNER; COUNCIL MEMBER JENSEN SECONDED THE MOTION, SPEAKING ABOUT POPULATION GROWTH IN THE UNITED STATES AND DEVELOPMENTS BEING A BALANCING ACT. THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 03 : Dianne Khin, Planning Director

Public Hearing and adoption of an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Edward and Peggy Riggsbee property (a single-family residence) containing 1.284 acres located at 1100 Greenlea Drive, Annexation #522, into the Town’s corporate limits

Staff oriented Council to the property. There is an issue with the septic systems, so they are wanting to tie into the Town’s System. Staff recommended approval of the request.

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

Public Hearing 04 : Dianne Khin, Planning Director

Public Hearing and adoption of an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex MJ Evans Property, LLC (Lucas Farms) property containing 8.73 acres located at 0 and 2605 Olive Chapel Road, Annexation #525, into the Town’s corporate limits

Staff oriented Council to the property, stating it recommended approval of the request.

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 WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 05 : June Cowles, Senior Planner

Public Hearing and Rezone #14CZ17, Greenmoor PUD Plan 50.2 acres located at 7616 and 7716 Green Level Church Road from Rural Residential (RR) to Planned Unit Development Conditional Zoning (PUD-CZ)

Staff oriented Council to the site, noting that the applicant agreed to all recommendations requested by staff. Included will be a 10-foot wide multiuse path and the condition of sidewalks on both sides of the streets going through the subdivision. The developer will work with other developers for a regional park site. A neighborhood meeting was held, the request is consistent with the TIP and UDO, and the Planning Board recommended approval.

Council asked about stormwater management, and applicant, Randy King of Pulte Homes, stated the subdivision plans will comply with the UDO and this is what they prefer to stay with.

Mayor Sutton declared the Public Hearing open.

Glenda Toppe on behalf of applicant stated this request corresponds with the previously approved PUD adjacent to this one. Three items were raised at the neighborhood meeting: (1) single family vs. townhomes: this will be single family; (2) drainage: properties to the south will not be affected; and (3) connectivity to the south; this is in compliance with the 2030 Land Use Map.

Mr. Rogers wanted to know what was going to happen with his septic field which goes into the applicant's property. Since this would be a civil issue, Council suggested that Mr. Rogers speak with an attorney. Mr. King stated he was unaware of this, but it will be evaluated and they will work with Mr. Rogers on a resolution.

As to stormwater, Mr. King stated it will be confusing to the home owners' association if there are two sets of standards. They are going to keep an existing pond which will show benefit downstream.

Joel Fox was concerned about the medium density zoning. If the development falls through, then what would happen if the requested rezoning has gone through. Staff stated that since this is a PUD, then this is what will have to be committed to. This is the first Mr. Fox was hearing about taking about 10 feet off of his property for the walkway. With this, traffic lanes, and a median, these things will almost be on his porch. What happens when 30-40 feet has been taken? He would not be able to sell his property. Council explained how the right of way works; staff explained what will happen as areas develop and how the roads may connect. However, it will be a long time before this happens.

Mr. Fox was disturbed with the current silt fence. Council stated it has spoken to staff and neighbors about this and no neighbors have come back to her about what they want done. Staff stated that the developer now has the opportunity to build the lines, since construction to continue was approved on this night.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE REZONING; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
COUNCIL MEMBERS SCHULZE, LASSITER, DOZIER, AND WILKIE VOTED IN THE AFFIRMATIVE;
COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 4-1 VOTE.

Public Hearing 06 : Dianne Khin, Planning Director

Public Hearing and Rezone #14CZ24 (3913 US 64 West) from Rural Residential (RR) to Neighborhood Business-Conditional Zoning (B1-CZ). The subject property is approximately 5.36 acres generally located at 3913 US 64 Highway West.

Staff oriented Council to the site, stating that the recently approved Deer Creek project is similar to this one. The Planning Board unanimously recommended approval as did staff.

Council Member Lassiter left the meeting unexcused at 8:14 p.m.

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 5-0 VOTE.

Public Hearing 07 : Shelly Mayo, Planner

Public Hearing and Rezone #14CZ26 (Woodall Tract), +/- 27.11 acres located at 6515 Apex Barbecue Road from Rural Residential to High Density Single Family Conditional Zoning

Staff oriented Council to the site which is consistent with the 2030 Land Use Map. A neighborhood meeting was held; the applicant proposed architectural conditions. Staff recommended approval with conditions proposed by the applicant. The Planning Board recommended approval.

J.W. Shearin, planning consultant, provided background on the family history, this being a vision by the family. Since they want to build single family homes, this would be a good transition for the school. Construction would not begin until the summer of next year when the school site is finished. Responding to Council, Mr. Shearin stated there will be curbing according to the standards. Staff stated that a certain number of streets light will be required. Once the property is annexed, the Town will properly light the area.

Council Member Lassiter returned to Council at 8:24 p.m.

There was brief conversation on the density of the property, the points of access, and if the increased population would overcrowd the middle school.

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; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED A BRIEF RECESS

OLD BUSINESS

Old Business 01 : Marty Mitchell, Facility & Fleet Services Director

Design contract with Stewart Cooper Newell was projected at \$190,000 and based on an exact prototype reuse of PSS4. Programming efforts for PSS5 yielded an increase in the requested SF of 60%, thereby resulting in an increase in design cost to \$284, 625. Motion to approve additional expenditures to cover increased design costs.

Staff stated we are well underway for the design of fire station 5. Additional square footage is warranted which increases design costs. Staff briefly went through what are believed to be well-designed plans. A bay was added for use by the Police Department. Staff explained the office spaces, noting that school resource officers, crime prevention officers, and support staff will be moved to this station.

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

NEW BUSINESS

New Business 01 : June Cowles, Senior Planner

Stillwater Residential Master Subdivision Plan (formally known as Richardson Forest) 133.1 acres located at 0, 8312 Ragan Road and 2505, 2428, 2504, 2510 Richardson Road

Staff oriented Council to the site, explaining the buffers and additional conditions on the construction plans for stormwater uses. A neighborhood meeting was held, and the Parks and Recreation

Commission recommended construction of a greenway. Staff concurred with TIA recommendations. This is consistent with the Transportation Plan and the UDO. The Planning Board and staff recommended approval.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE PLAN, COMPLIMENTING THE APPLICANT FOR MAKING A QUALITY PLACE FOR ADULTS AND FUTURE ADULTS TO LIVE; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 02 : Dianne Khin, Planning Director

Change to the 2030 Land Use Map to require either a minimum of 30% (current policy) or 50% non-residential acreage per project in the mixed use areas along US 64 west of Kelly Road to the Chatham County line

Town Manager Radford stated this request came from Council Member Jensen. Council Member Jensen gave the history of his looking at this issue since Sweetwater. He was concerned because we have a ratio problem in terms of where to put more businesses. If we don't set aside land, we will be built out with housing. With such a momentum to overcome in terms of housing, we won't see the proper ratio of available jobs to houses. We need to develop Apex as a quality town with a quality life.

Council Member Jensen explained how businesses would favorably affect the residential tax rates. This revised percentage would be a stop gap to help get us where we need to be. A study could be done to decide definitely what the percentage would need to be. We don't have to be enablers; we have to be planners.

Council stated it would love to see high end businesses. We could set a goal of 50% instead of forcing it, and then look at how we can get developments here. Council wants to look at things which would be more market driven. Council Member Jensen stated we have to give Economic Development a product to propose so businesses won't have to go so far out. Council thought the sentiments were correct, but it was voted on by the Planning Committee to keep the standard as it is at this same. We are not armed with the necessary information to say 50% will work better than 30%. Developers are already saying 30% is hard to reach. Do we possibly land bank until the demand is here? Council would like to see what the Town needs and what the residents want.

Council stated that since this would be just for Hwy 64, 50% would be a good goal for that location. Council spoke about residential and non-residential growth, median incomes, and the items discussed at coffee chat. If we continue to grow residential, all services will have to be increased and eventually

taxes or fees will have to be raised. If business pays more taxes than residents, then the cost spread would be easier on residents. Council Member Jensen spoke about losing land and how we can't get it back if we do. Council stated it is in favor of making Apex as attractive as possible to businesses. It can be a burden on people to go somewhere else to work, at which point they would not be contributing to their community.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE 50% NON RESIDENTIAL AS PRESERVATION UNTIL WE DO A STUDY TO GET A BETTER LEVEL ON WHAT THE PERCENTAGE NEEDS TO BE; COUNCIL MEMBER DOZIER SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, LASSITER, AND WILKIE VOTED IN THE NEGATIVE; COUNCIL MEMBERS JENSEN AND DOZIER VOTED IN THE AFFIRMATIVE. THE MOTION FAILED BY A VOTE OF 3-2.

Council Member Jensen asked for an alternate motion of 40% non residential. Council stated it was comfortable with the current 30%. While what Council Member Jensen was saying was understood and respected, if we pigeonhole ourselves, as a whole we will be excluding a lot of development from the town. Council would love to see commercial on Hwy 64 and an office park, but people in \$650,000 homes would be upset, it thought, for those homes to back up to an office park. Council stated if businesses come to us, we will work with them.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE 40% NON RESIDENTIAL; COUNCIL MEMBER DOZIER SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, LASSITER AND WILKIE VOTED IN THE NEGATIVE; COUNCIL MEMBERS JENSEN AND DOZIER VOTED IN THE AFFIRMATIVE. THE VOTE FAILED BY A 3-2 VOTE.

**Added New Business 05 (from Consent Agenda) : Drew Havens, Assistant Town Manager
Budget ordinance amendment to fund additional costs related to the purchase of Pleasant Park**

Staff explained that there was capital money left in the project fund line item for the Nature Park which will not be needed. Therefore, this money can be moved into Pleasant Park. Council asked about the trails at the Nature Park, and staff explained the funding issues.

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

CLOSED SESSION

Closed Session 01 : to discuss a personnel matter

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