



TOWN COUNCIL MEETING

TUESDAY, JULY 16, 2013

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, 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, July 16, 2013, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

COMMENCEMENT

Mayor Weatherly called the meeting to order and gave the Invocation. Boy Scout Troop 226 presented the colors and led the Pledge of Allegiance.

PRESENTATIONS

There were no Presentations

CONSENT AGENDA

Consent 01 Minutes of the June 18, 2013 Regular Town Council Meeting

Consent 02 Apex Tax Report dated 06/04/2013

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 Foster and Wardensky containing .0238± acres located off Roosondall Court, Annexation #492, into the Town’s corporate limits

Consent 04 Service contract between the Town of Apex and American Road Conservation, LLC, for street and parking lot sweeping services and authorization for the Town Manager to execute same

Consent 05 Release of the remaining 12 lots in Miramonte from the Miramonte greenway requirement in exchange for the payment of current recreation fee in lieu of construction of greenway for each of the remaining 12 lots in the Miramonte Subdivision, authorization to issue building permits for the same 12 lots, and to designate such payment for construction of the Miramonte portion of the Middle Creek Greenway

Consent 06 Resolution from the Town Council in support of a Veteran Government Bond, Stamp and Coin Program

Town Manager Radford asked that Consent item 04 be pulled for consideration in two weeks.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA MINUS CONSENT ITEM 04; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda, to which there were no requested modifications.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

Continued from the June 18, 2013 Council Meeting: Public Hearing and Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Parkside Builders, LLC properties containing 12.08 ± acres located at 2533 Olive Chapel Road, Annexation #490, into the Town’s corporate limits

and

Public Hearing 02 : Lauren Simmons, Planner II

Continued from the June 18, 2013 Council Meeting: Public Hearing and Rezoning #13CZ08, 12.08 acres located at 2533 Olive Chapel Road from Wake County-R-80W and Rural Residential to Medium Density Residential Conditional Zoning

Staff outlined details of the rezoning request. At the June 18, 2013 Council meeting, the applicant and neighbors were asked to meet and try to come to agreeable conditions. This did not happen. Staff recommended approval with conditions. The Planning Board unanimously recommended approval with the conditions presented at their meeting. There is a valid protest petition, the Town Attorney

stating the petition is valid as to the northern portion of the track and invalid as to the other portion. However, since this was submitted as an integrated whole, it would affect the whole rezoning.

Mayor Weatherly declared the Public Hearing open.

Jeff Roach of Peak Engineering, representing Parkside Builders, stated they met with and emailed the neighbors, and the issues from staff were addressed. Roach outlined what they will do as far as buffers and what they have added and reevaluated as far as plantings and fencing. Stormwater concerns from the neighbors were discussed vs. what the UDO allows as well as pond draining and testing, and the adding of conditions that have result components.

Speaking in opposition, Don d'Ambrosi of d'Ambrosi Land Consulting Services distributed photos of the pond. He discussed trees which they wish to remain, the damn which is proposed to be removed, and the outlet channel by which water is released. According to staff, restrictions can be imposed; and they want the Cadillac version. There are concerns, particularly as to what happens if the property is sold since some items are not explicit enough. The conditions were agreed to in general only; they discussed in detail with the applicant what they would like to have done and why. This rezoning is not compatible with adjacent uses and the environment, and d'Ambrosi asked Council to deny the request if acted on this evening. Subsequent meetings with Roach failed, but they would be open to further negotiations with the applicant

Staff stated the level of detail for this rezoning is much more than what is normally seen.

Faye Weisner stated the bottom line is that they and the applicant have not come to an agreement, even through efforts to do so. If Roach could make himself available, she felt a compromise could probably be reached quickly.

Mayor Weatherly asked Roach if given another two-week extension, did he think he would be able to work things out with the neighbors. Roach stated they have given what they can, and he was not sure the extra time would get them anywhere because of the level of specificity. However, he would be happy to delay another two weeks in order to engage further discussion. It was suggested that staff become an intermediary, the Town Manager stating this would be a dangerous precedent. Some

of the zoning conditions requested by neighbors are part of UDO and site plan approval process. Council should only be hearing those issues related to rezoning.

After further discussion,

MAYOR WEATHERLY CALLED FOR A MOTION TO CONTINUE THIS PUBLIC HEARING TO A SPECIAL MEETING TO BE HELD ON TUESDAY, AUGUST 13, 2013 AT 7:00 P.M. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Mayor Weatherly called for a five minute break.

Public Hearing 03 : June Cowles, Senior Planner

Public Hearing and Rezoning #13CZ11, 2.96 acres located at a portion of 6501 Old Jenks Road from Residential Agricultural Zoning to Medium Density Conditional Zoning

Staff outlined details of the request. A neighborhood meeting raising several concerns, and a valid protest petition was filed. Staff and the Planning Board recommended approval of the request.

Mayor Weatherly declared the Public Hearing open.

Jason Barron, representative of Ashton Woods Homes, stated this and the next rezoning will be developed as one residential development, with a maximum 10 units, and a vehicular connection. This site will be complimentary to the adjacent subdivision.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REZONING; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 04 : June Cowles, Senior Planner

Public Hearing and Rezoning #13CZ12, 40.85 acres that include 6 parcels located at 0 Old Jenks Road, 6613, 6633, 6609, and a portion of 6501 Old Jenks Road from Residential Agricultural Zoning and Medium Density Conditional Use to Medium Density Conditional Zoning

Staff outlined the details of the request. A neighborhood meeting raised concerns which resulted in additional conditions. A protest petition was filed which was deemed valid. The Planning Board

recommended approval but raised questions about transportation issues which staff stated would be more appropriately addressed at the master subdivision plan stage. Staff recommended approval of the request with conditions.

Lengthy discussion ensued on road connectivity, staff pointing out that a traffic impact analysis has not as yet been done. The Town Attorney stated that in a conditional zoning, a requirement can be varied that would otherwise apply to the UDO. Restrictions can be added or lessened.

Fire Chief Mark Haraway cautioned that when adding density and increasing development, requirements are in place to continue to maintain evacuation ingress, egress, and public safety requirements. The connectivity requirement is to enhance safety, and the Town has not in the past approved a temporary egress.

Mayor Weatherly declared the Public Hearing open.

Jason Baron readdressed Council, stating that from a planning standpoint this request makes a lot of sense. Discussed were conditions and details of the property, Baron noting that connectivity continues to be one of the biggest issues. However, until it is seen how the site is laid out, connectivity can't definitely be determined.

Speaking in opposition, Ed Phillips stated the protest petition was signed by just about every resident in Castlewood. He spoke on decreased tranquility with increased traffic, sidewalk safety, pedestrian and bike paths, and requested the stub at Sandy Hills not be used. Discussion followed on gridded streets.

Ken McAdams pointed to parts of the transportation plan, the UDO, and their requirements. He offered photographs of grids and pavers which could be used to match up the streets.

Crysta Coady showed slides of her house and what the new development possibly would look like from her property line. She asked for lot sizes immediately adjoining her property to be increased to $\frac{1}{4}$ acre, and she wished to see a larger buffer. Council explained that a type A buffer would be used.

Rick Cooper spoke on density and character and how the proposed subdivision would not match the surrounding area.

Surapon Sujjavanich stated a visiting Thailand ambassador spoke highly of the town. He asked that connectivity at Sandy Hills be reconsidered and gave examples of how to keep traffic moving at a slow pace. It was felt that the character of the area would be ruined by so many houses against their properties.

Al Martin chose his property for its rural characteristics. He spoke on the current condition of roads; he is opposed to connectivity at Sandy Hills. The proposed lots need to be larger so that a wall of houses would not be a hindrance to Castlewood.

William Pawns stated he settled in Castlewood because he is a dog walker. If traffic goes up, it will have to slow down; the roads are not up to a lot of traffic. Pawns is in favor of temporary emergency access.

Steve Blaugh stated he wanted a better understanding of runoff.

Dan Hughley spoke on traffic patterns and offered that the access roads are not making sense. Council was asked to consider traffic patterns.

Theresa Carnes spoke on the amount of traffic going to 64. The proposed road would bring dangerous traffic, and she'd have a hard time getting out of her driveway.

Mayor Weatherly declared the Public Hearing closed.

Council stated it wanted more information on grids. Fire department staff has not done research on grids, pavers, etc. However, there has been discussion with another fire marshal who has used pavers once in a parking deck where there was no street access but not for connectivity. Council was cautioned that whatever was done this evening would set a precedent for other pending subdivisions that don't want connectivity. The temporary street concept is not supported, and the Town has always stood firm on public safety.

There was further discussion with the Town Attorney on definitions and how a motion could be worded to address streets. Staff discussed the limitations of pavers and grids and demonstrated a pro stand on streets. The applicant stated it knows some improvement of roads is going to be needed, but there is no certainty right now not knowing their finances and what DOT would require.

AT THIS POINT, COUNCIL UNANIMOUSLY APPROVED DISCUSSION BETWEEN THE TOWN ATTORNEY AND THE APPLICANT ON LANGUAGE, THE PUBLIC HEARING TO BE CONTINUED AFTER THIS DISCUSSION.

Public Hearing 05 : June Cowles, Senior Planner

Public Hearing and Rezoning #13CZ14, 14.79 acres located at 2932 and 3008 Evans Road, 0 and 7732 Humie Olive Road from Rural Residential Zoning to Medium Density Conditional Zoning

Staff outlined the details of the request. Staff recommended approval with conditions as did the Planning Board. Staff pointed out this street situation was the same as the previous Public Hearing.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Clossen Engineering, stated this development is intended to be similar to Bella Casa architecturally and density wise.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REZONING; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 06 : Lauren Simmons, Planner II

Public Hearing and Rezoning #13CZ15, 5.1 acres located at 2717 Evans Road from Residential Agricultural to Medium Density-Conditional Zoning

Staff outlined the details of the request. No one attended the neighborhood meeting. Staff and the Planning Board recommended approval with conditions offered by the applicant.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Clossen Engineering, briefly outlined this project by Joey Ione.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE REZONING; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 07 : June Cowles, Senior Planner

Public Hearing and Rezoning #13CZ16, 65.9 acres located at 0, 3000, 3008 and 3012 Holland Road and 2805 Walden Road from Rural Residential Zoning to Medium Density Conditional Zoning

Staff outlined details of the request. A neighborhood meeting was held. Staff and the Planning Board recommended approval with conditions.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering, stated this is a Joey Ione project which will continue in the Bella Casa tradition. They are working with the DOT regarding issues on the Holland Road access. Buffers were discussed at the neighborhood meeting.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE REZONING; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 08 : Lauren Simmons, Planner II

Public Hearing and Rezoning #13CZ17, 107.68 acres located at Green Level West Road and Castleberry Road from Rural Residential and Wake County-R-80W to Low Density-Conditional Zoning, PINs 0713-93-6063, 0713-82-7260, a 37.87 acre portion of 0723-04-2533, 0723-03-3178, 0723-05-9161 and 0713-82-3778 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 August 20, 2013 Town Council meeting

Mayor Weatherly stated this would come back before Council at the August 20th Regular Meeting.

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 : Jessica Bolin, Public Works & Utilities Department

Construction contract for the New Hill Water and Sewer Infrastructure Project and associated Budget Ordinance Amendment No. 1 and Capital Project Ordinance Amendment

Staff recommended award to the lowest bidder and adoption of the Ordinance Amendments.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE CONTRACT AWARD AND AMENDMENTS; COUNCIL MEMBER ROWE SECONDED THE MOTION.

THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Continuation of Public Hearing 04:

The Town Attorney stated that the condition drawn up by the applicant was a lawful condition. Jason Baron presented the following language: "Subject to approval by NCDOT and other applicable government entities, the development of the property may include a second point of access onto Old Jenks Road in lieu of a permanent vehicular connection onto Sandy Hills Court. If the second access onto Old Jenks is approved, then the development shall not require a permanent vehicular connection to Sandy Hills Court."

Following discussion between staff and Council on this language and the effect it would have on the UDO plus alternates to this language for the site plan cited by staff,

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE REZONING WITH THE AGREED UPON CONDITIONS THAT THE CONNECTION BE GATED ON SANDY HILLS COURT UNTIL TOWN COUNCIL DEEMS IT APPROPRIATE TO OPEN THE GATE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.

With further discussion on ensuring that this language was correct,

COUNCIL MEMBER LASSITER WITHDREW HIS MOTION.

MAYOR WEATHERLY CALLED FOR AN ALTERNATE MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO CONTINUE THIS HEARING UNTIL THE AUGUST 13TH SPECIAL MEETING; COUNCIL MEMBER JENSEN SECONDED THE MOTION. COUNCIL MEMBERS JENSEN, ROWE, AND SCHULZE VOTED IN THE AFFIRMATIVE, COUNCIL MEMBERS OLIVE AND SCOTT VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-2 VOTE.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.
MAYOR PRO TEMPORE SCHULZE MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Keith H. Weatherly
Mayor