



# APEX TOWN COUNCIL MEETING

TUESDAY, MARCH 5, 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, March 5, 2013, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

## COMMENCEMENT

Mayor Weatherly called the Meeting to order; Mayor Pro Tempore Schulze gave the Invocation; Mayor Weatherly led the Pledge of Allegiance.

## PRESENTATIONS

### **Presentation 01 : \_Apex Downtown Business Association**

**The Apex Downtown Business Association will be in attendance to present a check for \$3,600 to the Town Council towards the purchase of the brick seat wall planned for the Apex Service Memorial**

Blaine East and JC Knowles presented the check to Mayor Weatherly, stating that the memorial will be nice in downtown. The Mayor accepted the check and expressed his appreciation for all of the Association's efforts.

### **Presentation 02 : Mike Sayers, Apex American Legion Post #124**

**Mike Sayers, Post Commander for the Apex American Legion Post #124, will be in attendance to present a check for \$4,000 to the Town Council towards the Apex Service Memorial**

Mike Sayers and JC Knowles presented and Mayor Weatherly accepted their check. Both gentlemen expressed strong feelings that the memorial will be a good centerpiece for the Town.

## CONSENT AGENDA

1. Motion to approve Minutes of the February 19, 2013 Regular Meeting
2. Motion to set Public Hearing for the March 19, 2013 Town Council Meeting regarding Rezone #13CZ03, 924 Center Street Rezone, MORR-CZ to MORR-CZ, changing conditions to add the use retail general
3. Motion to set Public Hearing for the March 19, 2013 Town Council Meeting regarding Rezone #13CZ02, 103.6 acres generally located at Milano Avenue, between Vincenza Drive and Mt. Zion Church Road from Planned Unit Development-Conditional Zoning to Planned Unit Development-Conditional Zoning Revision to the Development Requirements for Public Access Routes
4. Motion to set Public Hearing for the March 19, 2013 Town Council meeting regarding various amendments to the Unified Development Ordinance
5. Motion to authorize Town Manager to negotiate, approve, and enter into on behalf of the Town a professional services agreement with Martin/Alexiou/Bryson, P.C., to provide public involvement events, environmental documentation, traffic signal designs, traffic signal timing plans, property surveys, and appraisal services for the NC 55 Corridor Improvements Project designated TIP No. U-5118 AC, which includes constructing turn lanes on Hughes St. and extending a travel lane on NC 55 at Apex Peakway, and to authorize the Town Manager to execute same
6. Motion to approve professional services agreement with Martin/Alexiou/Bryson, P.C., to provide public involvement, environmental documentation, traffic signal designs, property surveys, and appraisal services for Laura Duncan Multi-Use Path TIP No. EL-5100 DD, from US 64 to Apex Community Park, and authorize Town Manager to execute same
7. Motion to approve Amendment No. 1 To Interlocal Agreement For Interim Cost Sharing And Capacity Allocation Related To The Western Wake Regional Wastewater Management Facilities
8. Motion to enact a Resolution approving the official Unified Development Ordinance book retained permanently in the office of the Town Clerk as the official codification of the Town's zoning, subdivision and planning ordinances and adopting and issuing the replacement pages inserted therein since the last codification
9. Motion to approve a request for street closings from the St. Mary Magdalene Church's Committee for the 6<sup>th</sup> Annual Monarchs in Motion 5K Run/Walk on Saturday, May 11, 2013 in the Scotts Mill subdivision

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

## REGULAR MEETING AGENDA

There were no requested modifications to the Regular Agenda.

## PUBLIC HEARINGS

There were no Public Hearings to be heard.

## OLD BUSINESS

### **Old Business 01 : Matt Kirkpatrick/Mitch Sanner, III**

#### **Request by Matt Kirkpatrick and Mitch Sanner, III to add 10 Additional Acres to the Colvin Park Subdivision Sewer Agreement**

Mr. Kirkpatrick stated these additional acres will accommodate up to 50 new homes in the northeast quadrant of the site. There is no other way the property can be serviced.

Mr. Kirkpatrick, responding to questions from Council, stated that parks and rec fees would be the same as previously as fee in lieu since the land doesn't tie into the park system. The total cost for sewerage would be in the \$7-8,000 range. The project is tracking to start construction this quarter.

Concern from Council was that tacking on tracks to other kinds of devices would push further away from getting a central solution for the area, staff stating this is a reasonable concern. Monies spent sewerage another way are monies being taken away from the regional solution. It was not conceived that the original project would grow in size. Council stated it is in the Town's best interest to add the extra acreage, especially since the Town would probably not kick in any money to grow the area with single family homes. Staff stated that while the Middle Creek Basin has opportunities for good commercial potential, this particular draw is more residential and would have no impact on utility usage.

The Town Attorney stated that this request would require formal amendment to the Alternative Sewer Connection Agreement and to the Interlocal Agreement with Cary. If Cary doesn't agree to serve the additional capacity, then Council would not be in a position to grant the request from Mr. Kilpatrick.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE AMENDMENTS TO THE ALTERNATIVE SEWER CONNECTION AGREEMENT AND TO THE INTERLOCAL AGREEMENT TO ALLOW THE DEVELOPER TO ADD THE ACREAGE AS DESCRIBED ON THIS EVENING ON THE CONDITION THAT THE TOWN OF CARY APPROVES THE CHANGE IN THE TRANSACTIONS BEFORE THE TOWN OF APEX SIGNS OFF ON THEM, AND TO AUTHORIZE THE TOWN MANAGER TO EXECUTE THE NECESSARY AGREEMENTS TO ACCOMPLISH THIS. COUNCIL MEMBER OLIVE SECONDED THE MOTION.

Mayor Pro Tempore Schulze stated he is opposed to this request for the same reasons that he was opposed to the original request, this setting a precedent. Council Member Jensen stated he feels the same.

COUNCIL MEMBERS LASSITER AND OLIVE VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS SCHULZE, JENSEN, AND ROWE VOTED IN THE NEGATIVE. THE MOTION FAILED BY A 3-2 VOTE.

## PUBLIC FORUM

Graham Wilson, Director of the Chamber of Commerce, stated that he distributed to Council the new Apex Magazine, an annual publication for those wishing information on Apex as well as considering moving to the area.

## NEW BUSINESS

### **New Business 01 : Tim Donnelly, Public Works Director**

#### **Motion to award and approve the contract for the Apex Beaver Creek Gravity Sewer Project and adopt the Associated Budget Ordinance Amendment No. 9 and Capital Project Ordinance Amendment**

The Town Attorney requested to go into Closed Session to discuss legal issues related to this request.

MAYOR WEATHERLY CALLED FOR A MOTION TO GO INTO CLOSED SESSION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR WEATHERLY CALLED FOR A MOTION TO RETURN TO OPEN SESSION.  
COUNCIL MEMBER OLIVE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.  
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Staff, on advice of Council and considering the difficulty bidders encountered in completing all the documents accurately, requested that all bids be rejected and that the project be re-advertised.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO REJECT ALL BIDS AND HAVE THE PROJECT RE-ADVERTISED; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

## WORK SESSION

There were no Work Session items for discussion.

## CLOSED SESSION

### **Closed Session to discuss with the Town Attorney potential litigation and to receive legal advice**

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

MAYOR WEATHERLY CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER OLIVE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

BASED ON DISCUSSION WITH TOWN COUNCIL, MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE A RESOLUTION AUTHORIZING EMINENT DOMAIN PROCEEDINGS RELATED TO THE MT. ZION ROAD ELECTRIC LINE PROJECT FOR THE IMPROVEMENT OF THE APEX ELECTRICAL SYSTEM AND TO APPROVE A RESOLUTION AUTHORIZING EMINENT DOMAIN PROCEEDINGS RELATED TO THE HWY 64 ELECTRIC LINE PROJECT FOR THE IMPROVEMENT OF THE APEX ELECTRIC SYSTEM; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR PRO TEMPORE SCHULZE, AS PROFESSIONAL COURTESY TO COUNCIL MEMBER LASSITER, CALLED FOR A MOTION TO RECONSIDER OLD BUSINESS 01 : MATT KIRKPATRICK/MITCH SANNER, III - REQUEST BY MATT KIRKPATRICK AND MITCH SANNER, III TO ADD 10 ADDITIONAL ACRES TO THE COLVIN PARK SUBDIVISION SEWER AGREEMENT; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Council Member Lassiter stated he felt Council made a hasty decision on this request. Mr. Kirkpatrick seemed to have more to say but was not given an opportunity to do so.

Mr. Kirkpatrick stated Cary is fine with this request as long as the same process for the revision made to the last Interlocal agreement is followed. This is in process now. The capacity to serve the area is there. With or without the additional 10 acres, the project is going forward, with hopes of breaking ground by the end of this month. A utility line will be stubbed to the property, as required.

Because of the way the project is being served, Mr. Kirkpatrick did not understand why the request is being negated by Council. Capacity fees are being paid, which will increase with more homes, even though Apex's plant will not initially serve this project. Other respective fees will also be paid. The activity currently in the Basin is being driven by this project. Eventually the market place will find a way to bring a gravity line to this property. The capital is in motion, the project is going forward, monies are going to be spent on the infrastructure. Mr. Kirkpatrick asked for reconsideration of Council's initial vote.

Council stated Mr. Kirkpatrick has asked for concessions in the past which have been granted. The Town will service this area with police coverage and garbage collection; and with the economy scale, these things becomes less expensive with 200 homes vs. 150 homes. 200 homes would be more beneficial to Apex because of the extra tax revenue. Council should look at this as if it was the first time looking at the project.

Council wants to discourage cross agreement connections to Cary. In the initial agreement, the Town was in favor of this if Cary was in favor; but that agreement was only for the initial development. The Town did not initially commit to increasing Mr. Kirkpatrick's full sewer capacity. The fear is that adding acres will continue. When does Apex make a cut off seeing as the Town wants to get a regional solution for the area at some point in the future? A strong signal needs to be sent that the end is here - if this is approved, then there will be no more additions or modifications to the agreement. Mr. Kirkpatrick stated there are no other pieces of the property to be developed.

Staff stated that a regional solution is preferred. The hope is that a developer gets enough critical mass on raw land that is for sale that can justify their investment in the bigger solution. Another developer is now trying to figure out how to sewer his property. His feeling is that if he can't get someone to help solve his problem, then what would the Town think about moving the pump station so he can pump to Cary? Council stated if we open the door for these ten acres, then it may cause a steamroll effect. Staff stated Mr. Kirkpatrick is required to stub a gravity line because the Town

intends to sewer the property with a system that benefits the Town. Council stated the Town has heard from another developer trying to figure out a way to extend onto what Mr. Kirkpatrick is already doing.

The question is where to draw the line – after adding 50 homes or after fulfilling the original commitment. Staff explained the flow in the basin, Mr. Kirkpatrick stating that there is a State minimum that had to be filled with the size of the pipes. In relation to fee adjustments and regulations because of this new piece of property, the Town Attorney stated park and rec fees cannot be charged greater than fair market value at the time the project was submitted. Presumably, the fair market value of the 10 acres would be judged based on recent appraisals, if Mr. Kirkpatrick exercises his right to appeal from the standard fee. However, it cannot be known at this point if the market value would be higher than the original project market values. Mr. Kirkpatrick can be required, through contract amendment, to apply these fees.

WITH THE POTENTIAL FOR COUNCIL OPINION TO BE CHANGED WITH CLARIFICATION OF ISSUES, MAYOR WEATHERLY CALLED FOR A MOTION TO CONTINUE THIS REQUEST TO THE NEXT REGULARLY SCHEDULED MEETING [MARCH 19, 2013].

COUNCIL MEMBER LASSITER MADE THE MOTION; COUNCIL MEMBER OLIVE SECONDED THE MOTION.

THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

## ADJOURNMENT

WITH THERE BEING NO FURTHER BUSINESS, MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.

COUNCIL MEMBER OLIVE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.

THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

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Donna B. Hosch, CMC, NCCMC

Town Clerk

ATTEST:

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Keith H. Weatherly

Mayor