



APEX TOWN COUNCIL MEETING

TUESDAY, APRIL 21, 2015

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, Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 21, 2015, 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 Town Attorney Laurie L. Hohe

COMMENCEMENT

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

PRESENTATIONS

Presentation 01 : Mike Sayers, Chairman, NC American Legion
Presentation of Certificate of Appreciation to the Town

Mr. Sayers stated that on behalf of the American Legion of NC, he was presenting the Town with an award for serving as host for the American Legion's Division 3 High School Oratorical Contest. Some Council Members served as judges, and the male who won in Apex went on to win the Nationals.

CONSENT AGENDA

- Consent 01 Minutes of the April 7, 2015 Regular Meeting and the March 31, 2015 Economic Development Committee Meeting
- Consent 02 Apex Tax Report dated March 2, 2015
- Consent 03 Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, Resolution Setting Date of Public Hearing on the Question of Annexation - Apex Town Council's intent to annex Parker Orleans Homebuilders property (Colvin Park Phase 4) containing 8.015 acres located at Redbud Tree Drive and Stephenson Road, Annexation #536 into the Town's corporate limits

- Consent 04 Equipment Lease Agreement between the Town and Wake County and authorize the Town Manager to execute the same
- Consent 05 Statement of the Town Council and Ordinance for Rezoning Case #14CZ21 (Sweetwater), Experience One Homes, LLC, petitioners for the property located at 2216 and 2408 Olive Chapel Road and 3115, 3121, 3224, 3233 U.S. Hwy 64 West
- Consent 06 Amendment to the Town's Utility Customer Service Polices to discontinue payment of interest on utility customer deposits
- Consent 07 Two budget amendments in order to provide funding for a municipal agreement with NCDOT to add turning lanes at the intersections of Apex Peakway at Olive Chapel Road and Apex Peakway at NC 55 in TIP Project No. U-5118 AE. At its December 16, 2014 meeting the Council approved the agreement but a budget amendment was not approved at that meeting
- Consent 08 Budget amendment to provide funding for capital outlay in the Electric Fund beyond the amount initially anticipated in the budget
- Consent 09 Set Public Hearing for the May 5, 2015 Council Meeting to consider an Agreement regarding naming rights for the Skate Plaza

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

REGULAR MEETING AGENDA

There were no requested modifications to the Regular Agenda.

PUBLIC FORUM

John Buck expressed appreciation to the fine members of the Planning Staff, Reed Huegerich, John Brown, and Council for maintaining the interactive development map. He recommended its usage to a greater extent because it works.

Paul Temple, Waterford Green Home Owners' Association President, spoke about the 10-10 and Waterford Green intersection which is under development. Under the current proposal, the front section of the median is being moved to allow one lane in and three lanes out along with a dedicated signal for the left turn lane. Adam Stephenson was commended for informing them of what's coming and helping them to understand the issues. However, DOT has not allowed a budget for replanting the median, which is a critical issue. It will take \$13,000 to restore the lush environment. This is a critical issue for which they don't have a budget. The revised median will also join the existing gap with the new section of the median. The Town has allowed the rear section to be temporary-type curbing which creates drainage

problems; it is beginning to fall apart. Eventually the road will be repaved, and Mr. Temple felt proper curbing should be put in at that time.

DOT feels this issue is cosmetic, which is why it is not in their budget. Mr. Temple stated they feel this is beyond esthetic and presented reasons why, i.e., root problems and drainage. This is a maintenance problem for them. He hoped the Town would consider remedying this and put it in its budget. Staff stated it would gather the numbers and present back to Council. Mr. Temple stated the immediate concern is plantings, which he hoped the Town would address now. Staff explained our budget does not include some of the road work.

Council consensus was to add a budget amendment for the amount Mr. Temple specified. Staff will bring back a real budget in two weeks.

Lynne Smith stated that BRI has been renting a facility previously owned by Ferguson and running a manufacturing plant. They have been working with Planning on an expansion. For four years, the neighborhood has been having problems with odor from the plant. The fixes BRI makes are temporary, and the odors return even when manufacturing is not in production. Some neighbors have had allergic reactions. BRI efforts will not be resolved but worsen with expansion, and Ms. Smith was concerned about the long term effects and home values due to the odor and silo which is planned. Ms. Smith believes BRI misrepresented themselves, and there is no confidence that expanding will eliminate odors. Ms. Smith asked Council to help BRI relocate to another, more suitable location. The Town Attorney stated she has been in contact with Planning regarding BRI's compliance with the UDO. Staff stated BRI was grandfathered in and has been fined.

Melanie Wayne asked Council not to approve the BRI expansion. The facility is inappropriately situated by businesses and homes. There is concern about odor and the effect on property values because of the appearance of the silo. BRI is not keeping up the property, and it is extremely run down. Ms. Wayne asked Council to please encourage BRI to move to a more appropriate location. If not moved, she would like to see architectural improvements – the silo moved to the rear or screened with metal siding, the façade needs to be repainted, and the landscape needs to be freshened. She wanted assurance from the Town that if the problem was not eliminated, the Town would take legal action against BRI to permanently eliminate the problem.

Chuck Hinton stated he has been a real estate broker for 21 years and lives in the area of BFI. He didn't plan on having to smell the odor. The area is zoned light industrial, and he cited the performance standards relating to odors and noise. He stated the Town Manager and Joe Curtin were helpful when

this started. He understands mixing causes odors. Homeowners have to fill out a state-mandated disclosure form when selling, and it asks about noise and smoke affecting the property. The seller would have to check 'yes'. The odor is mostly in summertime, and he would appreciate anything that can be done to stop the odor.

Council asked the Town Attorney to come up with ways at site plan approval to pull this type of thing out and state what the statutory fine would be. The current process is not a deterrent. Council was in agreement for her to do this. Staff stated they have been working with Legal and think there are solutions to take care of this, but they were not ready to talk about it now. Explained was how this needs to rise to the level of a nuisance so determinations can be made and action taken. Staff stated it is not supportive of the expansion. The more emails received from residents the better. Additionally, someone from staff needs to go out as many times as possible to smell the odor.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega, Principal Planner

Public Hearing and rezoning application #15CZ06 (The Pointe) to rezone 21.14± acres located on the northeast quadrant of Olive Chapel and Kelly Roads from Rural Residential (RR) to Planned Commercial-Conditional Zoning (PC-CZ)

Staff oriented Council to the site. A neighborhood meeting was held, the use is consistent with the 2030 Land Use Map, and the applicant was asked by staff to remove some of their proposed uses. The Planning Board unanimously recommended approval as did staff.

Mayor Sutton declared the Public Hearing open.

Alan Maness, representing the applicant, thanked the staff and neighbors for their efforts and input.

Council encouraged family friendly uses due to concerns of some of the folks in the area. Mr. Maness was thanked for his support with NCDOT requests. Council asked for Type A buffers to mitigate the back sides of the buildings if any of the out parcels backed up to the road. Mr. Maness explained the buildings will sit below Olive Chapel, but they can try to augment where practical. Council asked for the highest extent possible of storm water management; Mr. Maness will examine the possibility of going to 25 years.

Mayor Sutton declared the Public Hearing closed.

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

Public Hearing 02 : Shelly Mayo, Planner

Public hearing and rezoning application #15CZ03, The Reserve at Beaver Creek PUD, containing 31.69 acres located on the northeastern and southeastern quadrants of the Kelly Road and Beaver Creek Commons Drive intersection from Planned Commercial Conditional Use (PC-CU) and Rural Residential (RR) to Planned Unit Development Conditional Zoning

Staff oriented Council to the site. RCA requirements were exceeded, there will be a Type A buffer, the request meets the UDO requirements. A TIA was conducted and will be incorporated; a traffic signal warrant study will be done at 80% of build-out. A neighborhood meeting was conducted, the use is consistent with the 2030 Land Use Map and Transportation Plan. The Planning Board unanimously recommended approval.

Council Member Lassiter left the meeting unexcused.

Mayor Sutton declared the Public Hearing open.

Alan Maness, on behalf of the applicant, stated the staff presentation was thorough and he had no further comments. Council asked Mr. Maness to try to increase the stormwater pond size, which he stated they will study for that opportunity.

Mayor Sutton declared the Public Hearing closed.

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

Public Hearing 03 : Brendie Vega, Principal Planner

Public Hearing and rezoning application #14CZ16 (Aquiline PUD) to rezone 48.40± acres located on 1528 E. Williams Street from Planned Commercial-Conditional Zoning (PC-CZ) to Planned Unit Development-Conditional Zoning (PUD-CZ)

Staff oriented Council to the site. A TIA has been completed, and the use is consistent with the UDO. The Parks and Recreation Commission recommended a fee in lieu, a neighborhood meeting was held, and the use is consistent with the 2030 Land Use Map, the Transportation Plan, and UDO. The Planning Board and staff recommended approval. Council expressed that we seem to be going backwards from where we want to get to as a Town. Staff stated it was not aware of any interest for this to be used as solid commercial.

Mayor Sutton declared the Public Hearing open.

Don Mizelle, Withers and Ravenel, stated the plans sets the opportunity for commercial residential mixed use. They have worked with staff to come up with the plan and feel it's a good project for mixed use. Council expressed concern that all residential will go in and then offices would go in if this was mixed use. Mr. Mizelle stated they can look at this to see if something can come up that will suit the client. Council stated this will take time and suggested putting this off until it can be looked at.

Council Member Lassiter returned to the meeting.

Bill Peebles, Bay Point Development, stated there is a long history to the property being commercial since the mid-90s. There is not a demand for total retail use since a lot of that is now at Beaver Commons and in Holly Springs. Mr. Peebles felt this a fair mix that's marketable to sell and would still give the Town a commercial base. They can look at phasing, and he explained how they wish to develop the property. The property has been actively marketed, and there is just no interest in commercial. Mr. Peebles stated they can take the time to come up with a phasing plan and put this off until then. Council stated we are back at the same spot of Council not having faith in the Land Use Plan. At Council's request, Mr. Peebles will check into housing below market value.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO POSTPONE
MOVING ON THIS ITEM UNTIL THE APPLICATNT COMES BACK WITH A PHASING PLAN;
COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 04 : Brendie Vega, Principal Planner

Public Hearing and rezoning application #15CZ07 (Crestmont II) to rezone 1.86± acres located at 8028 Green Level Church Road from Rural Residential (RR) to Medium Density-Conditional Zoning (MD-CZ)

Staff oriented Council to the site, stating that the rezoning conditions were the same as Crestmont. The Planning Board and staff recommend approval with conditions by the applicant.

Mayor Sutton declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering, stated this parcel was not available previously. It will be incorporated into Crestmont.

Mayor Sutton declared the Public Hearing closed.

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

Public Hearing 05 : Dianne Khin, Planning Director

Public Hearing and Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Parkside Development Group property (Parkside Phase 13) containing 9.40 acres located between Blazing Trail Drive, Humie Olive Road and Richardson Road, Annexation #535, into the Town’s corporate limits

Staff oriented Council to the site, stating that the project was previously approved by Council but the property needs to be annexed for utilities. Staff recommended approval.

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

Public Hearing 06 : Reed Huegerich, Senior Planner

Public Hearing on proposed amendments to the Bicycle, Pedestrian, and Equestrian Plan map

Staff explained the one proposed amendment which came from a request by staff for a greenway. Designers of the school site were not willing at this time to commit to access to their property. Staff stated a multi-use path would be beneficial. The Planning Board recommended approval.

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

Public Hearing 07 : Brendie Vega, Principal Planner

Public Hearing regarding various amendments to the Unified Development Ordinance

Staff detailed each of the 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 JENSEN MADE THE MOTION TO APPROVE THE AMENDMENTS; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Mayor Sutton called for a ten minute recess.

OLD BUSINESS

There were no Old Business items for consideration.

NEW BUSINESS

New Business 01 : Shelly Mayo, Planner

Application for Arcadia Ridge Addition Master Subdivision Plan including the properties located at 2713 Olive Chapel Road, 2105 Richardson Road and 2121 Richardson Road. This addition contains 40.33 acres and 130 new single-family lots

Staff oriented Council to the site, stating the PUD has come back for three additional properties. This is consistent with the 2030 Land Use Map. A neighborhood meeting was held, and the Parks and Recreation Commission recommended a fee in lieu. The use is consistent with the Transportation Plan, and a greenway will be constructed. Staff recommended approval as did the Planning Board. The Town Attorney explained at what point Council could vote against a master subdivision plan. Council stated Richardson Road should be put in prior to these houses being built. The effects of not addressing more roads was discussed.

MAYOR SUTTON CALLED FOR A MOTION. BASED ON THE ADVICE OF THE TOWN ATTORNEY, COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE REQUEST; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 02 : Amanda Bunce, Planner

Crestmont Phase 1-3, revised Master Subdivision Plan, for the properties located east of Green Level Church Road and south of Roberts Road containing 36.48 acres and 122 lots

Staff stated Council previously approved this Plan, but road and lot layout changes were needed. A neighborhood meeting was held; a greenway path will be built. The Planning Board and staff recommended approval.

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

New Business 03 : Amanda Bunch, Planner

Lake Castleberry, revised Master Subdivision Plan, for the properties located at Green Level West, Wimberly and Castleberry Roads containing 118.11 acres and 147 lots

Staff stated this was a revised Plan to what Council previously approved. Road connections have been modified, and some lots have been increased in width. Staff recommended approval as did the Planning Board. Craig Dewers, Withers and Ravenel, explained why the road was modified.

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

New Business 04 : Shelly Mayo, Planner

Villages of Apex South Phase 1 Master Subdivision Plan including the properties located at 1960 Apex Peakway and containing 46.83 acres and 232 new single-family lots

Staff oriented Council to the site. The request meets the requirements of the UDO, a neighborhood meeting was held, and the request is consistent with Transportation Plan. Staff recommended approval as did the Planning Board.

Council expressed concern over CSX being a nuisance. Staff stated that until last week when CSX increased its nighttime coupling and uncoupling, the residents were happy. CSX has been less than responsive to complaining neighbors. We have requested information from them and received no response. There is also an odor.

Council stated the developer could put in a sound wall or a tall berm. Staff stated this has not been looked at because it is not in the ordinance, and we can't require the developer to do so. Staff stated CSX is not responsive to switching their operations to out of town. This development is on the higher side of the speed line and not adjacent to the tracks to which there have been complaints. Council hoped that the real estate agent would put the CSX situation in as a disclosure. The applicant's engineer stated they made a change to locate the townhomes further off the railroads than what was originally approved. He couldn't answer if they had to put the trains in as a disclosure. He didn't think a wall was being considered, but they will put in additional landscaping.

Council asked the Town Attorney would it be legal to vote against this request, to which the Attorney answered 'no'.

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