



APEX TOWN COUNCIL MEETING

TUESDAY, MARCH 1, 2016

Lance Olive, Mayor
Nicole L. Dozier, Mayor Pro Tempore
Eugene J. Schulze, William S. Jensen, Denise C. Wilkie,
and Wesley M. Moyer, Council Members
Drew Havens, Interim Town Manager
Tim Donnelly, Interim 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, March 1, 2016, at 7:00
p.m. was held in the Council Chamber of Apex
Town Hall, 73 Hunter Street

In attendance were Mayor Lance Olive, Mayor Pro Tem Nicole L. Dozier, and Council Members Eugene J. Schulze, William S. Jensen, Denise C. Wilkie, and Wesley M. Moyer
Also in attendance were Interim Town Manager Drew Havens, Interim Assistant Town Manager Tim Donnelly, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

COMMENCEMENT

Mayor Olive called the meeting to order, gave the Invocation, and led the Pledge of Allegiance. He confirmed with the Town Attorney that the Closed Session matter [heard this evening at 6:30 p.m.] would be addressed with the Closed Session on this Agenda.

PRESENTATIONS

Presentation 01 : Ms. Laura Weygandt, Executive Director, Western Wake Tennis Association

Presentation recognizing the Apex Community Park Tennis Courts as the 2015 as the USTA North Carolina Tennis Facility of the Year

Ms. Weygandt stated that the snow and ice in January kept people away from the tennis weekend in Pinehurst where awards were given out. She stated Apex won the Facility of The Year award and read a statement about the Town's renovation efforts. Doing this was a lot of work and a much larger project than anticipated. What Apex has done for tennis is great. She stated they will gladly write a reference for Apex for a grant for the courts at Pleasant Park. Karl Lyon was presented the award on behalf of USTA NC. Mr. Lyon thanked the USTA, stating that we could not have done the grant without them or the hard work of our maintenance crew.

Presentation 02 : Robert Doreauk, AT&T

AT&T and Town of Apex partnership in a promotional agreement to market specific corridors in the Town of Apex as "Fiber Ready." This will permit AT&T and the Town to effectively promote the advanced broadband communications capacity of the specific areas; which are: Pinnacle Park, Lufkin Road, Pristine Water Drive, Reliance Avenue, Investment Boulevard and Energy Drive

Mr. Doreauk talked about how difficult it is to recruit without high-speed, fiber-ready areas. He also talked about their certification program. Mr. Doreauk stated the Apex Pinnacle Road business corridor received the fiber ready certification, and he read the award. The Mayor stated it was nice to have a provider working to get this in Apex.

Presentation 03 : John Demers

Presentation to Council regarding the status of TV and Movie production in Apex

Mr. Demers presented an update on the status of film production, stating that they will be producing a feature film in the area. On March 8, there will be production work at the police department and at one of the local churches. This will be a family film dealing with faith issues. There are three more projects coming with work that will be done in Apex. He invited everyone to the March 8 productions.

Presentation 04 : J.C. Knowles, President, ADDBA

Presentation regarding the Apex Downtown Business Association in advance of the preparation of the FY 2016-17 Budget

Mr. Knowles thanked Council for the opportunity to present their needs which would allow them to accomplish their goals. He pointed to the distributed revised proposal and the expenses incurred for the past year. They were not asking for a handout but an increased level of investment. Mr. Knowles talked about they are a key factor influence in downtown. It was an oversight that the \$10,000 Council gave in past years was left out of the FY15/16 budget, and this crippled the Association. They were requesting reinstatement of the \$10,000 for the FY15/16 budget, and they asked to be granted \$15,000 for the FY16/17 budget. This investment will bring joy and service to the citizens of Apex and to all those who come here.

Presentation 05 : Bob Crowley, President, Apex Arts Council

Presentation regarding the Apex Arts Council in advance of the preparation of the FY 2016-17 Budget

Mr. Crowley thanked Council for the support received in the past years which allowed them to give productions that they couldn't do in the past. More people have been attending their performances. They have productions coming up this year and would like the Town's support continued – they want to keep things alive and going. Council commented on how sweet their production of Annie was, and thanked Mr. Crowley for doing this as it was a benefit to the people.

Presentation 06 : Tina Sherman, Fundraising Coordinator, Apex Farmers' Market

Presentation regarding Apex Farmers Market in advance of the preparation of the FY 2016-17 Budget

Ms. Sherman stated she appreciated the opportunity to address Council. She stated their Mission and how the Market as it is known today was formed. She talked about how many visitors and attendees there were in 2015. Their mission goes beyond the Market, and she detailed the other projects in which

they are involved and who they partner with in the community. Ms. Sherman stated that they have a 100% return rate of their vendors. She talked about the benefits of the Market to the community, such as their assisting low income residents, and their economic impact for Apex. The Market's request for the upcoming fiscal year was \$30,000, and she stated what the funds would support.

Presentation 07 : Don C. Willis, Program Manager, Wake County TRACS

Presentation regarding Wake County TRACS in advance of the preparation of the FY 2016-17 Budget

Mr. Willis talked about who TRACS serves and how important a transportation option this is, especially to the elderly and disabled. They try to get about 10% in grants to sponsor door to door trips. Last year the DOT cut their grant drastically. Mr. Willis asked the Town to continue its participation in the amount of \$15,000, which buys an extra 500 trips/year. Last year they made 2,578 trips, and 748 were completely contained within the town limits. The others were people who needed to leave town or come into town. Council stated that \$30/trip seemed high, and that a taxi may be more affordable. Mr. Willis explained how the DOT grant is run and how the transportation is contacted out. They have a 25% turn away due to limited funding.

Presentation 08 : John L. Thoma, CEO, Transitions Life Care

Presentation regarding Transitions Life Care – Founded as Wake County Hospice – in advance of the preparation of the FY 2016-2017 Budget

Mr. Thoma was not present. There was no presentation made.

CONSENT AGENDA

- Consent 01 Minutes of the February 16, 2016 Regular Council Meeting and the February 23, 2016 Council Workshop
- Consent 02 Statement of the Town Council and Ordinance for Rezoning Case #15CZ18, Benchmark Communities/Glenda Toppe, petitioners for the property located at 2301 and 2505 Richardson Road
- Consent 03 Statement of the Town Council for denial of Rezoning Case #16CZ03, William G. Daniel, Wm. G. Daniel & Associates, P.A./Kevin P. & Catherine S. Hatcher, Matthew & Holly Donaldson, The Hatcher Group, LLC, Portia G. Knowles, William Brian White, International Church of the Foursquare Gospel, petitioners for the property located north of US 64 Hwy, west of Old Jenks Road and to the east and west of Davis Drive
- Consent 04 Statement of the Town Council and Ordinance for Rezoning Case #16CZ04. Jeremy Spivey, JS Development, is the petitioner for the properties located at 0, 3929 & 4005 Green Level West Road
- Consent 05 Road closure request for the Apex Friendship High School Boosters 5K run on April 16, 2016 from 8 a.m.-11 a.m.
- Consent 06 Construction contract and authorization for the Town Manager to execute same for Sidewalk on Apex Barbecue Road at Scotts Ridge Elementary - Revised

- Consent 07 Supplemental agreement with RS&H for preliminary engineering services for the design phase of U-5537, Lake Pine Drive Improvements, in the amount of \$63,284.96. 70% of the supplemental services fee (\$44,299.47) is eligible for reimbursement according to the previously approved municipal agreement with NCDOT
- Consent 08 ITEM PULLED FOR DISCUSSION: Amendments to Section 20-164 (19) and (20) of the Town of Apex Code of Ordinances to establish No Parking zones along the east side of Shepherds Vineyard Drive, from Pine Plaza Drive to a point 600 feet south, and along the south side of Pine Plaza Drive, from Shepherds Vineyard Drive to a point 600 feet west
- Consent 09 Authorization for the Town Manager to execute a 1-year extension of the Yard Waste Agreement originally entered into with Greenway Waste Solutions of Apex, LLC (formerly Highway 55 C&D Landfill, LLC) in 2002
- Consent 10 Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of February 16, 2016
- Consent 11 Set the Public Hearing on March 15, 2016 for rezoning application #16CZ05 to rezone 1.897± acres located at 1917 Laura Duncan Road from Rural Residential (RR) to Planned Commercial Conditional Zoning (PC-CZ)
- Consent 12 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 HYCK Associates (Chelsea Run) property containing 17.33 acres located at 1200 Kelly Road, Annexation #567 into the Town’s corporate limits
- Consent 13 Set Quasi-Judicial Public Hearing for the March 15, 2016 regarding a Major Site Plan for Apex Friendship Middle School, a portion of 112.39 acres located at 7701 Humie Olive Road
- Consent 14 Wake County Greenway Grant agreements for Beaver Creek (Kelly Road to Barbecue Road) and Middle Creek (Miramonte to Holly Springs)
- Consent 15 Budget Amendment to appropriate additional funds to be received from Wake County for use by the Emergency Medical Services Department

Council Member Jensen stated he wished to pull Consent 08 for discussion. Mayor Olive stated this would be discussed as New Business 04.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER MOYER MADE THE MOTION TO APPROVE THE CONSENT AGENDA WITH THE EXCEPTION OF CONSENT 08; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

The Mayor reminded Council of their needing to have a Closed Session vote [from the 6:00 meeting] before going into Closed Session.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE REGULAR AGENDA; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC FORUM

Lisa Juliani spoke about rubber crumb fill on athletic fields. She hoped Council watched the turf wars video about the dangers of this fill. There is a similar charge going on in Chapel Hill, and they are asking for a moratorium. They will replace the crumb fill with poly fill because of the heat threat, not the health threat. There is a cancer argument and reports on the easy spread of bacteria. Ms. Juliani stated two senators are coordinating an investigation, and she talked about schools now banning this fill. She talked about three other agencies revisiting this and how those agencies have revised their originally saying that the fill is safe. Why would we want our kids playing on this? Ms. Juliani asked Council to consider other alternatives.

J.C. Knowles reminded everyone to THINK APEX!

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

Public Hearing and Ordinance on the Question of Annexation – Apex Town Council's intent to annex 1-3 LLC, Jackie and Amy Mitchem, Alfred and Jean Goodwin, Nathaniel and Danielle Weaver and William Rubin (McKenzie Ridge) property containing 64.675 acres located at 0 and 2600 Richardson Road, 7916 and 8000 Ragan Road and 8216 Humie Olive Road, Annexation #568 into the Town's corporate limits

Staff oriented Council to the site. Staff recommended approval so that they may get Town services.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE ANNEXATION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

OLD BUSINESS

Old Business 01 : Mayor Lance Olive

To refer to the Parks and Recreation Committee a discussion regarding the current project to install artificial turf on the field at Hunter Street Park

Mayor Olive stated that many people became aware of this issue after the decision was made on the turf. He stated everyone had done their due diligence; however, he wanted to make sure that Parks and

Recreation had all the information they need to make this decision. The Parks and Recreation Committee would meet tomorrow to discuss this. Mayor Olive wanted to make sure the right thing is done.

MAYOR OLIVE CALLED FOR A MOTION TO REFER THIS MATTER TO THE PARKS AND RECREATION COMMITTEE. COUNCIL MEMBER WILKIE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration

NEW BUSINESS

New Business 01 : Dianne Khin, Planning Director

Discussion on requiring a set amount of non-residential acreage in areas designated as mixed use on the 2030 Land Use Map

Staff stated the Planning Committee met and discussed proposing 30% to a required 29%. Any changes would have to go through the normal process which includes a public hearing, so this could not be heard by Council prior to April.

Council stated we need to be competitive and we don't want to price ourselves out of the market. Making this a requirement and not a guideline will make things more predictable. He talked about a land owner holding property in reserve and how there is nothing legally we can do about it.

Council stated her question about how many other municipalities are doing this had not been answered. Therefore, she didn't want to waste staff time doing this process until her question was answered. She wondered what a future Council would think of this as a requirement. Council stated he has no qualms about this and spoke about two previous projects. Future Councils will make their own decisions.

Council stated we need flexibility and the market will determine what goes in what location. Council talked about matching up the needs and rights of property owners, stating that there could be a balance. We need to try to develop the town for the best of everyone.

Staff, responding to Council, stated she did not know the history on the 30% suggestion vs. the 30% requirement. Council stated it started with him. 30% looked reasonable, but no one was sure about this at the time. So far, 30% has been met, but some have had to buy additional projects to meet it. This is

not necessarily a bad thing, because it brings about more benefits. 30% works for a rezoning, but we don't know if it will work for the buildout. It takes about 20 years to determine this. But if we don't set aside something, we won't have anything to make a decision on in 20 years. Council added that staff has had to argue with developers over the guideline; it would be easier for them if it were a requirement. If the latter was in the UDO, it would be a standard developers would have to meet.

Council stated it is not fair if someone comes close to the percentage but can't meet it. After more conversation about this, Council asked the Town Attorney if there could be a requirement of ownership, to which she stated it would need to be researched. Council stated he did not like developers contracting with locals for the residential knowing the property owners were not going to move or sell their land to get to the 30%. Council stated looking at the map, it makes sense just to set a requirement.

The Mayor asked if the information requested by Council could be available by April. Staff stated everyone, everywhere is busy. Some information can be gotten online, but we really need to do small area plans for specific numbers. She noted that what's online now is probably out of date. Staff explained how residential has to come before retail, which is why other areas do not try to do what is being suggested here. She noted that all communities are not focused on the same thing, and this is one of those things. This is not a normal problem for NC towns. Council stated we have been throwing this around for a while, and it is clear staff wants a way not to negotiate with developers.

MAYOR OLIVE STATED A MOTION ON THIS WOULD BE TO PASS THIS MATTER ON TO THE PLANNING BOARD FOR A 70/30 RESIDENTIAL PERCENTAGE SPLIT FOR THEIR NEXT MEETING WITH THEIR FINAL RECOMMENDATION COMING TO COUNCIL ON APRIL 19. COUNCIL MEMBER MOYER MADE THE MOTION TO APPROVE THE LATTER; COUNCIL MEMBER JENSEN SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

Council was not clear as to why the motion went in for 30% and not 25% as stated on the Agenda. Council asked how flexible would Council be for a really nice development that didn't come in at 30%. Would there be flexibility if it was part of the UDO? Staff stated the UDO is guidance as it is not law in NC. Council stated Smith Farm was an insult to the Council.

New Business 02 : John Demers, Festival Founder

Town co-sponsorship of the upcoming "Peak City International Film Festival" by providing use of the Halle Cultural Arts Center and a police motorcade for this event

Mr. Demers showed a promotional video, stating that the Festival has been revamped after time off, and that he was asked to come back and do another. This event is open to the public. They were looking for

in kind sponsorship of \$1,200 for use of the Halle. Also, at the first event, they had a motorcade where the police officers were hired as a 'training event' at a cost of about \$1-2,000. The Festival can be done without the motorcade, but they would like to have it. They would also like a Proclamation. The request was clarified – use of the Halle and two of its staff members on a specified date, police officers for the motorcade not to exceed \$2,000, and a proclamation.

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

**New Business 03 : David Wood, Manager, Halle Cultural Arts Center
Special Events Policy**

The Mayor stated that this had been talked about previously. He wished to have the Parks and Recreation Committee talk about this and bring a recommendation back to Council on April 5.

MAYOR OLIVE CALLED FOR A MOTION TO HAVE THIS MATTER REFERRED TO COMMITTEE. COUNCIL MEMBER WILKIE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

ADDED New Business 04 : Amendments to Section 20-164 (19) and (20) of the Town of Apex Code of Ordinances to establish No Parking zones along the east side of Shepherds Vineyard Drive, from Pine Plaza Drive to a point 600 feet south, and along the south side of Pine Plaza Drive, from Shepherds Vineyard Drive to a point 600 feet west

Council Member Jensen stated he'd looked at the amendments and was in agreement.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE AMENDMENTS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Mayor Olive stated that Council met in Closed Session at 6:30 p.m. on this day. The Council needed to vote on retaining Mr. Ernie Pearson for the purpose of economic development per the details discussed in Closed Session. It also needed to agree to move forward with entering into a contract with Mr. Pearson which would come back before Council for approval.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE ABOVE.

Council Member Schulze stated he wanted to see the contract and move forward with Mr. Pearson on an hourly basis.

COUNCIL MEMBER JENSEN AMENDED HIS MOTION TO ADD ALLOWING THE TOWN MANAGER TO COMPLETE THE CONTRACT TO BE REVIEWED BY COUNCIL AT ITS NEXT MEETING. COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

CLOSED SESSION

Closed Session to consult with the Town Attorney related to handling of the matter of the City of Fayetteville and the Public Works Commission of the City of Fayetteville v. NC Environmental Management Commission, NC Department of Environmental and Natural Resources and the Town of Cary and the Town of Apex

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE 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 OLIVE ADJOURNED THE MEETING.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Lance Olive
Mayor

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