



## APEX TOWN COUNCIL MEETING

TUESDAY, MARCH 15, 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 15, 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, Council Member Dozier gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

### PRESENTATIONS

**Presentation 01 : 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 stated he was accompanied by Toni Messler, VP of Finance and Operations. They were requesting \$10,000 for medical care and supportive counseling for terminally ill Apex residents. Mr. Thoma noted that Apex helped build its first facility on Trinity Road. Their request is more than last year's request because of need and population, with the aging population being the fastest growing. They have added a pediatric program serving terminally ill children and their families. In 2015, they served 222 Apex residents, a 35% increase over 2014. Mr. Thoma described the services that they provide, and stated that Apex funding helps serve all residents regardless of whether or not they have insurance. He thanked Council for the opportunity to speak and consideration of their request. Currently they have 20 beds on

site and will be adding another 10 by mid-May. They also have in-home care for all individuals in Wake County.

Mayor Olive recognized the director of the film "Unbridled", John David Ware. He stated Mr. Ware had been on the east coast for a while and would be editing "Unbridled" in the next several weeks. The Mayor recently provided Mr. Ware a Proclamation for shooting part of the film in Apex. The story is very touching, and the Mayor hoped many folks would look for it in the future. Several Council Members were cast as extras. Mr. Demers was the Line Producer.

## CONSENT AGENDA

- [Consent 01](#) Minutes of the March 1, 2016 Regular Council Meeting, the March 1 Special Meeting, and the March 4, 2016 Budget Retreat
- [Consent 02](#) Authorization for the Town Manager to negotiate new solid waste and recycling contracts with Waste Industries, LLC
- [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 Hendrick Automotive Group property containing 1.897 acres located at 1917 Laura Duncan Road, Annexation #572, into the Town's corporate limits
- [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 MI/Homes of Raleigh, LLC (Middleton) property containing 10.92 acres located between Howell Road and Holt Road, Annexation #573, into the Town's corporate limits
- [Consent 05](#) Road closures for Founders Day 5K race on March 19, 2016 from 8:00 a.m. to 11:00 a.m.
- [Consent 06](#) Budget Ordinance Amendment No. 20 for reimbursement to NCDOT for cost associated with relocating and installing water and sewer lines on the Kelly Road bridge replacement project

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

## REGULAR MEETING AGENDA

Mayor Olive stated that the Town Attorney requested the addition of a New Business item: Possible motion to adopt a Resolution to abandon portions of existing public electric utility easement. With no objections, he stated, this would be added as New Business 04.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA WITH THE ADDITION OF NEW BUSINESS 04.  
COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## **PUBLIC FORUM**

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Candra Kaufman spoke regarding a greenway connection which would provide a safe traffic area in the Pemberley subdivision. She made a strong push for project funding, some of which has already been earmarked. She asked that this promise be fulfilled.

Karen Walker stated she supported Ms. Kaufman and the neighborhoods in the above effort. There is a lot of traffic in the area which is dangerous for the kids riding bikes in the street. A greenway would provide the opportunity to have a safe location to play, ride bikes and scooters, etc., and to walk and enjoy the environment.

## **PUBLIC HEARINGS**

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**Public Hearing 01 : Tim Donnelly, Interim Assistant Town Manager**

**Public Hearing and closure of a portion of Mt. Zion Church Road**

Staff stated that in February this was requested by the developers because the road was no longer needed. Another road was built beside it. This public process is required, and the Clerk has received no comments. The developers will pay the cost of the required advertising.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed. Staff pointed to the Order left at their seats which also needed Council approval.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE CLOSURE OF THE  
PORTION OF THE ROAD AND APPROVAL OF THE ORDER; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Added New Business 04 : Laurie Hohe, Town Attorney**

**Resolution to abandon portions of existing public electric utility easement**

Tim Donnelly directed Council's attention to the Resolution. He stated that beside the existing alignment with the Town power line, a new power line was built and the easement was no longer needed. Staff recommended its abandonment. We probably paid for this easement, but not for the one on the new road.

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

Public Hearing 02 : Amanda Bunce, Senior Planner

Public Hearing and 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)

Staff oriented Council to the site. A neighborhood meeting was conducted. The applicant proposed several architectural conditions to the uses. The Planning Board unanimously recommended approval as did staff. Staff responded to Council regarding buffers and how far out residential would go.

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

Council thanked staff for working to get the 30 foot buffer along Laura Duncan.

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

Public Hearing 03 : Dianne Khin, Planning Director

Public Hearing and Ordinance 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

Staff oriented Council to the site, stating that staff recommended approval.

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.

*An audio recording of the following Quasi-Judicial Public Hearing made by the Town Clerk is incorporated into these Minutes by reference. The audio recording or transcript of the Hearing should be used as the verbatim record of the questions, testimonies, evidentiary rulings, and discussions that occurred at the Quasi-Judicial Hearing.*

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Quasi-Judicial Public Hearing 04 : Shelly Mayo, Planner

Quasi-Judicial Public Hearing for Major Site Plan for Apex Friendship Middle School, a portion of 112.39 acres located at 7701 Humie Olive Road

Mayor Olive asked if Council had the Checklist, to which all responded in the affirmative. Mayor Olive read the Statement as to how the Hearing would proceed.

Mayor Olive asked for introductions of those on behalf of the request. Kenneth Haywood, speaking for the Wake County Public School System, applicant, introduced himself and gave the names of those who might be called upon to present.

Mayor Olive asked for introductions of those who opposed the request. There were none.

Mayor Olive asked Council if any had inadmissible conflicts and if they would be able to decide this matter fairly. Each answered there were no conflicts and each stated they would be able to decide the matter fairly. Council Member Wilkie recused herself from this Hearing as she is an employee of the Wake County Public School system.

**Opening statement by the applicant:** Haywood stated he'd named those who may speak based on the fact that the school system has met all the standards. They would be asking for approval of the request.

**Opening statement by staff:** Shelly Mayo, Planner, stated her name and presented her credentials. She oriented Council to the site which is surrounded by residential. Mayo showed the overall campus layout, pointing out that the elementary school plans had not yet been submitted. A neighborhood meeting was held. Conditions requested by staff were agreed to by the applicant. The Plan met the UDO, and staff recommended approval.

**Cross examination of staff by Council:** Council asked for an explanation of the conditions; this explanation was provided. Council asked about the intersection of Humie Olive and Old US1, the recommendation being that the school system work with DOT to realign the intersection for better safety.

**Cross examination of staff by the applicant:** None.

**Presentations by staff witnesses:** Police Chief John Letteney introduced himself and stated his credentials and responsibilities. He stated he would speak as to the amplifier repeater. The Police Department is responsible for radio communications, and they have had problems -- particularly in schools. The school

staff has indicated radio communication is a proper focus and a necessity. Initially, there was agreement for a repeater in one previous school but the school was built without it. Letteney named those schools without a repeater and explained why radio communication doesn't work in these buildings. The hope was that radios would work in Apex High School, but they do not. The school staff has begun a study to pinpoint similar needs elsewhere, but there is no funding for this. Council stated she has been trying to meet with the schools and noted that the repeaters need to be a part of a Council decision. Council asked if they could be installed outside, Letteney responding that answer would come from staff member David Boggs.

**Cross examination of staff by the applicant:** Haywood asked Letteney if the Town was a subscriber to the County of Wake, to which he responded in the affirmative. Letteney stated that they have looked outside the building for signal strength. Haywood asked was signal strength less than ideal, to which Letteney responded in the affirmative.

**Staff Witness** David Boggs, Communications and Tech Manager, introduced himself. He stated that they were proposing a bidirectional repeater for all of public safety and talked about the various versions available. Council asked could the repeater be installed outside. Boggs explained it would be installed inside and broadcasted outside. The high school would receive very little benefit from the equipment. The cost would be based on the size of the area. There would be no communication inside the building without the repeater.

**Cross examination of staff by the applicant:** None.

**Staff Witness** Russell Dalton, Transportation Engineer, introduced himself and presented his credentials. Dalton talked about additional recommendations for the proposed traffic upgrades.

**Cross examination of staff by Council:** Dalton stated it would be wise to do upgrades now for the elementary school and explained some of the problems with long-term projections. Council asked about the realignment of Hume Olive and US1. Dalton explained the aspects of this intersection. Council asked about traffic in the future. Dalton stated the applicant could speak to this as they have done a study.

**Cross examination of staff by the applicant:** Haywood asked Dalton questions about the traffic impact analysis, what improvement conditions were and weren't agreed to by the applicant, future development in the area, and possible future traffic problems.

Mayor Olive asked Council if any had viewed the site in context of this proposal and to describe any observations they'd made. No Council Members had viewed the site.

**Evidence by the applicant:** Haywood stated they were excited to bring in new schools. He heard from staff about requirements in the UDO, and they have exceeded those. The issues on this night were the repeaters and road improvements to which the school system has not agreed. He explained why they were not agreeable.

**Presentations by applicant witnesses:** Zak Pearce, CLH Design, introduced himself and presented his credentials. He stated they helped master plan the high school. He talked about stacking requirements, the bus loop, staff parking, and service and mechanical yards. Pearce stated the plan met the standard of the school program.

**Cross examination of witness by Council:** None.

**Applicant witness** Marc Chambers, architect with Perkins & Will, introduced himself and presented his credentials and provided a brief overview of the layout of the building. He stated they worked hard to provide an aesthetically pleasing building.

**Cross examination of witness by the applicant:** Haywood asked if they were in compliance with Town requirements, Chambers answering in the affirmative. He added that they enhanced features of the design which will add additional cost.

**Cross examination of witness by Council:** Council asked if this was a brand new design or was it adapted for Wake County use based on a prototype that had been used previously. Chambers explained the cost predictability of using a prototype. Council asked about solar systems and if the buildings were prepared for these in the future. Chambers stated this building was not prepared and explained why not.

**Applicant witness** Joshua Reinke, Civil Engineer, Ramey Kemp & Associates, introduced himself and presented his credentials. Reinke stated that as far as the traffic impact analysis, he's done this type of work for other clients and has previously been a part of quasi-judicial hearings. He responded to questions related to the analysis and their meetings with DOT and Town staff. He talked about the improvements they recommended and various traffic situations.

**Cross examination of witness by applicant:** Reinke answered questions from Haywood and explained the basis for his opinions. He explained what DOT opinions were in reference to three intersections where the Town recommended improvements but they and DOT did not.

**Cross examination of witness by Council:** None.

The applicant offered information on traffic lanes for which the school system is paying and provided those cost figures. He also provided the cost out of the intersections in question.

**Rebuttal by Town staff:** Letteney re-addressed the issue of an inside vs. an outside repeater as it related to signal strength. He spoke about zero communication inside the high school and how this is the responsibility of the property owner. Council asked about the criticality of this equipment, and Letteney told of several incidents as early as a few weeks ago where the officer could not radio out.

**Cross examination of staff by applicant:** None.

**Rebuttal by the applicant:** None.

**Closing arguments of staff:** None.

**Closing arguments of applicant:** Haywood talked about how well other school campuses work and thought this one would work well here. All the standards have been met. As for roadway improvements, they have agreed to what is required by their traffic engineer and what they did not think was financially their responsibility. Repeaters have never come before him and he's never had a request for these. He believed the County needed to look at this issue. He proposed testing on the exterior and interior of the building for signal strength. They will install the repeaters near completion if they felt they needed to be installed. Haywood did not feel this was necessary as a requirement, and assured that they are concerned about safety. He asked for approval without the conditions in question.

Mayor Olive declared the Public Hearing closed.

Mayor Olive proceeded to go through the 8-step checklist. Council asked the Town Attorney about the checklist, as he was not familiar with some of the questions as to whether any of them spoke to safety and where it applied. Staff stated she couldn't quote the UDO but she was sure health, safety, and welfare were in the UDO.

- Question #1 – all in agreement
- Question #2 – all in agreement, but relying on staff
- Question #3 – all in agreement, but relying on staff
- Question #4 – one Council Member was worried about traffic
- Question #5 – Council had concerns
- Question #6 – Council had concerns
- Question #7 – Council had concerns. Council stated the repeater was a serious problem for the Town of Apex and Wake County. Communication is not a luxury but a requirement. He was not willing to put public safety or the kids in a bad situation. Council stated Wake County knows there is a problem in the buildings and won't do anything about it. Now is the time for the repeaters to be installed. Council stated you can't put a price on the safety of the kids.

The Mayor talked about signal strength and his ideas on repeaters. This is not a private structure where we could 'suggest' a repeater. This a public structure, full of our children and personnel. He questioned if repeaters are a problem here since Apex is the first to address the issue and there is no data. We have been asked to provide officers and we do. The school is not doing enough to protect their safety. The Mayor thought the County would have provided, at least, a partial solution. Council stated this is not a new issue. School system employees have come to her with this and have asked her for help. They say the issue is the cost to the school system. Council pointed out that we pay for an RSO year round and the repeater is a one-time event.

- Question #8 – Council expressed concerns about street improvements

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO DENY THE REQUEST; COUNCIL MEMBER MOYER SECONDED THE MOTION.

Council stated he would like to see a motion to approve subject to meeting the requirements of Town staff. The Town Attorney confirmed that Council could approve the request with conditions, continue, or deny. Council stated we shouldn't treat the school system different than developers. This may set a precedent.

COUNCIL MEMBER SCHULZE WITHDREW HIS MOTION.

COUNCIL MEMBER SCHULZE MADE A NEW MOTION TO RECOMMEND APPROVAL WITH THE STIPULATION THAT ALL CONDITIONS BY TOWN STAFF ARE MET; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

Council talked more about traffic and his hesitancy to put the load of traffic impact on the school system instead of on the housing developments who put the load on traffic. Council agreed traffic is going to

be important in this area. The Town Attorney reiterated to Council the standard which addressed relative impact. Haywood stated he was authorized to approve a continuance or they would withdraw their issues with the repeater. They would withdraw their objection to condition 1, accepting the condition that the repeater would be placed inside the building. He did not feel condition 2 was proportional. He felt staff needed to look at all the evidence. The Mayor went over the road conditions proposed by staff and asked Council to again look at those conditions. Discussion ensued related to this subject.

COUNCIL MEMBER SCHULZE MADE AN AMENDMENT TO HIS MOTION FOR APPROVAL WITH  
CONDITIONS 1A AND 1C AND WITH CONDITION 1B OMITTED.  
THE MOTION PASSED BY A 4-0 VOTE.

Mayor Olive called for a six minute recess after which Council Member Wilkie returned to the dais.

## OLD BUSINESS

There were no Old Business items for consideration.

## UNFINISHED BUSINESS

**Unfinished Business 01 : Council Members Wesley Moyer and Denise Wilkie**

**Update on use of crumb rubber infill material for Hunter Street Park synthetic turf**

Mayor Olive oriented the audience to this issue. Since we have a new Council, this matter was revisited to ensure it heard citizen concerns. Council stated this matter was discussed in Committee meeting to determine if there was any new evidence since the initial decision. After looking at expert information and advice, Council stated the Committee stood by the original recommended for crumb rubber infill.

The Mayor stated that no action on the part of Council was necessary since no change was being made to the original decision. Council asked about alternate fill. Staff gave several alternatives and explained why the crumb was being used. The Mayor stated his appreciation for the Committee's due diligence. Council provided statistics on the use of crumb and its cost and advantages. Council spoke about Dr. Kantars' impressive presentation on this subject.

## NEW BUSINESS

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**New Business 01 : Amanda Bunce, Senior Planner**

**Chelsea Run Master Subdivision Plan containing 50 lots and 17.33 acres located at 1200 Kelly Road on the west side of Kelly Road and south of US 64 Hwy**

Staff oriented Council to the site and stated that the Parks and Recreation Commission recommended a fee in lieu. Staff and the Planning Board recommended approval. Staff answered questions from Council about buffers, access points, and plantings.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE PLAN;  
COUNCIL MEMBER WILKIE SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, WILKIE,  
DOZIER, AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE.  
THE MOTION CARRIED BY A 4-1 VOTE.

**New Business 02 : Amanda Bunce, Senior Planner**

**Pinnacle Park Center - Master Subdivision Plan - for the properties located north of Classic Rd and west of Reliance Ave containing 25.35 acres and 6 lots**

Staff oriented Council to the site. Staff recommend approval with one condition as did the Planning Board. The applicant agreed to the condition.

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

**New Business 03 : Michael Clark, Senior Planner**

**Westhigh Master Subdivision Plan - for the two properties located at 1523 Salem Church Road. This project consists of approximately 1.57 acres and proposes 3 new single-family lots**

Staff oriented Council to the site, stating that the Parks and Recreation Commission recommended a fee in lieu. Staff and the Planning Board recommended approval.

Ryan Akers with McAdams answered Council questions about lot size and the entrance way. Staff explained a transportation impact analysis was not required and provided reasons why. Staff talked about why staff suggested this traffic situation. The Mayor stated that staff should look to see if this same type of situation may possibly occur somewhere else.

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

## CLOSED SESSION

Closed Session 01 : To consult with the Town Attorney in order to preserve the attorney-client privilege

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

MAYOR OLIVE CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER  
JENSEN MADE THE MOTION; COUNCIL MEMBER MOYER 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.

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Donna B. Hosch, CMC, NCCMC  
Town Clerk

ATTEST:

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Lance Olive  
Mayor