



## Apex Town Council Meeting

Tuesday, November 21, 2017

Lance Olive, Mayor  
Nicole L. Dozier, Mayor Pro Tempore  
William S. Jensen, Eugene J. Schulze, Denise C. Wilkie,  
and Wesley M. Moyer, Council Members  
Drew Havens, Town Manager  
David Hughes, Assistant Town Manager  
Shawn Purvis, Assistant Town Manager  
Donna B. Hosch, MMC, NCCMC, Town Clerk  
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 21, 2017, 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 William S. Jensen, Eugene J. Schulze, Denise C. Wilkie, and Wesley M. Moyer

Also in attendance were Town Manager Drew Havens, Assistant Town Manager Shawn Purvis, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

### **COMMENCEMENT**

Mayor Olive called the meeting to order, Council Member Schulze introduced Father J. William Long, Pastor, St. Andrew the Apostle Roman Catholic Church, who gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

### **PRESENTATIONS**

#### **Presentation 01 : Mayor Lance Olive**

**Proclamation to deem Saturday, November 25, 2017 as "Small Business Saturday" in the Town of Apex**

Mayor Olive read the Proclamation, which will be presented to Economic Development Director Joanna Helms.

#### **Presentation 02 : Keith Joyce, Joyce and Company, Independent Auditor**

**June 30, 2017 audit report from Joyce and Company**

Mr. Joyce gave highlights of the Comprehensive Annual Financial Report (CAFR), which is incorporated into these Minutes by reference. There was a clean opinion on the report, with sound policies and procedures in place. Mr. Joyce stated the Town received the excellence award for the 23<sup>rd</sup> consecutive year. There were no significant weaknesses found in the audit. There were three non-major items found, Mr. Joyce noting that procedures have been put in place to correct these. There is a new accounting

procedure which has been put in place this year. The past issues with New World have been resolved and cause no concern.

## **CONSENT AGENDA**

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- Consent 01** Minutes of the Regular Town Council Meeting of November 7, 2017
- Consent 02** Apex Tax Report dated 10/13/2017
- Consent 03** Appointment of members to serve on the Public Art Committee and Tunstall House Task Force
- Consent 04** Capital Project Ordinance Amendment No. 2018-4 to appropriate funds for the design of the Town of Apex Community Center Expansion/Senior Center by Smith Sinnett Architecture, P.A. and also to appropriate an additional \$50,000 for other work on the project
- Consent 05** Appointment of Shawn Purvis as our First Alternate Commissioner for the North Carolina Eastern Municipal Power Agency
- Consent 06** Professional services agreement with VHB Engineering NC, P.C. in the amount of \$982,484.54 for Phase 3 of the grade separated design of the Apex Peakway at CSX Railroad/South Salem Street and authorize the Town Manager to execute same
- Consent 07** Formal approval of the Swift Creek Land Management Plan Interlocal Agreement between and among the Town of Apex, Town of Cary, Town of Garner, City of Raleigh and Wake County and to approve the first amendment to such Plan
- Consent 08** Contract with CEI / Alford Leasing for the lease of multifunction equipment and the corresponding Budget Amendment 11 and to authorize the Town Manager to execute the contract
- Consent 09** Budget Amendment 12 for the purchase of ExecuTime Enterprise Workforce Management software, equipment, related training and set up costs
- Consent 10** 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 Capital Properties of Raleigh II, LLC (Center Street Station) property containing 7.896 acres located at 1100 Center Street, Annexation #614, into the Town's corporate limits
- Consent 11** 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 Merquiades Cespedes (single-family home) property containing .99 acres located at 7824 Green Level Church Road, Annexation #618 into the Town's corporate limits
- 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 Richard & Anne Casper, Larry & Dorothea Gardner, Glenn & Christine Rinne, Michael Ferrari, Sharon Heaton, Michael & Joy Wilkes and William & Virginia Ott (Linden Master Subdivision Plan) property containing 87.233 acres located at 1600,1612,1617,1632, 1641 & 1645 Pricewood Lane, Annexation #620 into the Town's corporate limits

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

## **REGULAR MEETING AGENDA**

Mayor Olive stated that Public Hearing 05 had a special circumstance, requesting that it be moved to be heard prior to Public Hearing 01. Council Member Moyer requested a Closed Session prior to Public Hearing 06.

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

## **PUBLIC FORUM**

In accordance with North Carolina General Statute 160A-81.1, the Apex Town Council will hold Public Forum during the first Regular Council Meeting of each month

## **PUBLIC HEARINGS**

**Public Hearing 05 - Quasi-Judicial : Shelly Mayo, Planner II**

**Quasi-Judicial Public Hearing and possible motion regarding an application for a Special Use Permit (#17SUP05) for the East Williams Street Cell Tower located at 1501 East Williams Street**

Mayor Olive stated the applicant requested this Hearing be moved to the regular meeting of January 16, 2018.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO MOVE THE HEARING AS REQUESTED; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 01 : Sarah Rayfield, Senior Planner**

**Public Hearing and rezoning application #17CZ23 to rezone approximately 13.86± acres located at 1920 and 1928 Kelly Road from Rural Residential (RR) to Medium Density Residential - Conditional Zoning (MD-CZ)**

Staff oriented Council to the site. A neighborhood meeting was held. Planning staff recommended approval minus one zoning condition proposed by the applicant for a cul de sac. Staff responded to Council questions regarding the cul de sac and buffers.

Stuart Jones, Jones and Crossen Engineering, representing the developer and property owner, stated the rezoning was consistent with Town Plans, and the Planning Board unanimously recommended approval with the inclusion of the cul de sac. He outlined the specifications of each land section and explained the road specifications if the cul de sac was not approved. Mr. Jones stated they wished to add another condition related to solar and asked Council for their support of this request. He answered Council questions related to lot sizes, the cul de sac, plans for the pond, buffers, preservation of the character of the area, and the house on the land.

Mayor Olive declared the Public Hearing open.

Robert Rossi stated the applicant worked with them to keep their property the way it looks now, and he thought they did a good job. He wanted to see the plan approved. There would be nominal impact on them, and Mr. Rossi was pleased with the density.

Mayor Olive declared the Public Hearing closed.

Council expressed their like for the proposed lot sizes and cul de sac and saw benefit to the proposed subdivision. Council asked for a difference in buffer and lot sizes.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE REZONING WITH A REVISED LOT SIZE, INCUSION OF THE CUL DE SAC, AND THE CONDITION RELATED TO SOLAR; COUNCIL MEMBER WILKIE SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, WILKIE, MOYER, AND JENSEN VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 4-1 VOTE.

**Public Hearing 02 : Dianne Khin, Planning Director**

**Public Hearing and Ordinance on the Question of Annexation - Apex Town Council's intent to annex Westford WEH, LP (Westford PUD) property containing 101.131 acres located at 0 Jenks Road, 2812, 2900 & 3300 US 64 Hwy West, Annexation #612 into the Town's corporate limits**

Staff oriented Council to the site and stated it 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 WILKIE MADE THE MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.  
(COUNCIL MEMBER DOZIER DID NOT NOTATE A VOTE.)

**Public Hearing 03 : Dianne Khin, Planning Director**

**Public Hearing and Ordinance on the Question of Annexation – Apex Town Council's intent to annex Crossroads Holdings, LLC (Crossroads Ford) property containing 21.85 acres located at the southwest quadrant of the intersection of US 64 Hwy and N. Salem Street, Annexation #615 into the Town's corporate limits**

Staff oriented Council to the site and stated it 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 ORDINANCE; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.  
(COUNCIL MEMBER DOZIER DID NOT NOTATE A VOTE.)

**Public Hearing 04 : Dianne Khin, Planning Director**

**Public Hearing and Ordinance on the Question of Annexation – Apex Town Council's intent to annex Western Wake Ventures, LLC (Deer Creek Area 3) property containing 0.218 acres located at south of US 64 Hwy along a portion of New Hill Olive Chapel Road, Annexation #616, into the Town's corporate limits**

Staff oriented Council to the site stating it 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 JENSEN MADE THE MOTION TO APPROVE  
THE ORDINANCE; COUNCIL MEMBER MOYER SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER MOYER  
MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A RETURN TO OPEN SESSION WITH NO OBJECTION FROM COUNCIL.

**Public Hearing 06 : Amanda Bunce, Planning Manager**

**Public Hearing and possible motion regarding amendments to the Unified Development Ordinance related to the Sustainable Development-Conditional Zoning District**

Staff oriented Council to the amendments, which were same as those proposed to Council on September 5<sup>th</sup>.

Jason Barron, Morningstar Law Group, on behalf of the applicant, talked about the importance of this development. He again reiterated the three points which they felt would make a better UDO. He spoke about their rezoning the property and the Town being in the middle of a private dispute.

Mayor Olive declared the Public Hearing open.

Tom Hendrickson, on behalf of the applicant, stated his position on this matter. He thanked all for their time spent working on this. He also thanked Council Members Schulze and Wilkie for their years of service to the community. He congratulated Council Member Dozier for leading the ticket and the two new members coming on board.

Mr. Hendrickson stated that the UDO was not applicable to Veridea and that the request should be denied. He and the Hudson group accepted the conditions placed in the process, which could be an exceptional development. Mr. Hendrickson outlined the history of this public process, stating that he believed in the original plan and asked Council to allow this to move forward.

Mayor Olive declared the Public Hearing closed.

Council presented the following comments: there is no problem saying no when a request is not in best interest of the Town; most of what was being said sounded personal and that some people have not been listened to; it is not Council's place to be involved in personal disputes; there are no winners in this situation; when things aren't working, things need to change, so there was support for the amendment; private business should handle their disputes between themselves and not involve government, even though we put together the SD plan; the process is broken and needs to be fixed, but this amendment is not the right way to go; there are other avenues to solve the issues which don't put the Town in jeopardy; this situation should be used as an example for others going forward.

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

**Public Hearing 07 : Amanda Bunce, Planning Manager**

**Public Hearing and possible motion regarding amendments to the Unified Development Ordinance**

Staff oriented Council to the amendments. Staff answered questions from Council related to exemptions. Staff stated the Planning Board recommended approval of all three amendments.

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 WILKIE MADE THE MOTION TO APPROVE THE FIRST TWO AMENDMENTS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

There was further Council discussion as to why businesses and schools are treated differently.

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

## **OLD BUSINESS**

There were no Old Business items for consideration.

## **UNFINISHED BUSINESS**

There were no Unfinished Business items for consideration.

## **NEW BUSINESS**

**New Business 01 : Drew Havens, Town Manager**

**Conveyance and title of land adjacent to our Tingen Road water tower at no cost to the Town**

Staff stated that a phone call was received from land owners wanting to know if the Town would be interested in having this land gifted. The land is a gateway to the Town, and it would be appealing for it to be under our control. We first need to investigate conveyance. We would then come back before Council with all pertinent information.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO INVESTIGATE THE ACCEPTANCE AND CONVEYANCE OF THIS LAND; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**New Business 02 : Shelly Mayo, Planner II**

**Townes at Westford Master Subdivision Plan located at 2812, 2900 & 3300 US 64 Hwy West containing ±55.76 acres and 315 townhomes**

Staff oriented Council to the site. A neighborhood meeting was held.

A representative from McAdmas stated they will consider a solar conduit. They will need to determine the expense.

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

**New Business 03 : Council Member Moyer**

**Discussion regarding sidewalk obstructions caused by placement of chairs along Salem Street prior to the Apex Christmas Parade**

Council stated chairs are being set up earlier and earlier downtown. Some are set up on the curb, roped off, and this makes it hard to walk across the street. He proposed restricting chairs on the curb, downtown on Salem Street, until the festivities are over on Friday night.

Council stated Chief Letteney has talked about the public safety hazard. Staff stated the primary concern was the chairs are coming out earlier and earlier each year. When they are tied to light poles and trash cans, it makes it difficult for people to mill about. We don't want downtown to feel hindered, we just don't want the chairs out until after the events on Friday. Police and CAPA will be on the lookout for early placed chairs and signage will go up. Public Works will remove and tag any chairs in violation. Chairs can start going out once the streets are back open. Business owners are in agreement with this, particularly since they, too, have spoken to PD about the chairs being placed early.

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



## **CLOSED SESSION**

**Closed Session (1) to consult with the Town Attorney privately to preserve the attorney-client privilege, and (2) to discuss a personnel matter**

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

MAYOR OLIVE CALLED FOR RETURN TO OPEN SESSION WITH NO OBJECTION FROM COUNCIL.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE RESOLUTIONS AUTHORIZING EMINENT DOMAIN PROCEEDINGS: FOR THE IMPROVEMENT OF THE APEX WATER SYSTEM AND STREET WIDENING, FOR THE IMPROVEMENT OF THE APEX SEWER SYSTEM, AND PROCEEDINGS RELATED TO THE DEER CREEK SUBDIVISION ELECTRIC LINE PROJECT FOR THE IMPROVEMENT OF THE APEX ELECTRIC SYSTEM. COUNCIL MEMBER SCHULZE 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.

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Donna B. Hosch, MMC, NCCMC  
Town Clerk

ATTEST:

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Lance Olive  
Mayor