



Apex Town Council Meeting Tuesday, August 20, 2019

Lance Olive, Mayor
Nicole L. Dozier, Mayor Pro Tempore
William S. Jensen, Wesley M. Moyer, Audra M. Killingsworth, and
Brett D. Gantt, 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, August 20, 2019, 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, Wesley M. Moyer, Audra M. Killingsworth, and Brett D. Gantt

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

COMMENCEMENT

Mayor Olive called the meeting to order, gave the Invocation, asked for a moment of silent reflection, and led the Pledge of Allegiance.

PRESENTATIONS

There were no Presentations to be made.

CONSENT AGENDA

Consent 01 Minutes of the Regular Town Council Meeting of August 6, 2019

Consent 02 Apex Tax Report dated 06/05/2019

Consent 03 Access easement on Town Property on Beaver Creek Commons Drive

Consent 04 *Design Build Project Utility Construction Agreement (UCA)* between the North Carolina Department of Transportation and the Town of Apex for the relocation of water and sewer utilities impacted by construction of NC 540 (Project R-2721A) and authorization for the Town Manager to execute the same

Consent 05 Town Manager authorization to execute an Encroachment Agreement between the Town and MCG Contracting, Inc. regarding Wake County, LO13R, Old Mill Village, Lot 3, Phase 2, BM2011-00382, 525 Mill Hopper Lane, Apex, NC 27502

Consent 06 Street and parking lot closures for 2019 Apex Music Festival on September 14, 2019

Mayor Olive stated the Town Manager requested an add-on item relating to the reconveyance of two cemetery plots back to the Town as requested by E.C. and Janet Hughes.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA WITH THE ADDITIONAL ITEM.
COUNCIL MEMBER MOYER MADE THE MOTION; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

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

PUBLIC FORUM

Joe Foresta stated he knew the history of the fire station downtown very well. There is a blue stream running through it, and he spoke briefly about water issues that others were having. He talked about options for the building, one of them being an historic site. He stated this could be income generating. He suggested selling the property if it is not going to be rehabbed for a fire station. He felt a new station should be built on the Peakway as was originally planned which would fit the growth. However, he wanted to keep the fire station presence downtown.

PUBLIC HEARINGS

Public Hearing 01 :_Sarah Rayfield, Senior Planner

Amendment to the 2045 Land Use Map and Rezoning Case #19CZ02. The applicant, Kaplan Residential, sought to amend the 2045 Land Use Map from Medium Density Residential to High Density Residential and to rezone approximately ±17.4376 acres, for the properties located at 0, 7208, & 7208B Morris Acres

Road (PINs 0732289587, 0732382530, & 0732382709), from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ.)

To be continued to the September 17, 2019 Town Council meeting
so that a recommendation may be received from the Planning Board.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION TO
CONTINUE THE HEARING AS REQUESTED; COUNCIL MEMBER GANTT SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 02 : Liz Loftin, Senior Planner

Rezoning Application #19CZ09, Linden Lot 22 PUD. The applicant, Dan Ryan Builders, sought to rezone approximately 4.52 acres located at 2236 Olive Chapel Road from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ)

Staff oriented Council to the site. A neighborhood meeting was held. A fee in lieu would be required. The applicant offered an additional transportation condition along with several other conditions. Planning recommended approval with the conditions offered by the applicant. The Planning Board recommended approval. Staff answered Council question related to a cross walk.

Mayor Olive declared the Public Hearing open.

Charlie Yokley, Senior Planner with McAdams and representing the applicant, addressed how the site met the statements and standards. They were proposing a public sidewalk to fill in a gap. Mr. Yokley stated that they wished to add another four conditions which he detailed. He answered Council question as to what would make this development unique. The price range for the houses would start in the \$400,000's.

Ryan Acres, Engineer with McAdams, spoke about the RCA and why they wished to continue with a stormwater control measure. He spoke to Council question about LED lighting in the homes. He spoke further about the cross walk and its characteristics and their willingness to actively address public safety with DOT.

Kyle Damborsky stated he and his neighbors were concerned, stemming from the original Town Hall meeting, about runoff and how it would be mitigated. He also spoke about abutments and how they wanted to see the developers come in as good neighbors.

Maria Geiss stated that during the meeting with the developers, it was stated that the property would be brought to grade. However, lot 22 is a big hole. Two properties have experienced adverse impacts because of drainage, and Ms. Geiss explained how additional water flow is affecting the area.

Mayor Olive declared the Public Hearing closed.

Council asked the applicant questions related to the sedimentation pond.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REQUEST WITH ALL THE CONDITIONS ORIGINALLY OFFERED AND THOSE OFFERED THIS EVENING; COUNCIL MEMBER MOYER SECONDED THE MOTION. COUNCIL MEMBERS JENSEN AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS GANTT, DOZIER, AND KILLINGSWORTH VOTED IN THE NEGATIVE. THE MOTION FAILED BY A 3-2 VOTE.

Council stated he wanted to see the 3% RCA in the development. Council asked if this could be reconsidered at a later date.

Mayor Olive called for a three minute recess.

The attorney explained how Council's request to reconsider could be met.

COUNCIL MEMBER GANTT MADE A MOTION TO RECONSIDER THE VOTE; COUNCIL MEMBER JENSEN SECONDED THE MOTION. COUNCIL MEMBERS GANTT, JENSEN, AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS DOZIER AND KILLINGSWORTH VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 3-2 VOTE.

Council asked the applicant about adding RCA to certain buffers. Mr. Yokley stated they would add to the RCA, but he was not sure if he could keep the same size stormwater pond by doing so. Mr. Acres explained how and why the pond would change and still meet the requirements. Both applicants clarified their desire to add an additional condition related to the RCA.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER GANTT MADE THE MOTION TO APPROVE THE REQUEST WITH ALL THE ADDITIONAL CONDITIONS; COUNCIL MEMBER MOYER SECONDED THE MOTION.

Responding to Council, the applicant stated the new conditions would add to the cost of the housing. Council was appreciative of the cross walk and the safety it will bring.

COUNCIL MEMBERS GANT, JENSEN, AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS DOZIER AND KILLINGSWORTH VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-2 VOTE.

Public Hearing 03 : Lauren Staudenmaier, Planner

Rezoning Application #19CZ13, 2213 East Williams Street. The applicant, Olive Chapel West Associates, LLC., sought to rezone approximately 3.11 acres located at 2213 East Williams Street from Rural Residential (RR) to Neighborhood Business-Conditional Zoning (B1-CZ)

Staff oriented Council to the site. A neighborhood meeting was held. The Planning Board recommended approval; Planning recommended approval with conditions offered by the applicant.

Mayor Olive declared the Public Hearing open.

Jeff Roach, Peak Engineering & Design, representing the applicant, spoke about why this would be a wonderful non-residential site. He committed to an additional condition related to solar. Mr. Roach thanked staff for working with them on the conditions. Mr. Roach answered Council questions related to lighting and how it would be shielded and the option for the dimming of the lights.

Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION TO APPROVE THE REZONING WITH ALL CONDITIONS OFFERED BY THE APPLICANT; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 04 : Liz Loftin, Senior Planner

Rezoning Application #19STC14 (320 and 322 North Mason Street). The applicant, Town of Apex, sought to rezone approximately 1.74 acres located at 320 and 322 North Mason Street from Neighborhood Business (B1) to Neighborhood Business (B1) and Small Town Character Overlay District.

Staff oriented Council to the site. A neighborhood meeting was held. Staff and the Planning Board recommended approval. Council questions were answered related to the overlay district.

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 DOZIER MADE THE MOTION
TO APPROVE THE REZONING; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 05 : Dianne Khin, Planning Director
Amendment to the MORR note on the 2045 Land Use Map

Staff oriented Council to the note. 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 GANTT MADE THE MOTION
TO APPROVE THE NOTE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 06 : Dianne Khin, Planning Director
Annexation Ordinance – Hwy 64 Holdings, LLC (Security Self Storage) property containing 19.22 acres
located at 7300, 7301 and 7325 Vanclaybon Drive, Annexation #660, into the Town's corporate limits

Staff oriented Council to the site. 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 DOZIER MADE THE MOTION
TO ADOPT THE ORDINANCE; COUNCIL MEMBER GANTT SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 07 : Shannon Cox, Long Range Planning Manager
Amendment to Transit Plan Map of the Comprehensive Transportation Plan.

Staff spoke about the amendment as it related to a bus route which will be funded by Wake County and operated by the Town of Cary. Cary and Apex have done further study on how this route would service Apex. The details of the study were explained. Town staff and the Planning Board recommended approval.

Staff answered Council questions related to ridership numbers and why the route was devised as it was.

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 KILLINGSWORTH MADE THE MOTION
TO APPROVE THE AMENDMENT; COUNCIL MEMBER GANTT SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 08 : Amanda Bunce, Current Planning Manager
Various amendments to the Unified Development Ordinance

Staff oriented Council to the three amendments. Council questions were answered related to RCA, practices of other towns, and lights in trees. Staff recommended approval.

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

Council stated she was uncomfortable with the amendments, and conversation ensued as to her reasons why. The rest of Council presented their thoughts. As a result, the Town Manager requested a continuance of the first amendment in order to confer further with staff.

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

Discussion ensued concerning the first amendment going through the Environmental Committee. The Chair for the Committee did not feel this was necessary; she simply wanted more data on from where the numbers came. Council asked for the pros and cons of a 50 foot buffer. The Town Manager would have staff provide the requested information to bring back to Council.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO CONTINUE THE
AMENDMENT ONE ITEM TO OCTOBER 15 TO ALLOW FOR ADDITIONAL STAFF RESEARCH INTO 50 FEET VS. 100 FEET; COUNCIL MEMBER
JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Council added that if information arises concerning this issue, it can be brought back to Council prior to October 15.

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 : Jenna Shouse, Long Range Planner

Updates regarding the Apex Circulator Study, an implementation study for the priority transit route identified in the Town's Comprehensive Transportation Plan

Staff stated the uses of funding; we will be coordinating with Cary. The scope of the program was outlined along with the public input strategy. Council questions related to the latter were answered. The test route resulted in an hourly frequency.

CLOSED SESSION

To consult with Town Attorney concerning (1) the handling of the Town of Apex v. Rubin, and (2) the handling of the Torres v. Town of Apex

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER MOYER

MADE THE MOTION; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

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

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business and without objection from Council, Mayor Olive adjourned the meeting.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Lance Olive, Mayor

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