



REGULAR TOWN COUNCIL MEETING

Tuesday, September 01, 2020 at 6:00 PM
Council Chamber at Apex Town Hall, 73 Hunter Street

Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tem: Nicole L. Dozier

Council Members: Brett D. Gantt; Audra M. Killingsworth; Cheryl F. Stallings; Terry Mahaffey

Town Manager: Drew Havens | Assistant Town Managers: Shawn Purvis and Marty Stone

Town Clerk: Donna B. Hosch, MMC | Town Attorney: Laurie L. Hohe

In attendance were Mayor Jacques K. Gilbert, Mayor Pro Tem Nicole L. Dozier, and Council Members Brett D. Gantt, Audra M. Killingsworth, Cheryl F. Stallings, and Terry Mahaffey. Also in attendance were Town Manager Drew Havens, Assistant Town Manager Shawn Purvis, Town Clerk Donna B. Hosch (remotely), and Town Attorney Laurie L. Hohe.

COMMENCEMENT

Mayor Gilbert called the meeting to order and read a statement of inclusion and diversity related to religion. Mallory Harris, Felton Grove Baptist Church, gave the Invocation, after which Mayor Gilbert led the Pledge of Allegiance.

PRESENTATIONS

PR1 Nicole Dozier, Mayor Pro Tem

Nicole Dozier, Mayor Pro Tem presented the Think Apex Awards

MPT Dozier welcomed everyone to the 2020 Think Apex Awards ceremony and gave background on her creating the Think Apex initiative. She thanked all who made nominations before announcing all those who were nominated in the various categories. Individual or Group Category: Doris Battle, Garrett Raczek, Hector Cuales, Ive Jones, Paul Stam, Stephen West, Sucharitha Murugu, and Tina Sherman. Nominees for the Business Category were: Apex Fencing Academy, Avalon Peaks Apartments, Common Grounds Coffee House and Desserts, Fresh Local Ice Cream, Jenny Midgley Photography, Lake Pine Animal Hospital, and Utica Bakery. Nominees for the Non-Profit Category were: Apex Chamber of Commerce and Apex Public School Foundation.

MPT Dozier read the nomination for the Individual or Group Category, after which she presented the Honorable Mention award to Hector Cuales. She then read the nomination for the Top Thinker in this category, after which she presented the award to Stephen West.

MPT Dozier read the nomination for the Business Category, after which she presented the Honorable Mention award to Common Grounds Coffee House and Desserts. She then read the nomination for the Top Thinker in this category, after which she presented the award to Apex Fencing Academy.

MPT Dozier read the nomination for the Non-Profit Category, after which she presented the Honorable Mention award to the Apex Chamber of Commerce. She then read the nomination for the Top Thinker in this category, after which she presented the award to Apex Public School Foundation.

MPT Dozier stated it has been her pleasure to do this initiative. While things are different, things are still moving on. She thanked all for what they do, all who nominated, and all those in attendance. She was appreciative for what the award winners do every day. MPT Dozier thanked Council and staff for their support.

PR2 Anne Harrison, Simple Gifts Community Garden

Presentation from Anne Harrison, representing Simple Gifts Community Gardens

Ms. Harrison stated that her friend Sandra Webb was in attendance with her. She gave the history of how the Garden got started. A project that stuck in her head was the growing of a community garden. Jean Hack offered her land for the Garden for as long as she was alive, which started in 2009. They have expanded over the years, adding various types of gardens. If a family wanted to join the Garden, it would cost them \$15. If they worked, they could take home part of the produce. The Garden supports five local foodbanks as it is important to get food to those who are food insecure.

Ms. Webb stated food is only one dimension of the Garden. She talked about how the Garden is taken care of using natural elements. They have donated over 20,000 pounds of food to the local foodbanks. They are also creating educational opportunities. Another dimension is the community aspect. Everyone is welcomed, respected, and valued. They have aligned with Apex United Methodist Church, but have quotes posted on their shed from all kinds of traditions. Ms. Webb talked about the other various projects in which they are involved. She hoped Council could find ways to partner with them to continue their effort.

Ms. Harrison stated their future is uncertain with the passing of Ms. Hack. She talked about what is located on the property. She thought the property would make a great park and there would be a lot to be gained by saving what is there. Ms. Webb thanked Ms. Harrison for her work over the last 12 years. Ms. Harrison figured out how to continue to grow the Garden even in the midst of COVID.

The Mayor stated he had been to the Garden, and it is beautiful.

CONSENT AGENDA

- CN1 Donna Hosch, Town Clerk
Minutes of the March 17, 2020 Regular Council Meeting
- CN2 Amanda Bunce, Current Planning Manager
Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the various Unified Development Ordinance (UDO) Amendments of August 18, 2020
- CN3 Lauren Staudenmaier, Planner I
Set Public Hearing for the October 6, 2020 Town Council meeting regarding Rezoning Application #20CZ07 2309 Old US 1 Highway. The applicant, Rich Levert, sought to rezone approximately 1.60 acres for the property located at 2309 Old US 1 Highway (PIN 0720985958), from Rural Residential (RR) and Tech/Flex-Conditional Zoning (TF-CZ #15CZ25) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ).
- CN4 Marty Stone, Assistant Town Manager
Approval of and authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and property owner, Katharine Heinkel, regarding Wake County, NC PIN#0722-68-8817, 727 Meadowside Court, as recorded in Book of Maps 2018, Page 00062, Wake County Register of Deeds
- CN5 Marty Stone, Assistant Town Manager
Approval of and authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and property owners, Hyun J. Woo and spouse David W. Lee, regarding Wake County, NC PIN#0723-60-4354, 2712 Tunstall Grove Drive, as recorded in Book of Maps 2018, Page 00961, Wake County Register of Deeds
- CN6 John Letteney, Police Chief and Vance Holloman, Finance Officer
Budget Ordinance Amendment No. 1 which appropriates Fund Balance in order to purchase body worn cameras for all sworn members of the Apex Police Department
- CN7 Dianne Khin, Director of Planning and Community Development
Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing for September 15, 2020 on the Question of Annexation – Apex Town Council's intent to

- annex MFW Investments, LLC (Colby Crossing) property containing 7.578 acres located along a portion of the future connection of Colby Chase Drive between Merion and Pemberley subdivisions, Annexation #651 into the Town's corporate limits
- CN8 Dianne Khin, Director of Planning and Community Development
Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing for September 15, 2020 on the Question of Annexation – Apex Town Council's intent to annex Kimberly & Loomis Horton, III, Mary Elizabeth Horton, Dwight Marvin Wright, MFW Investments, LLC, and MFWIRA, LLC (Horton Park PUD) property containing 101.356 acres located at 8140, 8252, 8306 and 8308 Smith Road, 0 East Williams Street, 0,0,0,0 & 0 Dezola Street and 5220 Jessie Drive, Annexation #687 into the Town's corporate limits
- CN9 Patrick Lechner, Facilities & Grounds Manager
Approval of and authorization for the Town Manager to sign three-year contract agreements with Gregory Poole Generator inspection/maintenance
- CN10 Patrick Lechner, Facilities & Grounds Manager
Approval of and authorization for the Town Manager to sign three-year contract agreement with FESS Fire protection
- CN11 Mary Beth Manville, Human Resources Director
Auto-renewing contract with Delta Dental of North Carolina, effective July 1, 2020

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Killingsworth made the motion; Council Member Stallings seconded the motion.
The motion carried by a 5-0 vote.

REGULAR MEETING AGENDA

Mayor Gilbert stated there was a request to add a second Closed Session item to discuss the location of a business or industry in the Town of Apex.

Mayor Gilbert called for a motion to adopt the Regular Agenda. Council Member Gantt made the motion with the stated addition; Council Member Dozier seconded the motion.
The motion carried by a 5-0 vote.

PUBLIC FORUM

No one wished to speak during Public Forum.

PUBLIC HEARINGS

PH1 Dianne Khin, Director of Planning and Community Development
Ordinance on the Question of Annexation – Apex Town Council's intent to annex Hector Cuales (Perry Hills Phase 6) property containing 1.66 acres located at 0 and 1105 Tingen Road, Annexation #695 into the Town's corporate limits
Staff oriented Council to the site which is the site Mr. Cuales was recognized for tonight with a Think Apex award. Staff recommended approval.

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

Mayor Gilbert called for a motion. Council Member Dozier made the motion to adopt the Ordinance; Council Member Killingsworth seconded the motion.
The motion carried by a 5-0 vote.

OLD BUSINESS

There were no Old Business items for consideration.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

NEW BUSINESS

NB1 Mike Deaton, Water Resources Director
Waive the \$4,700 Civil Penalty that was assessed to the Center Street Pharmacy property owner on March 19, 2020. The property owner failed to submit an annual inspection report for the on-site stormwater control measure (SCM) in accordance with UDO Section 6.1.12(l) (1).
Staff stated the penalty was for not submitting an annual inspection report for the owner's onsite stormwater control measure as required by the UDO. Over 11 years, none of the SCM inspection reports were submitted in a timely manner. Seven violation notices have been issued, and staff has worked with the property owner to remind them of their obligation. The property owner has stated hardships have made the penalty payment difficult. The SCM is now in compliance, and the property owner states he will not miss future deadlines.

Dr. Raj Polavaram, property owner, stated this has been a sore spot for him and his business partner. He stated they couldn't get the property rented; therefore, they have received no income. They have, however, kept up with the taxes and other things having to do with the property. The inspection is compliant as of October. The other property owner, who lives out of the country, was supposed to take care of this. However, he only paid his half of what was due. Dr. Polgyaram stated he was out of town, and it was not his intention to be non-compliant. He has been trying to do what else was needed on the property which is why he asked for this waiver. He will try to be compliant in the future. Responding to Council, Dr. Polgyaram stated that from now on, he would pay the fees himself. He stated there are hardships between him and his partner.

Council asked what procedures Dr. Polgyaram has put in place so this would not happen again. He restated that he, himself, would pay from this point forward and not rely on his partner who lives outside the country. His partner is not happy because the property is not making money.

Council stated the Town has been very lenient since 2009 and that others also struggle to pay. She asked was there consideration for a flexible payment plan. Also, Dr. Polgyaram stated he would try to be compliant, and trying and doing are two different things. She wanted to be sure that Dr. Polgyaram was treated equitably to someone else who would do the same thing. Dr. Polgyaram stated that no matter what, he will not rely on his partner and pay regardless. As for a payment plan, it would have been tough on him because of the circumstances of the building.

Responding to Council, staff confirmed the property has passed inspection and the report has been received from the consultant.

Council asked what was involved in the inspection process and how much it cost. Staff stated the process, the cost being about \$400-\$600 by the consultant.

Council asked how many of these penalties we assess in a year, staff stating this was the first for a stormwater control measure. Sometimes the requirement is not met, and the person is sent an NOV. This has worked well to get penalties paid. Staff stated the accrual process has been 47 days in this case. Council asked the Town Attorney if we could reduce instead of eliminating the penalty, to which she answered it could be reduced, waived, or stand as is.

The Mayor asked how responsive was Dr. Polgyaram to us as far as communication throughout the process. Staff stated the property owner is tough to get in touch with. We

have used email and phone calls to try to reach him. We have been to the property, but it is vacant. The penalties and NOV were sent to his Cary address.

Council understood situations for this year. She was concerned with the history of how long this has been going on.

Council agreed and stated the penalty was due in April and now we're in September. She asked why are we looking at this now? She wanted to be fair but equitable. She thought we needed to talk more about options. The Town has bent over backwards over the past 11 years. She did not know if this was something we could do for every business in this way. She was okay with reducing the amount, but it needed to make sense what it would be reduced to and a timeframe for payments needed to be set.

Council agreed the history of non-compliance was perplexing – why did this take 11 years. If this was the first time we were trying to issue this penalty and then we waive on doing so, it would take away some of the enforcement action. He was not in favor of a complete waiving of fees. He was happy to see Dr. Polgyaram was in compliance at this point. He was sympathetic because of the times, but wanted some penalty associated with this to settle.

Council agreed. This has been many years of this same problem, and this is concerning. There is no guarantee this won't be an issue next year and so on. She agreed with reducing the amount and possibly doing some type of payment plan.

Council stated he would not support waiving the penalty, because it's a bad precedent. We have our rules and should be able to enforce them. He was okay with some sort of payment plan.

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to reduce the penalty to \$1,500, Council Member Killingsworth seconded the motion.

Responding to Council question, Council explained the \$1,500 was large enough to still feel like a penalty, but he felt it recognized the economic situation and showed some flexibility on the Town's part.

Council stated she needed for this to make sense and wanted guidance from staff as to what a reasonable amount would be. She also wanted to receive from staff what would be appropriate in similar situations.

Responding to Council staff stated our ordinance states penalties up to \$100 per day. It would be hard to come up on the fly with something that's not arbitrary. We would also want to look at how we would handle similar situations. Council stated she would be more comfortable with staff coming up with something in case there were similar situations.

Dr. Polgyaram restated his partner lives outside the country. Therefore, he has taken over the entire responsibility. This will be the last time this happens. If he was given one more chance and he defaulted again, then he would go back and pay the whole amount.

Council stated she was a business owner also, and this was about business decisions and managing business. This was about the history of 11 years of non-payment and not just this year.

Council conversation ensued about doing something outside the policy and making it clear about how they arrived at a reduced number, and more clarity to the policy.

Council stated our rules are crystal clear, and now we're not following them. It is muddling things.

Council stated his goal was to compel compliance and now Dr. Polgyaram is in compliance.

Council stated she wanted to be able to show, should someone else come before Council, that we are being equitable according to the situation. Again, this is September – what happened in April?

Council Member Mahaffey was in agreement with revising his motion for staff to come back with the recommendation of a reduced amount; Council

Member Killingsworth was in agreement to second the motion.

Council Members Mahaffey, Dozier, Killingsworth, and Stallings voted in the affirmative; Council Member Gantt voted in the negative.

The motion carried by a 4-1 vote.

Responding to Council, staff cleared up why this was before Council and not the Board of Adjustment. The Board of Adjustment hears the violation. In this case, the violation is not being contested; the only body that can waive the fee is Council.

NB2 Joanna Helms, Economic Development Director

Extension of a ground lease agreement and an option to purchase agreement with Jack1, LLC regarding the Cash Corporate Center economic development site. Staff briefly oriented Council to the site. Apex entered in a development agreement with the property owner. The site has become NC certified, and all milestones have been reached for pre-development. An addendum to the lease describes an initial term of 3 years with the Town having the option to extend for three more 3-year terms. To extend beyond the initial term, the Town must give the owners a 90-day notice. The initial term expires in December, and staff recommended extending the lease since this is our only marketable industrial site that is shovel ready.

Staff showed charts of the number of site inquiries. There are currently three very active projects looking at the Center. Also, 4 parties have expressed interest in looking at the entire site, and staff explained the terms of this in the lease agreement. Staff stated the site is doing what it was expected to do.

Responding to Council, staff clarified the terms of the agreement to extend. The Town can buy down portions of the property in year three, there being a fixed price.

Responding to Council, staff explained why there have not as yet been any projects, mainly because this is a competitive market.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the extension of the ground lease and the option to purchase agreement; Council Member Mahaffey seconded the motion.

The motion carried by a 5-0 vote.

CLOSED SESSION

CS1 Laurie Hohe, Town Attorney

Closed Session (1) pursuant to GS 143-318.11(a)(3) to consult with the Town Attorney concerning the handling of the matter of Torres v. Tracy Lynn Carter, et al., and (2) to discuss the location of a business or industry in the Town of Apex

Mayor Gilbert called for a motion to go into Closed Session. Council Member Stallings made the motion; Council Member Dozier 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 and without objection from Council, Mayor Gilbert adjourned the Meeting.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Jacques K. Gilbert, Mayor