



| REGULAR TOWN COUNCIL MEETING

April 13, 2021 at 6:00 PM
Council Chamber at Apex Town Hall, 73 Hunter Street

Town 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
Interim Town Manager: Ralph Clark | 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 and Council Members Audra M. Killingsworth, Brett D. Gantt, Cheryl F. Stallings, and Terry Mahaffey. Also in attendance were Interim Town Manager Ralph Clark, Assistant Town Managers Shawn Purvis and Marty Stone, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe. Absent was Mayor Pro Tem Nicole L. Dozier.

COMMENCEMENT

Mayor Gilbert called the meeting to order and led the Invocation followed by the Pledge of Allegiance.

PRESENTATIONS

PR1 Tony Godwin, Interim Chief of Police

Presentation of National Telecommunicator Week 2021 Proclamation

Staff recognized the Telecommunicators, an important function of Police operations. He outlined the work that they do, handling 67,000 calls in 2020, a 62% increase in the past five years. Calls into the center are answered in less than ten seconds. Wayne Faber joined Interim Chief Godwin to receive the Proclamation from the Mayor. Telecommunicator Faber recited a few stories about his work after which the Council shared in the reading of the Proclamation before its presentation to Faber.

PR2 Jacques K. Gilbert, Mayor

Presentation of Earth Day 2021 Proclamation

Council joined the Mayor in the reading of the Proclamation.

CONSENT AGENDA

- CN1 Donna Hosch, Town Clerk and Tesa Silver, Deputy Town Clerk
Minutes of the March 18, 2021 Special Council Meeting, the March 23, 2021 Regular Council Meeting, the March 25, 2021 Special Council Meeting, and the March 31, 2021 Special Council Meeting
- CN2 Donna Hosch, Town Clerk
Ordinance amending Section 6-67 of the Town Code to authorize the Town Clerk to process plot sales in the Apex Cemetery
- CN3 Donna Hosch, Town Clerk
Resolution authorizing the Town Clerk to process plot sales in the Apex Cemetery
- CN4 Jacques K. Gilbert, Mayor
Appoint Council Member Terry Mahaffey as the Council's voting member for the North Carolina League of Municipalities and Interim Town Manager Ralph Clark as the alternate voting member
- CN5 Marty Stone, Assistant Town Manager
Encroachment agreement between the Town and property owners Siddharth Singhvi and wife Anjul Singhvi to install a private fence that will encroach 360 S.F. onto the Town's 20' Public Sanitary Sewer Easement and authorize the Town Manager to execute the same
- CN6 Shelly Mayo, Planner II
Statement of the Town Council and Ordinance for Rezoning Application #20CZ12 Felton Grove High School located at 8550 Stephenson Road. The applicant is Betty Parker for Wake County Board of Education
- CN7 Amanda Bunce, Current Planning Manager
Statement of the Apex Town Council pursuant to G.S. 160D-605(a) addressing action on the Unified Development Ordinance (UDO) Amendment of March 25, 2021
- CN8 Sarah Van Every, Senior Planner
Set Public Hearing for the April 27, 2021 Town Council meeting regarding Rezoning Application #21CZ08 Cash Corporate Center. The applicant, Town of Apex/Jack 1, LLC., seeks to rezone approximately 121.30 acres located at 0 Pristine Water Drive, 2100 Production Drive, 0 and 1201 Burma Drive (PINs 0751138504, 0751244221, 0751143089 and a portion of former PIN 0751136687) from Light Industrial-Conditional Zoning (LI-CZ #18CZ19) to Light Industrial-Conditional Zoning (LI-CZ).

- CN9 Marty Stone, PE, Assistant Town Manager
Budget Ordinance Amendment No. 17 which appropriates funds to pay amounts due under the first amendment to the Utility Infrastructure Reimbursement Agreement with WS-JPA, LLC and which authorizes a transfer of funds from the Water Sewer HB 463 Capital Fund to fund the payment
- CN10 Dianne Khin, Director of Planning and Community Development
Ordinance correcting, replacing, and superseding original Annexation Ordinance No. 2020-1215-25 approved by Town Council December 15, 2020
- CN11 Liz Loftin, Senior Planner
Statement of the Town Council and Ordinance for Rezoning Case #21CZ02, Abbey Spring PUD, Isabel Worthy Mattox, petitioner, for the property located at 0 W. Williams Street (PIN 0742026247)
- CN12 Vance Holloman, Finance Director
Proposal from Pinnacle Bank in connection with the sale and issuance of a general obligation bond of the Town of Apex, North Carolina
- CN13 Adam Stephenson, Engineering Supervisor
Construction contract and authorization for the Town Manager to execute same for EB-6019 Laura Duncan Road Pedestrian Improvements
- CN14 Craig Setzer, Interim Director, Parks, Recreation and Cultural Resources
Appoint Mary Lee Blatchford as the new senior citizen representative for the Parks, Recreation and Cultural Resources Advisory Commission
- CN15 Adam Stephenson, Engineering Supervisor
Resolution authorizing dedication of public right of way and granting a permanent maintenance easement to the NC Department of Transportation
- CN16 Megan Pendell, Sustainability Coordinator
Appoint Kimberly Pierson and Patrick Adams as new members on the Environmental Advisory Board (EAB)
- CN17 Megan Pendell, Sustainability Coordinator
Appointment of Chair and Vice-Chair positions on the Environmental Advisory Board (EAB)
- CN18 Michael Deaton, Water Resources Director
Water main construction contract to JSmith Civil, LLC and authorization for the Town Manager to execute the contract on behalf of the Town

CN19 Michael Deaton, Water Resources Director

Fee-in-lieu for 482 linear feet of 12" watermain as part of the Jordan Lutheran Church development. Due to water quality (long dead end line with no services), this section of water should not be permitted and built at this time. Once development occurs at adjacent properties and this section of water is required, the fee-in-lieu funds can be utilized.

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Gantt made the motion; Council Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

REGULAR MEETING AGENDA

Mayor Gilbert stated that staff requested to remove New Business 03, Development Agreement with BIN - APEX LLC, from the Agenda.

Mayor Gilbert called for a motion to adopt the Regular Agenda. Council Member Mahaffey made the motion with the stated revision; Council Member Stallings seconded the motion.

The motion carried by a 4-0 vote.

PUBLIC FORUM

Maria DeJesus, domestic violence survivor, thanked the Mayor and PD for their assistance in the past. She stated she was aware the Town could not release personal information. She, instead, was asking for public evidence in seeking justice for issues related to matters against the Apex PD. She spoke about being grateful to live in Apex and wanting to make the Town better and for it to be the example. She did not want to continue hearing the Town being degraded. Ms. DeJesus expressed desire to set up a meeting with the Mayor and/or Council to discuss what can be done in the community in relation to the Police Department.

Nikola Phoenix, Peak of the Vine, spoke about a sound barrier between his property and the neighborhood. He wanted a spot cleared where food trucks may be parked, not taking up parking lot spaces. He asked for an electrical outlet to be installed close to his property.

PUBLIC HEARINGS

PH1 Dianne Khin, Director of Planning and Community Development

Ordinance on the Question of Annexation - Apex Town Council's intent to annex Jordan Lutheran Church property containing 6.22 acres located at 1201 Chapel Ridge Road, Annexation #708 into the Town's corporate limits

Staff oriented Council to the site and stated that 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 Mahaffey made the motion to adopt the Ordinance; Council Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

PH2 Dianne Khin, Director of Planning and Community Development

Ordinance on the Question of Annexation - Apex Town Council's intent to annex MFW Investments, LLC (portion of PIN #0751 21 6689 located at 0 East Williams Street), Trinity Apex North 100, LLC (portion of PIN #0751 32 3228 located at 5125 Jessie Drive) and Horton Park MF, LLC (portion of PIN #0751 31 9308 located at 5101 Jessie Drive) properties (Horton Park PUD), as recorded in Book of Maps 2021 Pages 128-134 containing ±1.139 acres, Annexation #709 into the Town's corporate limits

Staff oriented Council to the site, stating that the majority of Horton Park had already been annexed. This was a clean up to get the small parcels annexed which were originally left out. 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 Gant made the motion to adopt the Ordinance; Council Member Stallings seconded the motion.

The motion carried by a 4-0 vote.

PH3 Shelly Mayo, Planner II

Quasi-Judicial regarding a Major Site Plan for Felton Grove High School located at 8550 Stephenson Road

Staff stated the requestor asked for this Hearing to be continued to the April 27, 2021 Regular Council Meeting.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to continue the Public Hearing to the April 27, 2021 Regular Meeting; Council

Member Stallings seconded the motion.

The motion carried by a 4-0 vote.

PH4 Amanda Bunce, Current Planning Manager

Various amendments to the Unified Development Ordinance (UDO)

Staff oriented Council to the various amendments. Staff answered Council questions related to uses which may have been/were grandfathered and special use permit allowances. The Planning Board recommended approval.

Staff answered questions related to typographical errors and explained how these are found and when they are brought before Council.

Staff Ben Bronstein read a public comment which was emailed supporting the use.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the Amendments; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

PH5 Jenna Shouse, Long Range Planner II

Text amendments to Advance Apex: The 2045 Transportation Plan and Bike Apex: The Comprehensive Bicycle Plan to clarify that street-side greenways are recreational facilities

Staff oriented Council to the amendments. Planning staff, the Parks and Recreation and Cultural Resources staff, and the Planning Board all recommended approval.

Staff answered Council questions related to sidepaths and sidewalks and clarification of language.

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 Killingsworth made the motion to approve the Amendments; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

OLD BUSINESS

OB1 Vance Holloman, Finance Director

Bond order authorizing the issuance of up to \$42 million of Street and Sidewalk Improvement Bonds subject to the approval of voters by referendum on November 2, 2021, directing the Finance Officer to file with the Town Clerk a Sworn Statement of Debt and a Statement of Total Estimated Interest, and calling for a public hearing on April 27, 2021 concerning the validity and necessity of the bonds

Staff stated the Resolution would move forward the process of possibly authorizing and issuing up to \$42 million of street and sidewalk bonds. He stated the three processes which would follow adoption of the Resolution. He stated the authorizations and processes which have occurred as a result of Council's previous action.

Staff and our Bond Counsel discussed uncertainty about the referendum date. None of the attorneys were aware of any legislation introduced which would prevent the Town from having this Referendum in November. However, he suggested that at the Council Meeting on April 27th that we might elect to defer establishing the date of the Referendum. The other actions could be addressed and would allow LGC approval of the bonds. Staff clarified for Council the order of the forthcoming processes and actions. Council stated that from what he was hearing, he was confident we would have an election in November.

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to approve the request as presented but removing the November 2, 2021 date;

Council Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

OB2 Vance Holloman, Finance Director

Guidelines for the Town's Customer Assistance Program, an agreement with Western Wake Crisis Ministries to assist the Town in determining eligibility of customers to participate in the program, and authorizing staff to execute the agreement. Also, Budget Ordinance Amendment No. 18 which appropriated funds to provide assistance to eligible customers and pay associated administrative cost.

Staff stated this program would help those having difficulty paying their utility bills because of COVID. Our past due accounts are up a bit since January. He explained the percentages of revenue and how payments are allocated to the various Funds. 1,842 accounts are currently in jeopardy of disconnection, the average balances increasing. Payment plans continue to increase, and staff spoke about the length of the payment plans. The stipulations of how funds would be added to customer accounts was stated as well as how disconnections could be deferred. Western Wake's role was outlined.

Staff answered Council questions from conversation which ensued related to prorating amounts according to incomes.

Council Member Killingsworth stated that because she was on the Board for Western Wake, she would not comment and would recuse herself from the vote. Responding to Council, staff stated we would look into extending allowances to Duke customers. Conversation ensued as to legislative regulations as to how monies could be spent.

Council asked to continue this matter to the next meeting to allow for more discussion on extending a cutoff date and prorating amounts.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to continue the matter to the April 27, 2021 Council Meeting for further discussion on a cutoff date and a proration amount; Council Member Mahaffey seconded the motion.

The motion carried by a 3-0 vote.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

NEW BUSINESS

NB1 Dianne Khin, Director of Planning and Community Development

Waive two \$500 civil penalties (\$1000 total) assessed to Peak of the Vine at 301 N. Salem Street for holding outdoor events without Temporary Use Permits in December 2020

Staff oriented Council to the penalties. Staff recommended that the penalties be waived since the business had been operating in compliance at the time. There was one complaint this weekend about the food truck noise.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the request; Council Member Mahaffey seconded the motion.

Council discussion ensued about this subject matter going before a Planning Committee meeting. Council stated he understood the issues with the neighbors had gotten better and mentioned what needs to be discussed moving forward. Responding to Council, staff explained the types of temporary use permits.

The motion carried by a 4-0 vote.

NB2 Angela Reincke, Parks and Greenways Planner

Fee-in-lieu of dedication for the Yumeewarra Farm Assembly Master Subdivision Plan with credit for construction of street side greenway

Staff oriented Council to the location of the site. The Parks, Recreation, and Cultural Resources Commission recommended a fee in lieu with credit for the construction of the street side greenway.

Mayor Gilbert called for a motion. Council Member Stallings made the motion to approve the request; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

NB3 Joanna Helms, Director, Economic Development
Development Agreement with BIN - APEX LLC and to authorization for the Town Manager to execute the same

This item was removed from the Agenda as requested by staff.

UPDATES BY TOWN MANAGER

TM1 Ralph Clark, Interim Town Manager
Updates on Town operations by Interim Town Manager Ralph Clark

Staff stated:

- The Senior Center opening would be delayed to about early August due to the inability to receive the materials to finish the flooring.
- He presented a list of initiatives/programs outside of the normal business operation, primarily hoping this type of list would be of assistance to the new incoming manager and to the Council.
- Garner is the only municipality interested in early voting, with nothing beyond five days. He presented our early voting figures from the last election. After some discussion, Council stated Apex wished early voting for eight days, regardless of what Garner decides to do.
- The American Legion wanted to install emblem poles around the 911 memorial downtown, and renditions had been submitted. Staff clarified the planting plans in the area. Council was in full support of this project with collaboration with the Planning Department.
- Idling of the trains was checked into and would be monitored. Hopefully, this was an isolated incident.
- The advertisement for the Police Chief went out this week. This will coordinate with Council schedules and the new manager being in place so that s/he would be a part of this process. There was discussion about a possible second interim Police Chief, staff explaining that the current interim Police Chief's time would be monitored/adjusted to ensure any extension of his time with us.

WORK SESSION

WS1 Mayor and Town Council
Discussion regarding the impact of new residential development on school capacity

The Mayor stated this was a matter of importance and that everyone involved wanted what was best for the community. The Mayor stated he had questions from Council to the School System.

Marcella Rorie, Long Range Planning, shared information about the sizes of schools they typically build and the number of students they are able to handle. Capp Schools are a short-term solution to overcrowded schools. Conversation ensued about voluntary reassignments. Betty Parker, Real Estate Services, spoke about the current school opening schedule.

Council conversation ensued about the overcrowding of schools seeming to be getting worse. Ms. Parker stated they are looking for more locations in Apex with Planning providing some input. She talked about what they would be looking for in a site. They are being outpaced across the counties with how many projects they can/do start vs. the number of developments coming on line. The market is responding to this with charter schools and home schooling. Ms. Rorie stated they meet with Planning staff annually for whatever is on the books as far as developments. With new schools, they also look at innovative swing spaces. Explained was the process when an existing school is renovated. Ms. Parker talked about their seven-year CIP process and their reassignment options. She explained the intricacies of multi-track, year-round schools.

There was discussion about most parents wanting their children to attend public schools, particularly in Wake County. Explained was how charter schools decrease funding to public schools. Transportation (buses) are run as efficiently as possible. There is a 1 ½ mile walk zone around the schools if this can be safely navigated by students.

Council asked how many students attend Apex schools who don't live in Apex. Ms. Parker will get back to Council with that answer. If Apex stops development and other municipalities don't and empty seats arise in Apex, those seats would be filled by surrounding municipality students. Ms. Parker spoke about enrollment forecasts.

Question arose -- will denying residential in Apex affect school capacity? Ms. Parker responded that there are so many variables that there is no clear answer. Council asked what else can we do? Council talked about more swing schools and modular schools. Council asked about decreasing our

requirements to increase capacity. Council stated we would be glad to get help with certain DOT recommendations.

Questions from the development community were addressed, with there being more conversation about types of schools and capacity. Brendie Vega, WithersRavenel, spoke about Council needing to be clear on what it wants. There was no indication of non-support except from one Council Member when Council was first approached with this. Council talked briefly about moratoriums and project sizes.

Mayor Gilbert thanked all for the discussion. The Interim Town Manager asked Council to allow staff to do further investigation into the situation and get back to them.

CLOSED SESSION

CS1 Steve Adams, Easement Acquisition Specialist; Shawn Purvis, Assistant Town Manager
Pursuant to NCGS 143-318(a)(5) to give staff direction concerning the Town's negotiating position to acquire real property

Mayor Gilbert called for a motion to go into Closed Session. Council Member Stallings made the motion; Council Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

With no objection from Council, Mayor Gilbert called for a return to Open Session.

ADJOURNMENT

With no further business and without objection from Council, Mayor Gilbert adjourned the meeting.

Donna B. Hosch, MMC, Town Clerk

ATTEST:

Jacques K. Gilbert, Mayor

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