



APEX TOWN COUNCIL MEETING

TUESDAY, FEBRUARY 2, 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, February 2, 2016, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street.

COMMENCEMENT

Mayor Olive called the meeting to Order, Council Member Schulze gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : Russell Dalton, Transportation Engineer

The Apex Peakway Southwest Connector Feasibility Study (Phase 1) is concluding in February and staff will discuss the findings and next steps for the project

Staff stated this connection of the Peakway will go across the railroad track. A loop around Apex has been on our long term plan, and it's one of our top priorities for transportation. This is one of the last two sections to complete the loop; the last section will be finished in another few years. The voters approved the transportation bond last year for \$1.5 million, and this is one of the projects included in the bond.

Staff detailed the process of identifying alternatives, obtaining public input, and providing information to Council and the public. The feasibility study is finalized, and we're now working on the NEPA phase. We must consider any impacts prior to spending the LAPP funds. Staff presented the three alternatives, number one being the simplest. The pros and cons of each alternative were given. Going forward through the process, a preferred alternative will be presented to Council. However, Council will not be the ones making the final selection.

Staff, responding to Council, stated alternative one will have four lanes on the bridge. Alternative two also would have four lanes on the bridge. Sidewalks will be included on the loop and the Peakway.

CONSENT AGENDA

- Consent 01 E-One Heavy Rescue apparatus from Fire Connections, Inc. using the Houston-Galveston Area Council Buy (H-GAC) Government Procurement Program. Included is a budget amendment to approve \$31,000 in additional funds to cover the inclusion of a mobile breathing air compressor, which will be offset by revenue gained through the sale of the current rescue apparatus
- Consent 02 Close parking lot at Chamber of Commerce on Sunday, April 24th from 6:00 am until 3:00 pm for an outdoor art show
- Consent 03 Construction contract and authorization for the Town Manager to execute same for Pedestrian Improvements at NC 55 & S Salem Street
- Consent 04 Street closure requests for Apex Music Festival (formerly Apex Jazzfest)
- Consent 05 Set Public Hearing for the February 16, 2016 Town Council Meeting regarding Rezone #15CZ18 Goodwin McNair PUD and Ordinance, 122.972 acres located west of Richardson Road between Olive Chapel Road and Humie Olive Road, from R-80 W and Rural Residential to Planned Unit Development Conditional Zoning (PUD-CZ), and to amend the 2030 Land Use Map from Rural Residential and Medium density Residential to Low Density Residential
- Consent 06 The applicant has requested that this item to have the public hearing on March 15, 2016.
Motion to set Public Hearing for the February 16, 2016 Town Council Meeting regarding Rezone #15CZ33, West Village PUD, 163.64 acres located at the Northwest quadrant of the intersection of Kelly Rd and Old US 1 Hwy from Rural Residential, Residential Agricultural, and Office and Institutional to Planned Unit Development Conditional Zoning (PUD-CZ)
- Consent 07 Set the Public Hearing on February 16, 2016 for rezoning application #16CZ03 (US 64 Hwy/Old Jenks Road/Davis Drive) to rezone 45.1423± acres located on the north side of US 64 Hwy, west side Old Jenks Road and Davis Drive to the east and west from Residential Agricultural (RA), Rural Residential (RR), Office & Institutional (O&I) and Planned Commercial (PC) to Planned Commercial Conditional Zoning (PC-CZ)
- Consent 08 Set Public Hearing for the February 16, 2016 Town Council Meeting regarding Rezoning Application #16CZ04. The applicant, Jeremy Spivey with JS Development, seeks to rezone approximately 18.79 acres located Green Level West Road from Rural Residential to Low Density Conditional Zoning.
- Consent 09 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 Jean and John Goodwin and Colin and Bridget MacNair property containing 123.546 acres located at 2301 and 2505 Richardson Road, Annexation #548 into the Town's corporate limits
- 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 Susan Castlebury, Trustee, Benjamin Whitley, Doug Whitley POA, Charles Wilkinson, Billy Wilkinson, 6101 Collins LLC/Dallas Herndon Heirs, Virginia Wilkinson, and Mary Lou Breedlove Heirs property containing 46.247 acres located Old Jenks Road, east of NC 55, Annexation #569 into the Town's corporate limits
- Consent 11 Resolution of Intent to consider the closing of a portion of Mt. Zion Church Road and to call for a Public Hearing at the March 15, 2016 Council Meeting
- Consent 12 Contract for audit services for the fiscal year ending June 30, 2016
- Consent 13 Statements of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of January 19, 2016

Consent 14 Budget Ordinance Amendments 16 and 17 for replacement of approximately 1300 manual read residential water meters with automated meters which can be read by drive-by collectors

Mayor Olive asked for clarification of the [underlined] note on Consent 06. Staff stated the applicant requested this after the public hearing notice was sent out. The note was to avoid people showing up for a hearing that was not going to happen. Also, this way the item will not need to be re-advertised.

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

REGULAR MEETING AGENDA

Mayor Olive asked if there were any requested modifications to the Regular Agenda. With there being none,

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

PUBLIC FORUM

Michael Barnhart, representing homeowners abutting the intersection at the Peakway, stated that because of increased traffic, they are ecstatic to see the Peakway come together. They want to keep a small town feel, and the way to do this is not to have large overpasses in a residential area – it devalues homes. Mr. Barnhart felt the underpass was better and gave reasons why. He understood the cost concern, but wanted to make sure the aesthetics remain as they are in order to keep that small town feel.

Tom Colhoun stated he sent information to Council the previous week. He was concerned with the change in property uses proposed by the Economic Development Committee related to mixed use in certain areas. This is a gross injustice as the Plan calls for mixed use as a component. The reduction in density proposed by the Planning Committee in the ETJ will reduce property values. If talking of value, then this should be against the law or property owners should be compensated in some way. This proposal is in direct conflict with bringing affordable housing to Apex. The kiosk in the Town Hall lobby says that Apex is open for business, but it's really only for the businesses that Apex wants. Lidl is one of the

largest grocery stores in America and we wouldn't let them come. We are letting businesses go to other municipalities.

Lisa Burleson stated she previously wrote to Council about signs and lights in school zones and asked for quicker movement of these types of projects. We need to give staff full resources to maintain and install these. At the Tingen and Salem intersection, we can't wait for years for traffic congestion to be taken away from it. She wanted the same type of service given to the principal who requested changes and got them immediately. Ms. Burleson talked about one safety hazard being exchanged for four at Apex Elementary.

Mayor Olive stated that regardless of what happened in past, we do have new changes in the form of four new faces. There will be a conversation with the Manager later to get up to speed on this.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

This item is continued from the January 19, 2016 meeting.

Public Hearing and Ordinance on the Question of Annexation - Apex Town Council's intent to annex Smith Farm PUD properties containing 271.862 acres located on the north side of Olive Chapel Road, east of the American Tobacco Trail and north of Richardson Road, Annexation #562 into the Town's corporate limits

and

Public Hearing 02 : Michael Clark, Senior Planner

This item is continued from the January 19, 2016 meeting.

Public hearing and rezoning application #15CZ32 (Smith Farm) and Ordinance to rezone 23 parcels totaling 270.514± acres located south of US 64, east of the American Tobacco Trail, and north of Olive Chapel Road, from Rural Residential (RR) and R-80W to Planned Unit Development - Conditional Zoning (PUD-CZ)

Staff oriented Council to the site, for which the applicant was requesting a rezoning. A neighborhood meeting was held. Staff recommended approval with modifications as did the Planning Board. Staff clarified setbacks in response to question by Council. The applicant proposed nonresidential acreage of a little over 37 acres, Council stating they would need 60 acres in the mixed use area. Staff stated this would be clarified by the applicant.

The applicant, Jason Baron of Lennar Homes, was in attendance with Stewart Jones, Jones and Crossen Engineering, and other representatives of Lennar Homes. Mr. Baron stated the setback was in error and had been corrected. This PUD was a unique concept; they wanted to do something different. The Olive farmhouse, which has been onsite for 100 years, is something they wish to preserve. They studied the Urban Agrarian Community concept in housing across the country. He explained what this entails and to

whom this concept appeals. The housing options will be intermixed – there will not be a high-priced area and a lower-priced area. Mr. Baron identified the key components which Lennar feels are ideal for a mix of uses. He pointed out Apex is underserved with product types under \$400,000. There will be 80 contiguous acres of non-residential or mixed use acreage. This development will have a workforce housing option, and four new schools will be open by the time this development is ready for occupancy.

Deck Airpark and Lennar have met, and Deck Airpark recommended a navigation easement. Mr. Baron stated this is not the right time to talk about this. The applicant is agreeable to informing residents in phase 4 near the site of the Airpark that it is there. He stated the non-residential or mixed use calculations were revised to 19%, lower than our standard of 30%.

Mayor Olive declared the Public Hearing open.

In opposition, Tim Royal, representing neighbors on Airpark Drive, wanted to limit the land being rezoned. They are supportive, however, of a development. They have met with Smith Farm representatives and most of their concerns were addressed. This is a federally-approved airport activated in 1962. It is the oldest private airport in Wake County. One of the main concerns is airplanes going in and out safely without any obstruction. He explained they don't need the adjoining property to land. He stated there have been no issues over last 50 years from anyone about their coming in and out, and he talked about obstructions at the end of the runway. Mr. Royal listed their concerns. They believed the solution to their concerns was an aviation easement, but the applicant told them now is not the time for this. He talked about the legality of rezonings. They would like to see a condition to the rezoning that the use of the airport as it stands now not be interrupted. He asked Council not to rezone tonight until all issues are resolved.

In opposition, Gabe Carillo talked about growth and encouraged Council to do it the right way.

Mayor Olive declared the Public Hearing closed.

Council asked Mr. Royal if there was an agreement for the cleared out section, to which he answered that the property owners have given them this as a safety buffer for the airplanes to come in and out. That agreement is valid until the FAA or neighbors in the area deem it no longer necessary. The height limitation was not known because this is determined by FAA. But single family homes would not provide an obstruction. Mr. Royal was not sure of the dimensions of the agreed-upon area.

Mr. Jones stated the applicant has agreed to an aviation notice where the homeowners would be notified of Airpark and noted that this sets a precedent. Council asked where was the wording, and Mr. Jones stated it was on the recorded plat. There is no easement. Mr. Baron pointed out the property is too huge to give a flight notice condition to all those in the development; this is unrealistic.

Council stated this is an issue between the two land owners, not for the Town of Apex. Council asked would it be responsible of us to allow houses at the end of a runway. Council wanted a larger notification area than just Phase 4. Mr. Baron stated they will modify to include the entire development. Council talked about the safety of pilots coming in and out and maybe putting in a raised bed. Council talked about the 19% vs 30% mixed use, stating this was a slight of hand. Council felt the easement should be there for safety if nothing else. Council stated that as long as people are notified, it's their choice as to buy in that area.

Responding to Council, Mr. Royal stated the airport is not used much during the winter because it's a grass strip. During the summer, sometimes it's used daily, sometimes 2-3 times a week. Council felt there could be a stub road put in to be done with the problem. Mr. Baron stated they were not yet at this point. However, they did not want to do anything to hurt the safety of the pilots.

Mayor Olive cautioned looking at an easement as a way to turn this down. He explained a prescriptive easement. Mixed use percentage, however, was a condition upon which to consider denial.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE
THE ANNEXATION; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.

Council stated he liked the subdivision but not the 19%. It would be a slam to Council to allow this. If they could find a way to add land, then he could go with it. From an economic development standpoint, we need to set land aside for quality businesses.

Council stated having a large parcel of 80 acres is a lot.

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

MAYOR OLIVE CALLED FOR A MOTION ON THE REZONING. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE WITH THE CONDITION TO NOTIFY ALL PARCELS OF THE DEVELOPMENT OF THE AIRPORT IN PLACE OF AN EASEMENT; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

Council stated the applicant had reached out to the school system, and she hoped they would continue to work with the people in attendance on this evening. The development respects and preserves NC history and she hoped the applicant would respect the airport history as well. She was disappointed about the lack of 30%, but she was glad to see a diversity of products which will draw a diversity of people.

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.

Mayor Olive called for a five minute recess.

Public Hearing 03 : Drew Havens, Interim Town Manager

Public Hearing regarding the formulation of the Fiscal Year 2016-2017 Annual Budget

Staff stated this was an opportunity for the public to provide their input to the budget.

Jeff Roach stated a site plan was coming through for a school on Haddon Road, and he was concerned about no sidewalks on the north side. Back in the 90's when the subdivision was put in, sidewalks were not included. Abby Knoll and Black Run have a long strip with no sidewalks, and this would not meet current standards. He would like to see sidewalk extensions addressed.

Kate McDonald asked Council to allocate funds to make Apex a tree city – a nationwide program for communities to expand their trees. Cary, Raleigh, Durham, and Chapel Hill are such cities. She explained the benefits of the program and the pluses to having more trees. She also explained the four standards that have to be met prior to applying. Ms. McDonald encouraged Council to seriously consider this.

Lisa Burelson talked about the resurfacing of tennis courts. John Brown [Parks and Recreation Director] has been proactive in getting this into his budget through grants, etc. She talked about how the courts could be used, including for lessons. Ms. Burelson asked that Council support staff to get the courts redone this summer.

Dick Beaver was in agreement with Ms. McDonald regarding Apex being a tree city. He invited Council to observe the entrances to The Villages where the trees were needlessly bulldozed. We are losing trees too quickly.

Brett Ganntt talked about the sidewalk on South Salem. He was happy that it was near completion. However, he was disappointed that Pizza Hut was going in near downtown Apex. He would have rather seen a small business encouraged to settle in that spot.

Steve Allrich liked the consolidation of the utility bills. However, they don't show historic views which would be good for folks to conserve and to see if they have leaks. He would like to see better practices in this area adopted.

OLD BUSINESS

There were no Old Business items for consideration.

UNFINISHED BUSINESS

Unfinished Business 01 : Stacie Galloway, Communications Manager

Continued discussion of logo entries

Staff provided a quick history of this item. Mayor Olive stated there are now five logos to consider vs. two from before. He wanted Council to think carefully about this, because it would say so much about Apex. He would like to have a conversation and then schedule a workshop for Council to talk about the elements they liked and then to create a word list. He did not feel this would be able to be accomplished on this evening.

Council wanted to get feedback from staff as she liked what she saw previously. After a bit of discussion about what was liked about each design, Mayor Olive stated this could be hashed out in a workshop. We can take what we like about each and put those into one design by the graphic designers. The prize for this was \$500, and Council asked what would happen if we took bits of each design. All should be compensated. Council stated he'd spoken with the Town Attorney and would like the logo trademarked. Mayor Olive stated this would not replace the seal, rather be something informal that could be used. It will be decided when this meeting will be.

Unfinished Business 02 : Dianne Khin, Planning Director

Discussion of Apex High School student parking in residential subdivisions

Staff stated students and parents had discussed this previously with Council and the potential hardship to the students. Council stayed the matter for further consideration. Staff read their recommendation which would go through the regular recommendation process. This would be a temporary measure to allow parking through the end of the school year. A property owner would need to obtain a temporary use permit to park in their paved driveway. Staff stated that because several departments would be involved, it would take less than two weeks to obtain. Staff did not think there would be many applicants.

Council discussed allowing parking as is currently since we're so late in catching this, nowhere to park being a hardship, and concern about safety when kids are crossing and cars are parked close to corners. Council stated we have ordinances; and if we're not going to back them up, then why have them. We will also embarrass ourselves. What staff proposed still gives the kids a place to park.

Council talked about enforcement. The Town Attorney stated we have ordinances in place and they need to be enforced. Even though there are no objections in this location, the problem will come when someone else does this and they have nothing to do with Apex High School – they just want to use their lot as a commercial lot. If enforced on the latter, we could be slammed. That's why we'd use the temporary permit through the end of the school year. Council spoke about not having enough people to enforce our rules.

NEW BUSINESS

New Business 01 : Dianne Khin, Planning Director

Set Public Hearing for the February 16, 2016 Town Council Meeting regarding various amendments to the Unified Development Ordinance

Staff detailed the four amendments.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO
SET THE PUBLIC HEARING; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 02 : Council Member Wesley Moyer

Changes to the wording of the Charter for the Parks, Recreation, and Cultural Resources Committee

Council explained the changes to a few of the words of which Mayor Olive was okay. The Mayor stated he thought the changes were good and in the right direction for the intent of the Committee.

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

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR OLIVE ADJOURNED THE MEETING.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Lance Olive
Mayor