



## Apex Town Council Meeting

Tuesday, September 4, 2018

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, September 4, 2018, 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 Assistant Town Manager David Hughes, Town Clerk Donna B. Hosch,  
and Town Attorney Laurie L. Hohe

### **COMMENCEMENT**

Mayor Olive called the meeting to order, Melissa Bolton from Hope Chapel gave the Invocation, and  
Mayor Olive led the Pledge of Allegiance.

### **PRESENTATIONS**

**Presentation 01 : Jennifer Park, CHES, MPH, Director of Local Program Development and Regulations**

**N.C. Division of Public Health, Tobacco Prevention and Control Branch**

**Tobacco-free policies and their public health benefits**

Ms. Park presented an overview of the results of data reports on tobacco and electronic cigarettes, local  
government authority to regulate smoking, and evidence-based options. She spoke about preventative  
measures and solutions towards cessation.

Research has been conducted regarding tobacco consumption in parks, and Ms. Park presented reasons  
why it is harmful in this environment. Information available for those who wish to quit smoking was given,  
along with her agency's contact information. Ms. Park answered Council questions related to the  
inclusion of greenways in a no smoking policy, the increase in both forms of smoking products, and the  
risk of second hand smoke from both products.

Presentation 02 : Mary Kate Morookian, Transit Service Planner, GoTriangle  
Update on the progress of the Wake Transit Bus Implementation Plan

Ms. Morookian expounded on what the Plan would mean for Apex, beginning as early as 2020. She overviewed the Youth Go Pass. Questions from Council related to limited and ad hoc stop service, charging stations, fare rates for adults, and smart [rate] cards were answered.

## **CONSENT AGENDA**

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- Consent 01 Minutes of the Regular Town Council meeting of August 21, 2018
- Consent 02 Amendment to Section 20-164 with the addition of subsection (30) establishing No Parking zones on all legs of the intersection of E Chatham Street and N Hughes Street for the distances specified
- Consent 03 Agreement with Background Investigative Bureau LLC to conduct background checks on volunteers (coaches and instructors) associated with programs offered by Parks, Recreation, and Cultural Resources
- Consent 04 Cemetery Refund Request from Estar Creech for Lot 185 Plots A and B in the Apex Cemetery
- Consent 05 Master Agreement, valid through June 30, 2021, with CDM Smith and authorizing the Town Manager to execute same for On-Call Professional Services for Water Distribution and Sanitary Sewer Collection
- Consent 06 Master Agreement, valid through June 30, 2021, with Falcon Engineering and authorizing the Town Manager to execute same for On-Call Professional Services for Environmental, Geotechnical, and Construction Services
- Consent 07 Master Agreement, valid through June 30, 2021, with Highfill Infrastructure Engineering and authorizing the Town Manager to execute same for On-Call Professional Services in the following areas of expertise: (1) Wastewater Treatment, and (2) Water Distribution and Sanitary Sewer Collection
- Consent 08 Master Agreement, valid through June 30, 2021, with Hydrostructures and authorizing the Town Manager to execute same for On-Call Professional Services for Water Distribution and Sanitary Sewer Collection (inflow/infiltration issues and rehabilitation)
- Consent 09 Master Agreement, valid through June 30, 2021, with McAdams and authorizing the Town Manager to execute same for On-Call Professional Services in the following areas of expertise: (1) Surveying, (2) Stormwater.
- Consent 10 Master Agreement, valid through June 30, 2021, with S&ME and authorizing the Town Manager to execute same for On-Call Professional Services for Environmental, Geotechnical, and Construction Services.
- Consent 11 Master Agreement, valid through June 30, 2021, with Taylor Wiseman & Taylor and authorizing the Town Manager to execute same for On-Call Professional Services for Surveying
- Consent 12 Master Agreement, valid through June 30, 2021, with Terracon and authorizing the Town Manager to execute same for On-Call Professional Services for Environmental, Geotechnical, and Construction Services
- Consent 13 Master Agreement, valid through June 30, 2021, with The Wooten Company and authorizing the Town Manager to execute same for On-Call Professional Services in the following areas of expertise: (1) Surveying, (2) Wastewater Treatment, (3) Water Distribution and Sanitary Sewer Collection

- Consent 14 Master Agreement, valid through June 30, 2021, with WithersRavenel and authorizing the Town Manager to execute same for On-Call Professional Services in the following areas of expertise: (1) Surveying, (2) Stormwater, (3) Greenway Design
- Consent 15 3-year contract with Southern Grounds Control, Inc. and authorizing the Town Manager to execute same for water and sewer construction and repair services
- Consent 16 Revisions to the Town Standard Specifications and Details
- Consent 17 Set the Public Hearing for the September 18, 2018 Town Council Meeting regarding Rezoning Case #18CZ19. The applicant, Town of Apex, seeks to rezone approximately ±121.316 acres, for the property located at 2100 Production Drive from Light Industrial (LI) to Light Industrial-Conditional Zoning (LI-CZ).
- Consent 18 Set the Public Hearing for the September 18, 2018 Town Council Meeting regarding Rezoning Case #18C23. The applicant, Town of Apex, seeks to rezone approximately ±.17 acres, for the property located at 0 Culvert Street from Medium Density Residential (MD) to Medium Density Residential-Conditional Zoning (MD-CZ).
- Consent 19 Set the Public Hearing for the September 18, 2018 Town Council Meeting regarding Rezoning Case #18CZ25. The applicant, Perry and Debra Cox, seek to rezone approximately ±0.14 acres, for the property located at 0 Hudson Avenue from Office and Institutional (O&I) to Mixed Office-Residential-Retail, Conditional Zoning (MORR-CZ).
- Consent 20 Set Public Hearing for the September 18, 2018 Town Council Meeting regarding various amendments to the Unified Development Ordinance
- Consent 21 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 Jack1, LLC (Cash Corporate Center) property containing 121.3050 acres located at the end of Burma Drive and Production Drive (south of Pinnacle Park), Annexation #630 into the Town's corporate limits
- Consent 22 Agreement for Collection of Soft Recyclables by Simple Recycling of North Carolina and authorize the legal department to finalize the contract language and the Town Manager to execute the contract
- Consent 23 Contract for Off-Duty Police Officer Services provided to the Wake County Public School System (WCPSS)
- Consent 24 Resolution delegating leasing authority to the Town Manager
- Consent 25 Letter to future residents regarding solar photovoltaic generation systems

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

## **PUBLIC FORUM**

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Ananya Rakshabandham gave the meaning and purpose of Hindu Swayamsevak Sangh (HSS) and exemplified activities in which they have been involved. The HSS team tied arm ribbons on those on the dais. Mayor Olive thanked HSS for their efforts and gesture of kindness.

Bill Jolly also thanked HSS for their efforts. He stated he was in support of stronger tobacco ordinances. Mr. Jolly related a story of his daughter having an asthma attack from someone who walked by her with a lit cigarette. He has sold treatments for lung diseases and has been involved in helping to write state health initiatives.

Dick Beaver stated now that the Tree Study had come in, he wanted to compliment the Town going forward with its plans. He stated that the Peakway was no place for 18 wheelers.

## **PUBLIC HEARINGS**

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**Public Hearing 01 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council's intent to annex Lotta Ann Crabtree and Majid Khazaei (single-family home) property containing 2.00 acres located at 1041 Twin Creek Road, Annexation #640 into the Town's corporate limits**

Staff oriented Council to the site, stating the applicant was seeking town services. 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 JENSEN MADE THE MOTION TO APPROVE  
THE ORDINANCE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

Staff answered Council questions related to zoning and connection.

THE MOTION CARRIED BY A 5-0 VOTE.

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

**Ordinance on the Question of Annexation – Apex Town Council's intent to annex Crescent Apex, LLC (Linden Grove Way R/W) property containing .484 acres located at Pricewood Lane and Olive Chapel Road, Annexation #642 into the Town's corporate limits**

Staff oriented Council to the site. The applicant was seeking Town services. Staff recommended approval.

Staff answered Council questions related to density.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE  
THE ORDINANCE; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.

Staff answered Council questions related to zoning, connection, and density. Council stated she would not vote for this annexation.

THE MOTION CARRIED BY A 5-0 VOTE, WITH COUNCIL MEMBER DOZIER ABSTAINING FROM VOTING.

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

**Ordinance on the Question of Annexation – Apex Town Council’s intent to annex JVI Building & Development, Inc. (Winston & Toad Hollow) property containing 13.990 acres located at 1912 & 1920 Kelly Road, Annexation #644 into the Town’s corporate limits**

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

*An audio recording of the following Quasi-Judicial Public Hearing made by the Town Clerk is incorporated into these Minutes by reference. The audio recording or transcript of the Hearing should be used as the verbatim record of the questions, testimonies, evidentiary rulings, and discussions that occurred at the Quasi-Judicial Hearing.*

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**Public Hearing 04 – Quasi-Judicial : Shelly Mayo, Planner II**

**Special Use Permit (#18SUP02) for the revised lighting plan for the Olive Chapel Swim and Tennis Club located at 1221 Ainsley Place**

Mayor Olive presented the process by which the Hearing would be conducted. All those wishing to speak were sworn in by the Town Clerk.

Mayor Olive declared the Public Hearing open.

Paul Flick, attorney, introduced himself as representing the applicant.

Stan Thompson, Apex citizen, stated he wished to cross examine witnesses but not provide expert testimony and gave accounting for his having the standing to cross examine. The Town Attorney stated Mr. Thompson would have to have damages especially to him. After further conversation with Mr. Thompson, it was declared that there was no standing for cross examination by him. However, the Mayor

stated there might be a slot as to how he could be called as a witness. He was sworn in by the Town Clerk.

Mayor Olive asked Council if there had been any communication with the applicant, if there were any relational or financial conflicts, and if all could provide an impartial decision. The Mayor stated he'd had a conversation with the applicant approximately six months ago and that he'd viewed the site before the SUP came up. Council Member Moyer stated he'd observed the area prior to the SUP. Council Member Killingsworth asked to be recused. In April she viewed the site and had extensive conversations with the community without knowing this Hearing would be quasi-judicial. Some of the recommendations she offered were in the agreement.

MAYOR OLIVE CALLED FOR A MOTION TO RECUSE COUNCIL MEMBER KILLINGSWORTH. COUNCIL  
MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER GANTT SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Council Member Killingsworth stepped down from the dais.

All remaining Council stated there not had been any communication with the applicant, there were no relational or financial conflicts, and that they could make impartial decisions.

**OPENING STATEMENT BY APPLICANT:** Paul Flick stated he represented the swim club of over 700 families. He commended staff for working to try to find a solution to this issue. Mr. Flick stated he was in attendance because after discussion, they decided to redo the existing tennis courts. He spoke about the process of having lighting installed. After they were turned on, a complaint came in. The Town determined the UDO Standards weren't met. Mr. Flick named those who would be his expert witnesses.

**OPENING STATEMENT BY STAFF:** None.

**TESTIMONY OF STAFF:** Ms. Mayo presented her credentials and work history with the Town. Staff oriented Council to the site. A neighborhood meeting was held, and the reason why the applicant was asked to hold a second meeting was stated. Staff believed the Standards had been met.

**CROSS EXAMINATION OF STAFF BY COUNCIL:** None.

**CROSS EXAMINATION OF STAFF BY APPLICANT:** None.

**TESTIMONY OF APPLICANT:** Mr. Flick presented Mr. Frasure, LSI Lighting, who stated his name, credentials, and occupation. Mr. Frasure responded to questions from Mr. Flick related to tennis court lighting.

**CROSS EXAMINATION OF APPLICANT BY COUNCIL:** Mr. Frasure responded to questions related to spill light levels.

**CROSS EXAMINATION OF APPLICANT BY STAFF:** Mr. Frasure clarified questions related to a submitted map and calculated values.

**TESTIMONY OF APPLICANT:** Mr. Flick presented Chris Davies, president of the swim club. Mr. Davies stated his name, address, and position with the Olive Chapel Swim and Tennis Club. He responded to questions from Mr. Flick related to the neighborhood, the Club, and their renovation process of the court facility.

**CROSS EXAMINATION OF APPLICANT BY COUNCIL:** None.

**CROSS EXAMINATION OF APPLICANT BY STAFF:** None.

**REBUTTAL EVIDENCE FROM STAFF:** None.

**REBUTTAL EVIDENCE FROM APPLICANT:** None.

**TESTIMONY BY RESIDENT STAN THOMPSON:** Mr. Thompson spoke about his observations of the effect the new court lighting had on his viewpoint of the court and the inside of his home.

**CROSS EXAMINATION OF MR. THOMPSON BY COUNCIL:** Mr. Thompson was given an opportunity to answer questions related to how he feels about the applicant offering to help mitigate his issues. Council stated she felt the applicant would be good neighbors. Mr. Thompson answered questions related to lighting from the poles.

**CLOSING ARGUMENT FROM STAFF:** None.

**CLOSING ARGUMENT FROM APPLICANT:** Mr. Flick summarized their stand on this issue.

**QUESTIONS FROM COUNCIL:** staff answered questions related to the height of trees.

Mayor Olive declared the Public Hearing closed.

Council expressed wanting to see everyone enjoy the facility without much adverse impact on anyone. Council expressed wanting to see staff review the UDO for lighting. Council stated there were three levels of protection to help reduce the effects of the lighting and that the applicant went above and beyond to help mitigate negative impacts.

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

Council Member Killingsworth returned to the dais.

Mayor Olive called a three minute recess.

## **OLD BUSINESS**

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There were no Old Business items for consideration.

## **UNFINISHED BUSINESS**

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There were no Unfinished Business items for consideration.

## **NEW BUSINESS**

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New Business 01 : Councilwoman Audra Killingsworth

Discussion and possible motion to amend Article III, Section 10-31 – 35 of the Town of Apex Code of Ordinances to prohibit smoking in Town Parks and to prohibit the use of vaping products, and tobacco products in Town buildings, vehicles, and parks

Council stated she felt this needed to be assessed as a reasonable protection of our most vulnerable. She pointed to those municipalities which have implemented such a policy. Her proposal was to look at the current Ordinance and determine if it needed to be amended.

Council Chairman of the Parks, Recreation, and Cultural Resources Committee voiced his adversity to the request, stating that he has had zero complaints concerning any type of tobacco products. Therefore, there was no need to enact a law that doesn't need to be fixed. Further, how would it be enforced? The Police Department is already operating as efficiently as possible. He stated examples of not being



able to enforce helmets and pads at the skate park. The remaining Council Members stated their thoughts on this issue.

The Parks and Recreation Director stated he has had less than a handful of complaints during his long tenure with the Town; the Town Manager stated he has only had a few complaints since his tenure. Further discussion ensued related to what stressed law enforcement, effects of smoking on children, an educational campaign on smoking, designated smoking areas, and banning smoking on the greenways.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION AND TO ADD WORDING FOR GREENWAYS; AN IMPLEMENTATION DATE OF JANUARY 1 WITH LANGUAGE FOR DESIGNATED AREAS; AND EDUCATIONAL CAMPAIGN; AND STAFF TO REWORD THE ORDINANCE AND BRING BACK BEFORE COUNCIL. COUNCIL MEMBER DOZIER SECONDED THE MOTION. COUNCIL MEMBERS KILLINGSWORTH, DOZIER, JENSEN, AND GANTT VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER MOYER VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 4-0 VOTE.

Council Member Moyer stated that clearly education is not going to make a dent in not smoking. This was making way too many laws for no reason.

## **CLOSED SESSION**

(1) To consult with the Town Attorney regarding the handling of the matter of HH Trinity Apex Investments LLC, et. al. v. Town of Apex, and (2) for a personnel matter

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER KILLINGSWORTH 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 OBJECTIONS FROM COUNCIL.

## **WORK SESSION**

There were no Work Session items for consideration.

**ADJOURNMENT**

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With there being no further business and with no objection from Council, Mayor Olive declared the meeting adjourned.

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Donna B. Hosch, MMC, NCCMC  
Town Clerk

ATTEST:

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Lance Olive  
Mayor