



## Apex Town Council Meeting Tuesday, November 20, 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, November 20, 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 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 Shawn Purvis, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe  
Absent was Mayor Pro Tem Nicole L. Dozier

### **COMMENCEMENT**

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Mayor Olive called the meeting to order, gave the Invocation, and led the Pledge of Allegiance.

### **PRESENTATIONS**

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**Presentation 01 : Keith Joyce, Joyce and Company, Independent Auditor**  
June 30, 2018 audit report from Joyce and Company

Mr. Joyce presented highlights of the Comprehensive Annual Financial Report (CAFR) (incorporated by reference). This was a clean audit. A certificate of achievement of excellence was received by the Town for the 24<sup>th</sup> consecutive year. Mr. Joyce answered Council questions regarding Fund Balance and tax rates and OPEP funding. In the Management Letter, there was one technical aspect mentioned. Staff has taken steps to correct this for next year.

### **CONSENT AGENDA**

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Consent 01      Minutes of the November 6, 2018 regular Town Council Meeting  
Consent 02      Sale of Lot 22, Plots G and H, in the Apex Cemetery to Rhonda Stewart

- Consent 03 Findings of Fact, Conclusions of Law, and Decision approving Special Use Permit #18SUP03 South Landfill Public Safety Tower
- Consent 04 Findings of Fact, Conclusions of Law, and Decision approving the Hanna Imports Parking Improvements Major Site Plan
- Consent 05 Construction contract and authorization for the Town Manager to execute same for Seaboard Street Parking Project (R-18-4)
- Consent 06 Master Services Agreement, valid through June 30, 2021, with Ezzell Electrical Components, Inc. and authorization for the Town Manager to execute same for wastewater components service and repair and general electrical repair
- Consent 07 Set a Public Hearing for Tuesday, December 4, 2018 at 7:00 pm to receive citizen input regarding the formulation of the Fiscal Year 2019-2020 Annual Budget
- Consent 08 Amendment of the Special Event application *Christmas on Salem Street* to modify street closure on Salem Street extending the previous closing point of Center and Salem to now Hunter and Salem. The event is scheduled for November 30<sup>th</sup>.
- Consent 09 Revisions to the Town Standard Specifications and Details
- Consent 10 Sale of Lot 232, Plot G, in the Apex Cemetery to Virginia Enzor
- Consent 11 Authorization for the Town Manager to sign the amendment to the current Fire Protection Agreement with Wake County Fire Services which authorizes the County to reimburse the Town for providing NFPA 1582 compliant physicals for members of the fire department
- Consent 12 Resolution to use Construction Management at Risk services for construction of the Pleasant Park project
- Consent 13 Resolution to use Construction Management at Risk services for construction of the Senior Center project
- Consent 14 Apex Tax Report dated 10/6/2018
- Consent 15 Motion to approve Mutual Aid and Emergency Assistance Agreement with Duke Energy Progress, Inc. and authorization for the Town Manager to sign the agreement

Staff requested a change in language regarding indemnity for Consent 05. There was an add-on item requested for a resolution for ETJ appointments by the County.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA WITH THE STATED MODIFICATIONS.

COUNCIL MEMBER MOYER MADE THE MOTION; COUNCIL MEMBER GANTT SECONDED THE MOTION.

THE MOTION CARRIED BY A 4-0 VOTE.

## **REGULAR MEETING AGENDA**

Staff requested an add-on item under New Business related to a request from Friendship High School Academy.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA WITH THE STATED ADD-ON ITEM.

COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.

THE MOTION CARRIED BY A 4-0 VOTE.

## **PUBLIC FORUM**

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Jennifer Job stated she was present to deliver a petition containing 164 signatures calling for an action plan for a stop light at Kelly Road and Beaver Creek Drive. The request was for immediate construction, as this is now a serious situation which has been covered by the news and resulted in police giving out tickets daily. Ms. Job outlined the process that is being taken by the developer who is proceeding slowly. This was supposed to be done by May.

Ms. Job stated she hoped the petition highlighted the serious flaw in how developments are constructed in Apex. Conducting traffic studies should be done before ground is permitted to be broken.

The Mayor stated the developer was met with on this day and the Town asked for the poles to be ordered to get this done. We will continue to actively work with the developer.

## **PUBLIC HEARINGS**

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Public Hearing 01 : Lauren Staudenmaier, Planner I

Ordinance on the Question of Annexation – Nina Church, Michelle Demers, Kenneth and Jennifer Proulx and William and Deborah Elmore (Jordan Vistas) property containing 53.139 acres located at 2500, 2508, 2520, and 2532 New Hill Olive Chapel Road, Annexation #636 into the Town's corporate limits  
and

Public Hearing 02 : Lauren Staudenmaier, Planner I

Rezoning application and Ordinance for #18CZ17 (Jordan Vistas PUD). The applicant, Jeff Roach, Peak Engineering & Design, on behalf of William and Deborah Elmore, Nina Lynn Church, Michelle Demers, Kenneth and Jennifer Proulx, sought to rezone approximately 52.909± acres located at 2500, 2508, 2520, & 2532 New Hill Olive Chapel Road from Wake County Residential-40W (R-40W) & Residential-80W (R-80W) to Planned Unit Development-Conditional Zoning (PUD-CZ).

Staff oriented Council to the site. A neighborhood meeting was held. The Parks and Recreation Commission recommended a fee in lieu. The Planning Board unanimously recommended approval. Planning staff recommended approval with conditions offered by the applicant.

Jeff Roach, Peak Engineering & Design, representing the applicants, stated they were looking 15+ years out with this PUD. He detailed what their plan was for the site, pointing out access, a multiuse path, and

their working with staff to try to identify and save a few large trees on the property. These are slotted to be homes on larger lots. Mr. Roach spoke to the three added conditions.

Mr. Roach answered Council questions related to the building of roads, traffic signals, and solar systems.

Mayor Olive declared the Public Hearing open.

John Demers stated he and his wife fully supported this effort, noting that the community needs to grow. They were delighted with the Town supporting the growth and its interest in solar.

Mayor Olive declared the Public Hearing closed.

Council offered that the developer should name which lots would be designated for solar. Staff detailed the plat process and what would be the best manner for staff enforcement of solar.

Gordon Poulson, applicant, explained why encumbrances to property can be a problem down the road. Staff went into further explanation of installation of solar/aspects of solar. Mr. Roach offered further conditional wording.

Conversation ensued related to future traffic signals, with clarification presented by the Town Attorney.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE ANNEXATION ORDINANCE, REZONING, AND ORDINANCE FOR #18CZ17 WITH STATED CONDITIONS; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

**Public Hearing 03 : Shelly Mayo, Planner II**

**Ordinance on the Question of Annexation – Katherine Chalk, James Lawrence, Kathy and John Bartholomew, Peggy Gray, Trustee Survivor's Trust A, Grace and Don Goodwin and Amy and Joseph Power (Olive Chapel Road Assemblage) property containing 70.79 acres located at the southeast quadrant of the intersection of Olive Chapel Road and New Hill Olive Chapel Road, Annexation #645 into the Town's corporate limits  
and**

**Public Hearing 04 : Shelly Mayo, Planner II**

**Rezoning application #18CZ28 (Olive Chapel Road Assemblage PUD) and Ordinance amending the Zoning Map. The applicant, Toll Brothers, Inc., sought to rezone approximately 70.80 acres located at the southeast corner of Olive Chapel Road and New Hill Olive Chapel Road from Wake Co. R-80W to Planned Unit Development – Conditional Zoning (PUD-CZ).**

Staff oriented Council to the site. A neighborhood meeting was held. Planning recommended approval with conditions offered by the applicant. Staff answered Council questions related to roads, walkability, and a Traffic Impact Analysis.

Jason Barron, Morningstar Law Group, representing the applicant, further detailed the aspects of this project, including the historic home on the property. He outlined the concepts of PUDs, the challenges of access placement, solar placement, and water quality. He recognized there was neighbor opposition to the PUD.

Mayor Olive declared the Public Hearing open.

Tracey Schelting expressed opposition to the main entrance to the proposed subdivision. She has a barn directly across from the entrance, and she was concerned about the horses on her property being spooked by traffic noise. She showed pictures of the road depicting how she felt this entrance would be dangerous. She asked for an independent study of the location of the entrance.

Sarah McGrath, competition rider, stated that horses could become spooked by traffic pulling in and out of the proposed entrance. She detailed how this could also be a danger the people riding the horses.

Jeff Robke spoke about his daughter's love for riding horses and the impact riding lessons has had on her. He spoke about Council's past desire for managed growth. This PUD would not fit with the old time character.

Heidi Snyder was concerned about the proposed entrance and also spoke about the benefits of her child being able to ride horses. She spoke about Tracy's property and business being a benefit to the community. She asked for protection of Tracy's barn.

Ninette Yengling asked Council and the applicant to set a time to view how Tracy teaches the children.

Lori Tryon spoke about the inherent danger of the road being directly in front of the barn. Horses being spooked and them and people being hurt is a real scenario. She showed photos of what happened to her when her horse was spooked and threw her.

Mayor Olive declared the Public Hearing closed.

Council stated the position of the proposed road would put a lot of people in danger, and she wanted to prevent as many injuries as possible. Mr. Barron stated the entrance points would be studied to ensure there is not a safety problem. The Mayor touched on at what point in the process these entrances would be finalized, staff providing a more detailed explanation. Mr. Barron answered Council questions related to buffers. Staff answered questions related to sidewalks.

Mayor Olive reopened the Public Hearing.

Dr. Johnson Russel talked about the health issues horses could face with the traffic, and how an entrance across from the barn could cause malicious behavior by humans. A buffer would not help to ensure the safety of the horses or the riders. He asked for this to be tabled until there was a solution to the proposed road.

Mayor Olive declared the re-opened Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE  
THE ANNEXATION ORDINANCE, THE REZONING, AND ORDINANCE FOR #18CZ28 WITH CONDITIONS FROM STAFF  
AND THE APPLICANT; COUNCIL MEMBER GANTT SECONDED THE MOTION.

Council restated her objection to an entrance across from the barn. Council stated he hoped there would be further consideration of the entrance and that he liked the location of the pond. Council clarified what he meant by 'buffers'.

THE MOTION CARRIED BY A 4-0 VOTE.

Mayor Olive called for a five minute recess.

**Public Hearing 05 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council's intent to annex Cariello Holdings, LLC (Green Level Market) property containing 3.67 acres located at 3705 Green Level West Road, Annexation #648 into the Town's corporate limits**

Staff oriented Council to the site which was a proposed future Goddard School. Staff recommended approval. Staff answered Council questions related to connectivity.

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 MOYER MADE THE MOTION TO APPROVE  
THE REQUEST; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

## **OLD BUSINESS**

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Old Business 01 : Shelly Mayo, Planner II

This item was continued from the October 16, 2018 Town Council meeting.

Rezoning application #18CZ27. The applicant, 540 Flex & Business Park, LLC, sought to rezone approximately 10.04 acres located at 1600 Olive Chapel Road from Tech/Flex-Conditional Zoning (TF-CZ #14CZ20) to Tech/Flex-Conditional Zoning (TF-CZ).

Staff oriented Council to the site. The applicant added conditions since being presented previously. Staff recommended approval with the additional conditions.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION TO APPROVE  
WITH ALL EIGHT CONDITIONS; COUNCIL MEMBER GANTT SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

## **UNFINISHED BUSINESS**

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There were no Unfinished Business items for consideration.

## **NEW BUSINESS**

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New Business 01 : Shelly Mayo, Planner II

Oak Pointe Phase 2 Revised Master Subdivision Plan located at 0 Old Jenks Road containing ±28.48 acres and 56 single-family homes

Staff oriented Council to the site. A neighborhood meeting was held. Staff recommended approval of the Plan. Ron Acres, Engineer with McAdams, answered Council questions related to the water line and through traffic.

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

New Business 02 : Amanda Bunce, Planning Manager

Jordan Oaks Master Subdivision Plan located at 0 Horton Road containing ±31.61 acres and 50 single-family homes

Staff oriented Council to the site and answered questions related to access.

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

Added New Business 03 : Drew Havens, Town Manager

Allowing Apex Friendship High School Academy of Engineering and DACA to change their plan for "Performing Lights"  
(synchronizing lights and music) in front of the Depot

Staff stated that because of aesthetic/technical issues, instead of the school putting lights on the tree, lights were placed on the roof and around the bushes in front of the Depot. The Mayor was disappointed that the original plan was changed without approval from the Town. If this is going to look gaudy, he would want to see the show before it gets shown to a large group of people. There was no one in attendance representing the school; Council conversation ensued regarding how to receive clarity of the proposed lighting plan.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER GANTT MADE THE MOTION TO APPROVE THE INSTALLATION AS REQUESTED; COUNCIL MEMBER JENSEN SECONDED THE MOTION. COUNCIL MEMBERS GANTT AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS KILLINGSWORTH AND MOYER VOTED IN THE NEGATIVE.

REQUIRED TO BREAK THE TIE VOTE, MAYOR OLIVE STATED HE DID NOT LIKE SETTING A PRECEDENT, THE SCHOOL SHOULD HAVE ASKED BEFORE CHANGING THE PLAN; THEREFORE, HE VOTED IN THE NEGATIVE.

Following further conversation, Council proposed the formation of an ad hoc committee to be delegated to discuss this with the Town Manager.

COUNCIL MEMBER KILLINGSWORTH MADE A MOTION TO FORM A CHRISTMAS LIGHT AD HOC COMMITTEE (CLAC) OF TWO COUNCIL MEMBERS TO MEET WITH THE TOWN MANAGER TO DETERMINE THE APPROPRIATENESS OF THE NEW LIGHTING PLAN. COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Mayor Olive stated that a letter had been received from the Mayor of River Bend, NC, thanking the Town for its assistance in storm relief.

## **CLOSED SESSION**

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There were no Closed Session items for consideration.

## **WORK SESSION**

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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