



## MINUTES - REGULAR TOWN COUNCIL MEETING

APRIL 26, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

### WELCOME AND COMMENCEMENT

The regular meeting of the Apex Town Council was called to order by Mayor Gilbert. The Mayor began the meeting with a welcome and invocation saying

“The Town of Apex values and celebrates diversity and inclusion. We see diversity as a strength that binds the community together. Inviting members from different faith communities to deliver an invocation at the beginning of our council meetings supports this unity, recognizes that not everyone practices the same traditions, we welcome you to have a private moment of silence.”

The mayor asked those attending to join in the Pledge of Allegiance.

#### *Town Council and Administration:*

In attendance were Mayor Jacques K. Gilbert, and Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Mayor Pro Tem Killingsworth attended virtually. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

### CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Mayor presented the Consent Agenda to be set prior to taking any action on the following items:

He said item CN7 has been requested to be removed from the consent agenda. A motion was made to approve the amended consent agenda. (Motion: Council Member Gray\Second: Council Member Gantt, Vote: Approved 5-0, with Killingsworth voting virtually).

**CN1 Approval of the minutes of the April 12, 2022 meetings of the Regular Town Council Meeting.**

**CN2 Approval of Wake County Tax Report for the Town of Apex, dated March 1, 2022.**

**CN3 Approval of amendment to Article VIII “Parking” of Chapter 20 of the Town of Apex Code of Ordinances.**

- CN4** Approval to set the Public Hearing for the May 10, 2022 Town Council meeting regarding amendments to the Unified Development Ordinance (UDO) related to the creation of the Downtown Festival District and other associated amendments.
- CN5** Approval to set the Public Hearing for the May 10, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN6** Approval of and authorizing the Town Manager to sign and execute, the GoApex Agreement with Town of Cary and MV Transportation.
- CN7** Removed from the agenda.
- CN8** Approval to set the Public Hearing for the May 10, 2022 Town Council meeting regarding Rezoning Application #21CZ29 North Salem Station PUD. The applicant, Ana Wadsworth with The Wooten Company, seeks to rezone approximately 10.39 acres from Planned Commercial (PC) & Neighborhood Business (B1) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 Candun Dr., 0 Laura Duncan Rd., and 0 N. Salem St.
- CN9** Approval of a Supplemental Agreement with NCDOT for \$10,000,000 in supplemental construction funds toward U-5928, Apex Peakway at South Salem Street and the CSX railroad tracks, and authorizing the Town Manager to execute the agreement on behalf of the Town.
- CN10** Approval of an encroachment agreement between the Town and property owner Dhiraj Adhikari to install a concrete patio that will encroach 61 square feet and a fence that will encroach 34 linear feet onto the Public Drainage Easement and authorizing the Town Manager to execute the same.
- CN11** Adopting a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Jessica and Abel Figueroa property containing 5.88 acres located at 804 and 808 Wimberly Road, Annexation #723 into the Town’s corporate limits. This annexation had been re-scheduled previously.
- CN12** Adopting a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the WFINV, LLC property containing 1.910 acres located at 1016 N. Salem Street, Annexation #730 into the Town’s corporate limits. This annexation had been re-scheduled previously.
- CN13** Adopting a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Tony C. Sears and Judy T. Sears property containing 1.6209 acres located at 0 Kelly Road, Annexation #731 into the Town’s corporate limits. This annexation has been re-scheduled previously.

## **PRESENTATIONS**

- PR1** Apex Town Council and Stephanie Mitchell, President of the Apex Public School Foundation awarded the Peak S.T.A.R. Award to Ashley Miller of Oakley Elementary School.

- PR2** Mayor Jacques Gilbert and the Town Council members read a proclamation regarding the "Think Apex Day" and encouraged the community to participate in volunteer activities on that day.
- PR3** Mayor Gilbert and the Town Council read a Foster Care Awareness Month proclamation recognizing those that provide foster care for children in the Town of Apex and recognizing the need for more homes to care for children.
- PR4** Mayor Gilbert and the Town Council read a Public Service Recognition Week Proclamation. He thanked the federal, State, county and Town of Apex employees for providing service to the public.
- PR5** Mayor Gilbert and the Town Council read a Civilian Law Enforcement Professionals Week Proclamation recognizing the necessary and valuable services provided.

## **REGULAR MEETING AGENDA**

Mayor Gilbert called for additional Agenda items from Council or Staff and to set the Regular Meeting Agenda prior to Council actions. Mayor Gilbert noted removal of the second closed session from the agenda. (Motion: Council Member Stallings /Second: Council Member Gantt /Vote 5-0, with Mayor Pro Tem voting virtually)

## **PUBLIC FORUM**

The Mayor recognized Phil Welch who wished to express support for the Town's contributions for affordable housing efforts and encouraged the Town Council to continue increase funding for this effort. He expressed the need for additional senior housing.

## **PUBLIC HEARINGS**

- PH1** Planner Lauren Staudenmaier presented rezoning Application #21CZ26 Humie Olive Commercial. The applicant, Jeff Roach, Peak Engineering & Design PLLC., seeks to rezone approximately 7.69 acres from Rural Residential (RR) to Neighborhood Business-Conditional Zoning (B1-CZ). The proposed rezoning is located at 0 & 7525 Humie Olive Road. She noted the land was vacant and wooded.

Ms. Staudenmaier asked the Council to note zoning condition ten, the requirement for a 20-foot Greenway easement along the western property line and zoning condition twelve requiring the recordation of a cross-access agreement between the two parcels in the request prior to Site Plan Final Plat. Concern was expressed by the Transportation Planning due to the road configuration creating a poorly aligned "Y" intersection, high volume traffic further aggravated by the proximity of two existing schools and the construction of a third school underway, and the proximity of the development to the intersection of Humie Olive Road and Old US 1 Highway. Cross-access and connectivity would provide safe movement by limiting access onto these two busy roads. The staff requested that the applicant agree to a maximum of one point of full movement access for each road. The applicant has stated they are not willing to agree to this condition.

The Planning Board and Staff support the rezoning, but *only* if they meet the single access condition. Traffic Engineer Russell Dalton noted that all construction and development in this area must be evaluated in addition to this development and anticipating further traffic congestion. He noted additional driveways would require expensive traffic control measures such as medians. He noted existing traffic at this intersection actually exceeds the length of the project frontage. If this agreement is not imposed at this time, each parcel in the rezoning could develop independently and apply for driveway permits, avoiding the need for consideration of the impacts of multiple driveways at this intersection and possible mitigation required.

There was interest in the possible realignment of Humie Olive Road at the time of development. Improvements to this intersection are not scheduled by the Town and NCDOT at this time.

Mayor Gilbert asked the applicant to address the Council. He indicated that they were not necessarily opposed to limiting access, but they did not want to commit to it at this point. They do not know how the property will be developed.

Mayor Gilbert opened the public hearing, there being no requests to speak closed the hearing.

Council Member Gantt made a motion to deny the request. The applicant then asked that the Council to continue the case. Council Member Gantt withdrew the motion. He noted in addition to the traffic issue, he also was concerned about a daycare facility at this location and was concerned about the number of environmental concerns that were not addressed and not agreed to by the applicant. A motion was made to continue the case until May 24, 2022. (Motion: Council Member Mahaffey /Second: Council Member Gantt /Vote 5-0, with Mayor Pro Tem voting virtually)

PH2 Current Planning Manager Amanda Bunce briefed the Council on Rezoning Application #22CZ03 Sweetwater PUD Amendment. The applicant, David Schmidt, ExperienceOne Homes, LLC, seeks to rezone approximately 44.76 acres from Planned Unit Development-Conditional Zoning (PUD-CZ #18CZ01) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 3233 US 64 Hwy W, 0 Core Banks St, and 1051 & 1075 Newland Ave.

This previously approved development has staged development and construction and had been revised since its original approval. They have asked to have the minimum office space reduced to 55,000 square feet. None of the Environmental Advisory Board's suggested conditions were agreed to or met.

A major revision to the project requested is the requirement for land to be set aside for the improvements to the US 64 interchange. This interchange is shown on both NCDOT and Town of Apex transportation documents and remains an important improvement to the transportation thoroughfare system. A revision allowed temporary use of the land set aside as parking and related facilities like lighting and storm drainage until the right-of-way is purchased. Staff expressed concern that any permanent construction within the set aside area would have to be purchased or redeveloped at the time of road construction and could have a detrimental effect on the ability to get the best design for the interchange. Further, any businesses and citizens in the newly developed area would be adversely impacted.

This condition was agreed to with the original approval of the development and played an important role in the development and approval of the project. The project approval was also the basis for public expenditure to provide services to the development. The developer stated that they only agreed to the condition to move the project forward.

The developer has suggested uses for adjacent property to the reserved property, but the reserved area is also necessary for their new plan to move forward.

Paul Stam, State Conditional Law attorney, for the developer gave the Town Council an overview of their legal position.

A motion was made to go into closed session. (Motion: Council Member Gantt /Second: Council Member Gray /Vote:5-0 with Mayor Pro Tem Killingsworth voting virtually)

A motion was made to go back into regular session. (Motion: Stallings /Second: Gantt /Vote:5-0 with Mayor Pro Tem voting virtually)

The Mayor asked for additional public comment. Hearing none, he closed the public hearing.

There was discussion on whether the NCDOT has a time line for the construction of US 64. Staff indicated it was not on the 10-year plan. A motion was made to continue the case until the June 14, 2022 Regular Council meeting. (Motion: Council Member Gray /Second: Council Member Gantt /Vote:4-1 with Mayor Pro Tem affirmatively voting virtually, Council Member Gantt voting against)

PH3 The staff requested this case, #22CZ04, be continued to the May 24, 2022. A motion was made to continue this case to the May 24, 2022 Regular Council meeting. (Motion: Council Member Mahaffey /Second: Council Member Gray /Vote:5-0 with Mayor Pro Tem voting virtually)

## **OLD BUSINESS**

There was no old business.

## **UNFINISHED BUSINESS**

There was no unfinished business.

## **NEW BUSINESS**

NB1 Christopher "C.J." Valenzuela, Housing Program Manager, briefed the Town Council to possibly provide financial support to Evergreen Construction Company for the residential affordable housing senior (55 yrs. +) rental project known as Abbey Spring in the form of a loan from the Affordable Housing Fund for permanent financing contingent upon final project

approval, and authorize the Town Manager to execute loan and compliance project documentation. There was discussion of ways to leverage additional funds from all Wake County Communities.

A ten minutes break was held.

A motion was made to approve a loan in the amount of \$500,000 (Motion: Council Member Stallings /Second: Council Member Gray /Vote:5-0 with Mayor Pro Tem voting virtually.)

#### **UPDATES BY TOWN MANAGER**

Manager Catherine Crosby talked about the Success of the Earthfest held on the Town Campus. She said it was run well by staff and the community really enjoyed it. She said she was looking forward to more activities being held on the Town Campus.

She wanted to congratulate Belinda in Finance Department for receiving the Peak performer award. She went above and beyond to help a fellow employee and their family. She said this was the example we want to set for our employees for helping fellow workers and for the community.

She reminded the group that Think Apex day is April 30<sup>th</sup>. She said she would be volunteering at the Habitat for Humanity housing and encouraged everyone to also volunteer in the community.

She also wanted to thank the Town's employees for their service. She said when she started her career she had not been aware of how much was done by public service employees. She said she had discovered it was a meaningful career opportunity. She said how much the employees enjoy providing service to the community.

Happy Birthday to Shawn today and Marty next Friday.

#### **CLOSED SESSION**

CS1 A motion was made to go into closed session pursuant to NCGS 143-318.11(a)(5) to discuss the Town's negotiating position to the acquisition of real property. (Motion: Gantt /Second: Council Member Stallings /Vote 5-0 with Mayor Pro Tem voting virtually.)

#### **WORK SESSION**

#### **ADJOURNMENT**

There being no further business, the Mayor adjourned the meeting.