

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for January 03, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 03, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Jensen was absent.

Invocation was given by Council Member Schulze.

Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

Mayor Weatherly recognized the Town Clerk, Georgia A. Evangelist, MMC, who announced her retirement May 1, 2012, having served the Town of Apex for 32 years.

PRESENTATIONS

There were no Presentations.

CONSENT AGENDA

Mayor Weatherly presented the Consent Agenda to be set prior to taking action.

Action: Council Member Schulze made the motion to approve the consent agenda. Council Member Rowe made the second to the motion. Motion carried unanimously 4 and 0.

1. Minutes for December 20, 2011 Council Meeting.
2. Council Statement and Ordinance for Rezone #11CZ15, Jones & Clossen Engineers, PLLC, petitioner, for property located at Milano Avenue between Evans Road and Mt. Zion Church Road, and approved by Council November 15, 2011.
3. Council Statement and Ordinance for Rezone #11CZ16, Mark Frazier, petitioner, for property located at 1610 N. Salem Street, and approved by Council November 15, 2011.
4. Schedule Public Hearing January 17, 2012 for various amendments to the Unified Development Ordinance.
5. Annual Certification of Firefighters and State Certification Roster for 2011 as reported by the Fire Chief.
6. Resolution for Interlocal Agreement entitled Amendment No. 2 to the April 26, 1988 Agreement Between Cary and Apex (water plant) which was approved on December 20, 2011.
7. Certification of Municipal Declaration to Repeal Speed Limits and Request for Concurrence for removal of overlapping NCDOT Ordinance No. 1043978 of two in the designated portion of the State Highway System: 45 miles per hour municipal speed zone and described as Salem Street (SR1011) from the southern corporate limit, a point approximately 0.12 mile east of SR1162 eastward to the corporate limit, a point approximately 0.34 mile east of SR1162; Apex Traffic Engineer concurs with the request.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.
There were no amendments and the agenda was set.

PUBLIC HEARINGS

There were no Public Hearings.

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

Jeff Roach, Parks and Recreation Commission advised the A. V. Baucom School fundraiser had received a \$25,000 Grant from Pepsi towards restoration of the school playground.

Dr. Andy Taylor addressed Council in respect to a letter he had sent related to Motiva and displayed his displeasure with not having received a reply, noting their accountability to do so. Mayor Weatherly chose not to engage in conversation with him as past conversations had not been productive.

NEW BUSINESS

New Business #01

Director of Finance Lee Smiley

Presentation of June 30, 2011 Audit Report by Keith Joyce, Joyce and Company, CPA, Cary, N.C.

Audit was accepted by Council. Highlights of the audit report were presented, and the management letter that disclosed areas involving internal control for improvement and the governance letter, and noted the Government Accounting Standards used by the Town relative to certain accounting estimates; and noted no significant difficulties in dealing with management in performing and completing the audit, and minor New World issues over the previous audit. Council gave favorable acceptance of the Audit Report.

New Business #02

Director of Finance Lee Smiley

Budget Ordinance Amendment and Capital Project Ordinance Amendment for realignment of Lufkin Road, noting the design work is complete and the project is out for bid, with bid opening on January 26, 2012. Project is funded 80% by a federal grant and town is responsible for the remaining 20% and in current budget. **Action:** Council Member Schulze made the motion to adopt as presented. Council Member Lassiter made the second to the motion. Motion carried unanimously 4-0.

New Business #03

Mayor Weatherly presented for adoption the 2012-13 Annual Budget Calendar and asked to set the Council's Annual Retreat for February 24, 2012 to be held in Apex Town Hall. **Action:** Council Member Olive made the motion to adopt the calendar and approved the date of the retreat. Council Member Rowe made the second to the motion. Motion carried unanimously 4-0.

CLOSED SESSION

There were no Closed Session items.

WORK SESSION

There were no Work Session items.

ADJOURNMENT

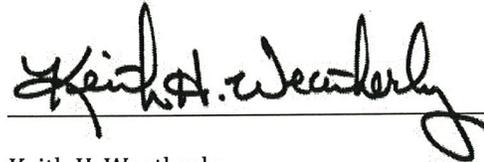
With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:27 p.m.

Action: Council Member Olive made the motion to adjourn. There was no second to the motion. Motion carried unanimously 4-0.

The January 3, 2012 Council minutes were submitted by the Town Clerk for Council approval during their January 17, 2012 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for January 17, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 17, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a Welcome to those in attendance. Mayor Weatherly called on the Manager for introduction of newly hired Town Employees.

PRESENTATIONS

There were no Presentations.

ADJOURNMENT

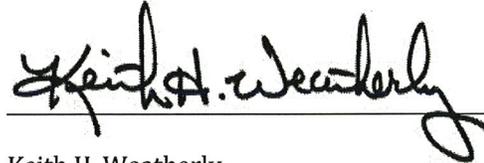
With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:27 p.m.

Action: Council Member Olive made the motion to adjourn. There was no second to the motion. Motion carried unanimously 4-0.

The January 3, 2012 Council minutes were submitted by the Town Clerk for Council approval during their January 17, 2012 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for January 17, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 17, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a Welcome to those in attendance. Mayor Weatherly called on the Manager for introduction of newly hired Town Employees.

PRESENTATIONS

There were no Presentations.

CONSENT AGENDA

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments and the Consent Agenda was set. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for January 03, 2011 Council Meeting.
2. Minutes for January 04, 2012 Personnel Committee Meeting.
3. Approving CSX Wireline Crossing Agreement #CSX-686115, and allow Manager to execute same and deliver agreement to CSX only after town acquires necessary insurance required by CSX agreement.
4. Resolution to Abandon Portions of Existing Public Electric Utility Easement upon lots 7 & 8 of Vineyard Station Shopping Center.
5. Personnel Committee recommendation for approval of revisions to the Apex Personnel Policies.
6. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in their regular session held January 3, 2012.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments and the Agenda was set.

PUBLIC HEARINGS

Public Hearing 01

Mayor Keith Weatherly

Public Hearing to receive citizen input regarding the formulation of the FY2012-2013 Annual Budget.

Mayor Weatherly noted comments received regarding the formulation of the budget and opened the public hearing at 7:10 p.m. The following spoke in support of various projects and for their funding:

Mark Black, Seagroves Farm - Seagroves Park Phase II

Hamilton Martin, West Chatham Street - construct sidewalks on West Chatham Street

Lisa Laws, Scotts Mill - Beaver Creek stormwater management, excavate sand and cleanup; Nature Park

Breck __, Whitehall, enhance greenway to American Tobacco Trail/ Cary; construct sidewalks S. Salem Street

Michael Monfort, Scotts Mill - Echo Beaver Creek; recreation for disabled (needs assessment/training)

Kevin Hutchinson, Seagroves Farm - Seagroves Park Phase II (playground and shelter)

Teresa Scofield, Seagroves Farm - Seagroves Park Phase II

Lindy Sullivan, Holland Farm - Nature Park, and Nature Park for this part of Town (Manager and Mayor explained the bond process and failure to sell bonds due to the economic slowdown and had committed to the citizens not to raise taxes for the park; hopes plans will move forward in the future).

Mayor Weatherly closed the public hearing at 7:30 p.m. and stated the process will continue and consideration will be given to these matters. Public Hearing is scheduled June 5, 2012 with adoption of the FY budget June 19, 2012.

Public Hearing 02

Planner Lauren Simmons

Public Hearing and possible motion for various amendments to the Unified Development Ordinance.

Staff stated the proposed amendments as follows and presented the planning report which is incorporated as a part of the minutes:

1) Section 5.1.5 "Small Town Character" dimensional table, to increase the maximum impervious area to 50%, from 40% and to remove the maximum Floor Area Ratio of .35.

2) Section 5.2.7 (E) "Dimensional Standards for Detached Accessory Structures" Encroachments into Setbacks, to clear up inconsistencies and add back the provision that allows detached accessory structures in the front yard as long as they are 60' back from the front property line.

Planning Board recommends approval.

Mayor Weatherly opened the public hearing at 7:32 p.m.

Wayne English spoke in support of the amendment as it would allow him to build out his drive at his new residence on East Chatham Street.

Mayor Weatherly closed the public hearing at 7:34 p.m. and referred the matter to Council.

Action: Council Member Lassiter made the motion to approve the amendments as recommended. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

Lisa Laws addressed protection of the environment when it comes to stormwater run-off and impervious surface; ask citizens help to address environmental problems.

NEW BUSINESS

New Business 01

Mayor Keith Weatherly

Consideration and discussion of pay raise given to Governing Body in FY2011-12 Budget.

Mayor Weatherly called on Council Member Jensen who stated there had been concerns amongst Council in that the Mayor and Council had received a salary increase in the FY2011-12 Budget; he was not aware that Council would receive the same raise employees received with the adopted budget and felt it best to have Personnel Committee review comparisons of Council members of like size towns to Apex, and have the Committee bring a recommendation with their findings back to Council to consider whether Council should keep the raise or otherwise, that it be done with those details outlined for them when considering this. **Action:** Council Member Jensen made the motion to refer the matter to Personnel Committee. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

CLOSED SESSION

There were no Closed Session items.

WORK SESSION

There were no Work Session items.

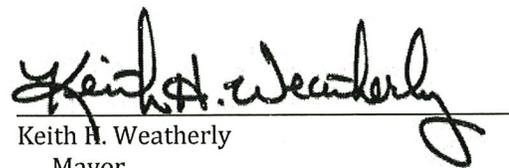
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 7:40 p.m. **Action:** Council Member Schulze made the motion to adjourn. There was no second to the motion. Motion carried unanimously 5-0.

Minutes of the January 17, 2012 Council meeting was submitted by the Town Clerk for approval by Council during their February 7, 2012 Council meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for February 07, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 07, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order, asking Council Member Lassiter to give the Invocation. Scouts from Troop 209 led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01

Mayor Keith Weatherly

Catherine Woyee-Jones, Executive Director/The Hope Project and Courtney Jones, Special Operations Command at Ft. Bragg Operations, presented Mayor Weatherly and Manager Radford with an "Army Certificate of Appreciation" for letters sent to deployed troops and support given to military families of Ft. Bragg, during "Every Letter Matters Campaign."

Presentation 02

Town Manager Bruce Radford

Two presentations were made regarding the Wake County Transit Plan: Bus, Commuter Rail and Light Rail.

1) Wake County Manager David Cooke presented the draft plan with all Wake County Municipalities and transportation agencies participating, now seeks support for a formalized the transit plan to connect all of Wake County long-term; growth rate 640,000 by 2035; WC Board of Commissioners will decide whether to seek voter approval for a half-cent sales tax to implement the plan. Triangle Transit Authority Director David King presented the Bus Plan and defined routes affecting Apex. Ed Johnson CAMPO was present and it was noted the plan was derived from CAMPO's bus transit plan and Triangle Transit's alternatives analysis on rail.

Bus hours would increase and aimed at peak hours with need for park and ride lots, shelters and benches. Rail Corridor Study reveals 56 miles of commuter rail, 12 total station locations and routes that would align and coordinate with bus service routes, and identified best starter point Garner to Durham and with commuter rail five years out. Cooke noted two key components: 1) core transit plan for expanded bus serve (\$138.3 million) and commuter rail and capital projects will be funded with local funds, and no reliance on federal or state sources beyond what's already being provided for busing. The local funding source would include a voter approved half-cent sales tax, vehicle registration and other fees, rider fares. Commuter rail would operate on existing rails from West Durham to Garner or 37 miles of track and running every 30 minutes during peak hours and 60 minutes off peak; costs for commuter rail would be shared between Durham and Wake County (commuter rail \$650 million); 2) enhanced transit plan for light rail (\$1.1 billion with a \$14 million year operating expense) from Cary to North Raleigh south of NC540; approximately 13 miles and cannot be implemented without state and federal funding (75%) and would provide different rail service from commuter service, can share lines and similar to AMTRAK and Charlotte Blue Line. Cooke continued when support is seen from the 12 municipalities, it would require Interlocal Agreements, altering of

the plan based on feedback, setting referendum for voter approval of 1/2 cent sales tax, other sources of revenues, and finalizing policy issues: costs, needs, priorities, choices, tradeoffs.

Council discussed rider fares; Apex Transportation Planner Huegerich expanded on positives of the bus plan for Apex and commuter rail service; Veridea concept approved by Apex Council has been integrated into the draft plan, its success would boost tax base and population and needs future transportation planning. Cooke noted the focus is on getting started and approval of the plan and more explicit about the 2nd tier project with financing for commuter rail and how best to fashion the plan for the future; demand-reduction in TTA schedules has had no significant impact on the analysis-going where the people are.

2) Dr. Michael Sanera, Director of Research and Local Government Studies, John Locke Foundation summarized concerns with the plan that would double bus service, add commuter and rail services and proposed implementation by voter approved 1/2 cent sales tax, \$10 increase in vehicle registration fees, increased vehicle rental fees, transit bonds, state and federal funds, and rider fees; estimated cost \$2.8 billion and full plan with light rail \$4.6 billion through 2040. Report agreed with improved transit bus-based service, however expressed was not technically or financially feasible and unreliable as the basis for decisions regarding the investments in Wake County; once project is approved, costs would soar. Plan contains numerous optimistic assumptions, errors of fact or omission and calculations that are at variance with standard practice in the transit industry, expanding on primary concerns noted in the summary. Review did not propose alternative approaches, however recommended revision of the plan by an independent group and placed in context with regional transportation needs, and the needs of transit dependent citizens and provide opportunity to hold down costs. Hoped the review would contribute to an open and objective discussion of the plan within the County and that the County would not approve the plan as written.

Mayor Weatherly noted the positive side of the report agreeing with enhanced bus service; Sanera stated it needed adjustment to serve bus users and unrealistic to expect people that have cars would use buses and should allow alternative transit decisions in response to people's lifestyles they choose vs design preferences, and noted a recent report issued to lower costs - full report is on line; noted rail costs are huge and they should have all the information to make a fair decision.

End of Presentations

CONSENT AGENDA

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 Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments.

Action: Council Member Schulze made the motion to approve the consent agenda. Council Member Lassiter made the second to the motion. Motion carried unanimously with a vote of 5-0.

1. Minutes for January 17, 2012 Council Meeting; Minutes for February 1, 2012 Personnel Committee Meeting; Minutes for December 20, 2011 Closed Session (separate).
2. Annexation Petition #466 Glenn Futrell, Glenn E. Futrell, Lewis P. Cooke and Joy C. Futrell, property owners/petitioners, petitioning to annex 9.757 acres including public right-of-way and with property being contiguous to the Town's corporate limits, and located north of US64 and east of Laura Duncan Road, Apex, N.C.; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to schedule date for Public Hearing February 21, 2012.
3. Annexation Petition #467 KCLC Development Company, LLC owners/petitioners, petitioning to annex 1.501 acres (DB 012605 PG 02512-02514 property underlying Blazing Trail Drive) and contiguous to the Town's corporate limits and located north of Humie Olive Road, Apex, N.C.; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to schedule date for Public Hearing February 21, 2012.
4. Resolution No. 2012-0207-468: Intent of Town Council for Annexation #468, Apex Peakway ROW, North Salem Street to Ambergate Station Road, and setting date of Public Hearing February 21, 2012.
5. Service Allocation Agreement between Town of Apex & CP&L DBA Progress Energy Carolinas (PEC).

6. Cooperative Purchasing Agreement between Town of Apex and Wake County concerning Disaster Debris monitoring Services and to approve the related Services Agreement between Town and Atkins North America, Inc
7. Cooperative Purchasing Agreements between Town of Apex and Wake County concerning Disaster Debris Removal Services and to approve related Services Agreement between Town and Phillips and Jordan, Inc. (primary provider) and Services Agreement between Town and Crowder Gulf Joint Venture LLP (secondary provider) for disaster debris removal and clearing services.
8. Memorandum of Agreement with NCDOT for emergency debris removal and authorize Town Manager to execute same.
9. Agreement with Rummel, Klepper & Kahl, LLP (RK&K) by approving the execution of Contract for Construction Engineering and Inspection and Construction Materials Testing Services and to allow Town Manager to execute same.
10. Set Public Hearing on February 21, 2012 for 0.28 acres located at 3525 Old US Hwy 1 Land Use Amendment and Rezone #11CZ17 and known as the New Hill Post Office property.
11. Set Public Hearing on February 21, 2012 for various UDO Amendments.
12. Amend Town Code of Ordinances Section 20-164. Addition of subsection (17). Ord. No. 2012-0207-01.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.
There were no amendments; the meeting Agenda was set.

PUBLIC HEARINGS

There were no public hearings.

OLD BUSINESS

Old Business #01

Manager Bruce Radford

Update on performance review system for Town Employees and recommendation of Personnel Committee regarding salary increase for Governing Body. Manager Radford stated the Personnel Committee had asked for an update on the Performance Evaluation System for Town employees. Human Resources Director Eleanor Green gave key points in the evaluation process - annual review date for all employees, five rating levels, key performance indicators and behaviors, concrete rating definitions, determination of funds and pay matrix based on market and CPI, employee pay distribution based on guidance and where they are in pay range, no forced rating distribution, departments will get set budget for salaries and for award, training as to how to award increases and evaluate employees will be conducted, will identify the market adjustment based on CPI and will be built into the matrix along with merit, if employees achieve expected results will get the market piece.

Personnel Committee Chair Rowe gave recommendations of the Personnel Committee having met February 1, 2012 and directed by Council to discuss Council's salary and benefits package; 1989 minutes reflect increase to the governing body was tied to whatever adjustment was given to town employees. Explained decision made by the board in past June to implement a pay raise or pay adjustment to all town employees, was unknowing to them they also received that pay increase. Council asked Personnel Committee to consider this. Data was provided from surrounding and like size communities as to how Council's pay scale compared to communities in equal size; capita chart data summaries and realizes the scale and adjustment Apex is operating on the low end if not the bottom end of the scale of all the like size communities. Understanding that, the adjustment received by the board didn't seem unfair or out of line to the Personnel Committee and concluded 1) recommend to the board that the pay increase continue as had been passed to them previously and will be put forth to full Council for approval of the recommendation.

2) Committee further considered moving forward and how to avoid this from happening again; after a series of discussions and evaluating options, conclusion centered on using some independent or neutral category to use as an evaluating point and seemed the financial cost index was the best reference, and referenced by Green as one of the Town's guidelines to use when recommending this range of adjustments that comes to employees and elected to use

that as a reference point when released every year, will be evaluated but that any adjustment given to the governing board would not exceed the average of adjustment that is given to the Town employees, so the board would never receive an adjustment higher than what any of the Town employees would receive, even when times the index may go up, if the Town isn't funding a similar adjustment or lesser adjustment to the Town employees, then that will be the governing adjustment to the board.

Action: Council Member Rowe brought forth this as a motion to approve the two recommendations from the Personnel Committee. Council Member Schulze made the second to the motion.

Mayor Weatherly thought the discussion of the issue was thorough and obvious most of the Council last June wasn't really aware how the 1989 action by the board applied to this, and would be the same adjustment; the Personnel Committee undertook the review and showed what it showed, the adjustment wouldn't have been out of line anyway and thinks it's appropriate; they did review it and glad they did it to satisfy everybody. Council Member Lassiter noted Apex governing body makes less per capita than communities of like size. Council Member Olive noted the two recommendations and wanted it to be clear 1) keep things as they were applied from last summer in terms of the salaries and 2) they make the change to the future in the way described, and asked if this were correct and it was correct. He knew a motion and a second was on the table, however, made the motion. **Action:** Motion to split the decision into two separate items so they could be voted on independently. Mayor Weatherly noted he wanted to amend the current motion and asked if there were a second. Council Member Jensen made the second to the motion. With no discussion Mayor Weatherly asked all in favor to signify by voting eye - vote was unanimous 5-0 for two separate votes. Mayor Weatherly first called for the vote on the motion for recommendation No. 2 -how pay adjustments apply to the governing Council as described by Personnel Chair Rowe. Motion carried unanimously 5 - 0 on recommendation No. 2.

Mayor Weatherly secondly called for the vote on the motion for recommendation No. 1 - which was to let stand the adjustment in the budget last year as brought to them from the Personnel Committee, and in their discussion the application of the current ordinance at the time; vote on the motion was 4-1 with Council Member Olive voting no.

Mayor Weatherly explained the only two people aware of that before discussions were the two members on the Personnel Committee and the minutes adequately or amply say that the discussion about how the cross the board increase would apply to Council. He directed his statement to Council Member Olive that he was aware in Personnel but didn't bring that to the rest of the Council for discussion at all and now wants to object to that and thought it to be disingenuous. Council Member Olive responded it was not disingenuous and since he had brought it up would be happy to address that, explaining when first discussed in Personnel Committee, at the time a one and half year tenured councilman, he assumed a \$1000 across the board pay increase to all town employees would apply to anyone that gets a paycheck from the Town as an employee. He went into the Personnel Committee meeting knowing that, assuming that without any knowledge of the 1989 resolution. Secondly the fact they were told about half way through the meeting, that the increase would apply to them as well, told not as a matter of point but as a fact trying to convince them that it was a good idea when they were already in opposition to an across the board increase because they wanted to find a way to reward the most highest performing employees with the limited amount of funds they had. Third, they brought it out to the Council meeting and the Personnel Committee made the recommendation - they did not recommend the \$1000 across the board pay increase, therefore it's not incumbent upon the Personnel Committee or its representation to make points for all of the argument for a proposition they were not supporting. It would have been up to the Town Manager to present that to you if he wanted to make sure that you knew voting for or against was going to affect you in anyway; that didn't happen.

Mayor Weatherly responded the minutes adequately say it was explained and told to you, he had read the minutes some time ago and clearly evident the Personnel Committee discussed the application of the ordinance at that time, that across the board would apply, and then in your argument against across the board that would have been a logical point to raise, that this cross the board also applies to the governing body, and he didn't want to do that or we certainly oppose that, but he didn't and was silent in nine languages.

Council Member Olive responded, for him it was irrelevant in the discussion. He was presenting an alternate plan and was not presenting the negatives of the plan that the Town had presented. Council Member Lassiter stated he would have been interested in hearing this at the Personnel Committee when they discussed this as opposed to having it brought out in a political blotter.

Council Member Olive responded the Personnel Committee meeting was held at 4:00 p.m. and he has a job and was at work until 6:00 p.m. and could not make the meeting; we have a Personnel Committee, they did their job, and thinks they did a fine job. Council Member Rowe asked Council Member Olive the reason for his opposition. Council Member Olive responded the reason for the point was last summer they tried to appropriately award Town employees with the limited budget for salary they had, this being a side effect if you will of what happened last summer. He wanted to have a purposeful, intentional situation where they didn't honestly - he didn't expect they were going to bring up this matter as a voting matter because doing nothing does not necessarily require a vote not since he's been aware. It was presented as two recommendations and he saw this as an opportunity for us to say, let's put things back the way they were, then talk about whether or not we could have an intentional increase, not a side effect increase.

Council Member Jensen wanted to make sure it was overtly done and after looking at the statistics, felt by bringing this up and voting on it as they did, and why he wanted to split it also, it overtly says this is what the Council wants to do. He stated they were still on the bottom end of the scale and he doesn't like the way the whole thing took place, unfortunate because he was one of the people that did not know about the raise for Council but thinks overall is acceptable, not good timing, but to go back and try to take money out of salaries and change all of it back was going to be a giant mess and better to let it go as is, because if we bring it up all brand new and try to sweep all the other out then we gyrate a whole bunch of work for the town staff. He's ok with the result, not satisfied with the procedure but it's done and had tried to clean it up the best they could.

Council Member Schulze agreed it was an ugly way they came about it, but the key thing was to be open and transparent about it and voting on it tonight was what they did.

End of Old Business

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

Karen Rindge, WakeUP Wake County spoke in support of the transit plan, for needed access and to relieve congestion and pollution as the County continues to grow and allow voters to decide on the referendum for the 1/2 cent sales tax to implement the plan; asked for support of the Wake County Board of Commissioners in their vision for the future.

Mike Monfort noted special needs recreation activities were a part of the overall master plan and asked for more research in finding out those needs and move forward with implementation of the special needs programs.

End of Public Forum

NEW BUSINESS

New Business 01

Director of Finance Lee Smiley

Possible motion to approve Budget Ordinance Amendment and Project Ordinance Amendment for Regional Water Reclamation Facility and additional design work at Community Park dam.

Director of Finance presented a second contract had been awarded for the regional WRF and the project ordinance amendment appropriates \$3.2 million of the Town's proposed bond funds to pay its share of the costs. When the first contract for this project was awarded the Town budgeted \$12.5 million to be transferred from the Water/Sewer Reserve for a portion of that work. Because of the large amount and availability of revolving loan funding, that transfer was not made immediately but postponed until needed. Budget Ordinance Amendment completes that transfer and appropriates \$15,000 of General Fund balance for additional design work on the Community Park dam. The State is requiring geotechnical and modeling data that was not anticipated in the original scope of the design contract.

Action: Council Member Schulze made the motion to approve the Budget Ordinance Amendment and Project Ordinance Amendment for Regional Water Reclamation Facility and additional design work at Community Park dam. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of New Business #01

New Business 02

Director of Finance Lee Smiley

Director of Finance gave a review of 2nd Quarter Finance Summary and Apex EMS revenues and expenditures. Benchmark for the quarter is 50% for revenues and expenditures. Significant variances were noted. Monthly and year-to-date revenues and expenditures for Apex EMS were noted; County funding remains at \$89,779 monthly with no adjustment, noting eventually transport fees will go away and will be sole revenue of Wake County; noted disparity in other revenues, however where it should be and in good shape.

End of New Business

New Business 03

Town Manager Bruce Radford

Proposed motion to adopt a Resolution declaring surplus two parcels of real property owned by the Town; 1) the 1.57 acres parcel of land at the southwestern quadrant of the intersection of Old Raleigh Road and the Apex Peakway and 2) the 0.19 acre parcel located at the southeastern quadrant of the intersection.

Manager Radford pointed to the site map for the property at the intersection of 1200 Old Raleigh Road, identifying 0.19 acres and 1.57 acres; noted Town does not need the parcels for Town operations or projects; recommends declaring both parcels surplus and marketing them; stated private property adjacent to the 0.19 acre southeastern parcel intends to sell the land; Town has been offered opportunity to market this parcel for assemblage with the private tract; 0.19 acre parcel is left over from acquisition for Peakway construction and if tied together as one tract of land would afford a right-in and right-out for the combined tracts for future development. Asked to declare this parcel surplus to allow the listing with same realtor marketing the Edwards land and market this with same commercial use in keeping with the UDO allowed for that area; broker Colhoun suggested asking price \$50,000 for 0.19 acres in keeping with the primary lot and proves to be about \$250,000 a full acre and is the recommended value for the adjacent property for sale.

Manager Radford pointed to the 1.57 acre parcel of land at the southwestern quadrant of the intersection noting the Town could market this tract in order to find a user that would be able to use it for what is currently permitted; was not asking they approve it for sale at this point, only to declare it surplus and find out its value, and place signage for sale.

Mayor Weatherly asked the compelling reason to surplus the 1.57 acres at this time recalling past discussion to sell that and saw no compelling reason to do so, and real estate values at the time were on appreciation and with no reason to sell decided to let it appreciate; asked the compelling reason to sell it now, and secondly any reason Town would need it for its own purpose, asking what the difference was last time to this time

Manager Radford responded he had not derived that it would be needed for the town's own purpose; and noted the lot on the site map; noted difference last time discussed and this time was that it was not a part of this land at that time and now having made trade with Villages of Apex made that portion square and created the 1.57 acre lot; Town is not out anything to list it ourselves and in the event someone has interest in putting a commercial development on that corner, and would bring back the price or offer made to the Council to make the decision at that time. Mayor Weatherly stated his point being if there's not a compelling reason, they don't need to be a motivated seller, don't sell in a down market; he asked again what's the compelling reason they would want to consider selling this property in a down market. Manager responded the Town clearly has a piece of property and have not determined how it would be used for our own benefit, declaring it surplus would obviously bring in additional revenue and certainly not top of the market as has been in the past. Council Member Schulze felt this was prime real estate and would not want to sell it in the down market.

Council Member Rowe noted the task force working on opportunities for development within the community and had heard of communities that have established a piece of property they have developed for their Town and would like to see this in discussions as they look for economic development opportunities in Town, asking does having a

marketable piece of property put the Town in a position to act as a developer or enhance the property to the Town's benefit, and asked if putting in surplus eliminate that opportunity to make it a part of the discussions that are going on now. Manager Radford didn't think this eliminates opportunity to discuss how you would market it and how they might improve it, noting water and sewer available to the site and certainly would not clear any portion of it nor spend any additional money on it in advance; it would give the opportunity to determine the market for it. Council Member Lassiter added determining it surplus does not set the time to market or sell it. Council Member Jensen stated the Town didn't have to sell even in the upset bid process, but could consider it; he had talked with the Manager and with Council Member Rowe and stated a member of the task force stated with companies that come in, 80% of want to have a building up and if all the plans are in place, you may chip into 80% that want it to 20%; Villages of Apex property donated to Town earlier just down the street, thinks there are two opportunities for top money and goes beyond certified sites with little costs to the town; he didn't agree to sell it in a down market and a motivated buyer gets what he gets in an up market. Manager Radford asked if they were willing to split the two parcels, asking to consider the 0.19 track surplus and list it with the broker. Mayor Weatherly called for a motion.

Action: Council Member Rowe made the motion to declare the 0.19 acre track surplus and list it with the Broker listing the private parcel. Council Member Schulze made the second on the motion. Motion carried unanimously 5-0.

Mayor Weatherly asked if there were a motion concerning the 1.57 acre parcel. There was no motion. No action was taken regarding the 1.57 acre parcel. Attorney Fordham asked the Resolution for adoption be modified to reflect no action taken on the 1.57 acre parcel.

End of New Business 03

New Business 04

Chief of Police Jack Lewis advised Council of a request to close certain streets within Scotts Mill area for 5k Run, making them aware of past guidelines and impacts on the neighborhood. Schedule is May 12, 2012; race time had been 7:30 p.m. – 9:30 p.m. and explained there had been issues with EMS services getting to a down runner, and had received a series of complaints over the race land-locking the area. Promoters had gotten approval and support but not communicated to the residents and asked to continue the event. Chief wanted to make this work and felt to allow the race was good for the community, and with the hold harmless agreement in place and flyer distribution within 72 hours of the event. Council discussed the communication to the neighborhood and the complainers, additional requirements for notification to the approximate 500 homes, HOA better to work with this, parking restrictions, while considering alternate routes and race time and made the following motion.

Action: Council Member Lassiter made the motion to allow the run and closed the streets noted, with notices in place by police, signs and flyers in place and with the insurance hold harmless. Council Member Olive made the second to the motion. Council Member Jensen was satisfied, however had received many emails and didn't want to do so again. Motion carried unanimously.

End of New Business 04

New Business 05

Town Manager Bruce Radford

Discussion of selection process for Town Clerk; Mayor and Council decided by consensus that no fewer than 3 candidates and no more than 5 candidates that were the most qualified receive interviews with the full Council and reach a conclusion, wanting a strong say in who's being hired as the Clerk and with the Manager and Human Resources Director sorting out the top candidates for the interview process. The process will call for a meeting notice of the Council and considered in Closed Session.

End of New Business

CLOSED SESSION

Mayor Weatherly call for a motion to move into Closed Session at 9:45 p.m. for the following purposes:

1) to receive legal advice from the Town Attorney about the case entitled, "Town of Apex, a North Carolina Municipal Corporation v. Jones & Cnossen Engineering, PLLC, f/k/a/ Jones, Cnossen & Dolle Engineering, PLLC, No. 10 CVS 21136 (Wake County NC Civil Superior Court)," to discuss the case and to provide guidance to the Town Attorney.

2) to receive legal advice, discuss, and give the Town Attorney instruction concerning two matters of potential eminent domain litigation.

Action: Council Member Schulze made the motion to move into closed session for the purposes stated. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. Closed Session minutes are recorded separately. **Action:** Council Member Schulze made the motion to move back into regular session at 10:15 p.m. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

WORK SESSION

There were no Work Session items.

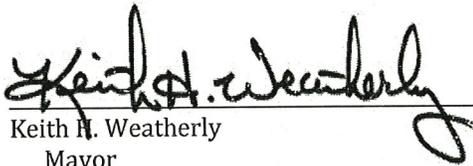
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 10:15 p.m. **Action:** Council Member Schulze made the motion to adjourn. There was no second to the motion. Motion carried unanimously 5-0.

Minutes of the February 07, 2012 Council meeting were submitted by the Town Clerk for approval by Council during their February 21, 2012 Council meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA
Council Meeting Minutes for February 21, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 21, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.
Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

1) to receive legal advice from the Town Attorney about the case entitled, "Town of Apex, a North Carolina Municipal Corporation v. Jones & Cnossen Engineering, PLLC, f/k/a/ Jones, Cnossen & Dolle Engineering, PLLC, No. 10 CVS 21136 (Wake County NC Civil Superior Court)," to discuss the case and to provide guidance to the Town Attorney.

2) to receive legal advice, discuss, and give the Town Attorney instruction concerning two matters of potential eminent domain litigation.

Action: Council Member Schulze made the motion to move into closed session for the purposes stated. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. Closed Session minutes are recorded separately. **Action:** Council Member Schulze made the motion to move back into regular session at 10:15 p.m. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

WORK SESSION

There were no Work Session items.

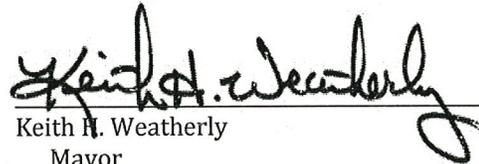
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 10:15 p.m. **Action:** Council Member Schulze made the motion to adjourn. There was no second to the motion. Motion carried unanimously 5-0.

Minutes of the February 07, 2012 Council meeting were submitted by the Town Clerk for approval by Council during their February 21, 2012 Council meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA
Council Meeting Minutes for February 21, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 21, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

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

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

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 Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Manager Radford asked to pull item 6. **Action:** Council Member Jensen made the motion to approve the consent agenda without item 6. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for February 07, 2012; Closed Session of February 07, 2012 (separate).
2. Street closings for 2012 Peak Fest Street Festival and Old Fashioned 4th of July Celebration.
3. Amend Town Code Section 15-6 Hours of Operation for Apex Town Parks: Opening and Closing: Ordinance No. 2012-0221- 02.
4. Increase damage deposit for room rentals at Apex Community Center and Halle Cultural Arts Center from \$100.00 to \$200.00.
5. Resolution #2012-0221- 05 Supporting the NC Turnpike Authority in its Application to Designate the Triangle Expressway as a NC Scenic Byway.
6. Amend Traffic Schedule I: Change in stop control to remove Stop Sign for Apex Peakway at Anterbury Lane, and Addition of Stop Signs to match existing conditions at various locations (pulled).
7. Amend Chapter 12, Article III, Subdivision 4.5 of Apex Town Code Sewer Use Pretreatment Program: Ordinance No. 2012-0221- 03.
8. Agreement with Thales Academy for use of Hunter Street Park.
9. Resolution No. 2012 - 0221- 06 to Codify UDO.
10. Tax Report for Apex approved and accepted by Wake County Board of Commissioners during their regular session February 6, 2012.
11. Annexation Petition #469 Joyce C. Adams, owner/petitioner, petitioning to annex 5.355 acres and contiguous to the Town's corporate limits and located at 1836 Olive Chapel Road, Apex, N.C.; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to schedule date for public hearing March 6, 2012 on Town website.
12. Annexation Petition #470 Travis Eugene Richardson, owner/petitioner, petitioning to annex 19.493 acres and contiguous to the Town's corporate limits and located at north of Milano Avenue and west of Blushing Rose Way; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to schedule date for public hearing March 6, 2012 on Town website.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.
There were no amendments and it was set.

PUBLIC HEARINGS

Public Hearing 01

June Cowles Senior Planner

Possible motion to continue Public Hearing for 2025 Land Use Amendment and Rezone #11CZ17 to the March 20, 2012 Town Council Meeting; subject property located at 3525 Old US Hwy 1, New Hill (Post Office Site); approximately .28 acres. Mayor Weatherly announced the hearing would be continued to March 20, 2012 as stated and called for a motion. **Action:** Council Member Jensen made the motion to continue the public hearing for 2025

Land Use Amendment and Rezone #11CZ17 to the March 20, 2012 Town Council Meeting. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 01 continued to March 20, 2012.

Public Hearing 02

June Cowles Senior Planner

Public hearing will not be held for major Site Plan for Thales High School, located at 1300 N. Salem Street containing 9.35 acres. **THE PUBLIC HEARING WILL BE READVERTISED.**

Public Hearing 02 will be readvertised.

Public Hearing 03

Lauren Simmons Planner

Public Hearing and possible motion for various amendments to the Unified Development Ordinance. Staff presented the planning report for the proposed amendments and is incorporated as a part of the minutes and approved by the Planning Board with a condition to fix a staff report error in item 2 during their February 13, 2012 meeting. Staff recommends approval. 1) Table 4.2.2. *Use Table*. Allowing barber and beauty shops as a fully allowed use in the O & I instead of a percentage of use. 2) Table 6.1.11(G)(1) *The Table of Uses*. Due to DWQ staff error the Town needs to amend the Table of Uses (6.1.11(G)(1)) to allow drainage of a pond in the Jordan Lake Watershed. Mayor Weatherly opened the public hearing at 7:10 p.m. No one spoke during the hearing. Public hearing was closed and matter referred to Council. **Action:** Council Member Schulze made the motion to approve the amendments as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 03.

Public Hearing 04

Dianne Khin Director of Planning

Public Hearing and possible motion regarding Annexation Petition #466 Glenn Futrell, Glenn E. Futrell, Lewis P. Cooke and Joy C. Futrell property owners/petitioners, petitioning to annex 9.757 acres including public right-of-way and with property being contiguous to the Town's corporate limits (Infiniti Site), and located north of US64 and east of Laura Duncan Road, Apex, N.C. Staff oriented to the site known as the proposed Infiniti dealership and contiguous to Laura Duncan Road. Mayor Weatherly opened the public hearing at 7:11 p.m. No one spoke during the hearing. The public hearing was closed and the matter referred to Council. **Action:** Council Member Jensen made the motion to approve the annexation. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 04.

Public Hearing 05

Dianne Khin Director of Planning

Public Hearing and possible motion regarding Annexation Petition #467 KCLC Development Co. LLC owners/petitioners, petitioning to annex 1.501 acres (DB 012605 PG 02512-02514 property underlying Blazing Trail Drive) and contiguous to the Town's corporate limits and located north of Humie Olive Road, Apex, N.C. Staff oriented to the site, noting Blazing Trail is a private drive that will lead into Parkside at Bella Casa and owned by the same. Mayor Weatherly opened the public hearing at 7:12 p.m. No one spoke during the hearing. The public hearing was closed and the matter referred to Council. **Action:** Council Member Schulze made the motion to approve the annexation. Council Member Lassiter made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 05.

Public Hearing 06

Dianne Khin Director of Planning

Public hearing and possible motion regarding Annexation #468, Town of Apex, owners/petitioners, petitioning to annex 1.986 acres, (Apex Peakway Right of Way) into the Town's corporate limits; property located off Ambergate Station Road and North Salem Street. Staff oriented to the site known as Apex Peakway ROW off Ambergate Station Road and North Salem Street, and owned by the Town. Mayor Weatherly opened the public hearing at 7:13 p.m. No one spoke during the hearing. The public hearing was closed and the matter referred to Council. **Action:** Council

Member Lassiter made the motion to approve the annexation. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 06.

End of Public Hearings

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
*Comments must be limited to 3 minutes to allow others opportunity to speak.***

Apex High School Principal Matt White announced plans for a 5K Race in May in memory of Coach Daniels and presented a poster to the Mayor. Proclamation is forthcoming; plans are being worked out with the Police Department.

NEW BUSINESS

There were no New Business items.

CLOSED SESSION

There were no Closed Session items.

WORK SESSION

There were no Work Session items.

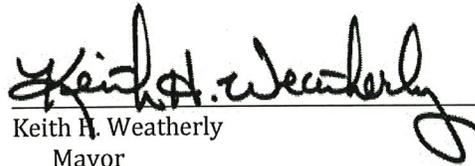
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 7:14 p.m. **Action:** Council Member Schulze made the motion to adjourn. There was no second to the motion. Motion carried unanimously 5-0.

Minutes of the February 21, 2012 Council meeting were submitted by the Town Clerk for approval by Council during their March 6, 2012 Council meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

**Town of Apex, North Carolina
Minutes for the 2012 Town Council Annual Retreat
February 24, 2012**

The Town Council of Apex, North Carolina held its 2012 Annual Retreat on Friday, February 24, 2012 in the Apex Police Department Conference Center, Saunders Street. The Council toured Town facilities and sites beginning at 8:00 a.m. and returned to the Police Department at 10:30 a.m. to consider various issues presented by staff as listed on the attached Agenda which is incorporated herein by reference. The meeting ended at 3:35 p.m. It was noted in the public notice Council could potentially take action during the meeting if they choose to do so; no action was taken.

Highlights:

Tour of Facilities:

Public Works Building/Campus, Upchurch Street - lacks space in both buildings and yards; expansion would create space; potential for electric division to move to Mt. Zion site.

View Available Land at Fire Station No. 3 - Hunter Street - 5 acres owned by Wake County -surplus price \$683,500 if purchased by Town would allow for expansion of the station

View Future Site of Fire Station No. 5 - Apex Barbeque Road - part of the Seymour property - design postponed for 4 years; growth continues to the west; design would replace PSS4 but consist of two bays versus three.

View Nature Park Site - 160 acres (Seymour and Holleman Tract) Evans Road

View Mt. Zion Transmission Station - space for building for electric division freeing space at Public Works - water and sewer would be available with extension of Milano Avenue; feasibility study rendered a preliminary design.

Tour Fire Station No. 2, Old US1 is located 6 1/2 miles from Apex - 24-7 staff covers the rural district, structure has met its life expectancy and needs repair; there is room for expansion and has water; sewer system has failed and working with the County for extending the sewer field; 5 acre footprint is owned by Progress Energy and sits adjacent to the proposed New Hill Community Center site; design for addition to back of building and costing proposal is underway.

Drive by Regional Water Reclamation Facility - Shearon Harris Road - entrance was under construction and could not drive down to the construction site; 200 acre site sits adjacent to the Harris Plant and will well buffered internal to the site.

Return to Police Department

Noted: Staff continues to be creative in using existing space at Public Works to include ladder system and racking, noted purchase of adjacent land; no analysis has been done; have exceeded capacity and expectations in 1994 building and grounds design; space could be gained by moving electric division to Mt. Zion site; yard space has become problematic; design for the current site will be presented.

Staff presentations and potential capital projects plans follow and covered in the agenda notebook:

10:30 Population & Growth Forecast, Planning Director (pg. 4-8)

2.94% Growth rate with potential for 2.5% over the next years; population at build out 2035 - 74,000; approved residential and non-residential projects under construction and those pending construction were noted.

10:45 Building & Construction Forecast, Engineering & CM Director (pg. 10-14)

2011 Review and 2012 forecast covered sidewalks and streets, completion of the NC540; commercial and industrial and residential projects under construction - permits in 2012 are tracking slightly lower than 2011. Pavement conditions survey noted streets in good condition and recommends resurface of 5.5 miles (118.9 miles of paved streets and 72.1 miles of sidewalks and 218 miles of curb and gutter); noted estimated repair costs at \$1.5 million; annual need \$1.1 million; in 15-18 years a number of new streets will age out and need repair.

11:00 Public Works Update, Public Works & Util. Director (pg. 16-21)

- (1) Regional Water Reclamation Facility (aerial photos) would support 70,000 population; buffered site; construction ahead of schedule; remaining target milestone dates were noted; becomes operational 2014.
- (2) Cary/Apex Water Plant Expansion from 40 MGD to 56 MGD; currently under design; Estimate \$50.5 million; Apex ownership \$23% of the plant capacity; support 65,000 population; project timeline 2015 - complete 2018.
- (3) Mt. Zion Substation Transformer - conversion from 115kV to 230kV - 2014; electric system demand continues to grow to the west; a second transformer would be more cost effective, and would minimize downtime and capacity (purchase of PE transformer and covert existing transformer \$2 million).
- (4) Interactive Voice Response - Outage Management System - Police Communications handles outage calls and has outgrown the process, overloading emergency dispatch, causing line time-up and blocking 911 normally linked to emergencies; available solution "Interactive Voice Response System" that would provide automated phone answer and outage status reports to customers; would identify cause and location of outages and provide update on repair; investment \$300,000 with \$46,000 annual operating costs; could be funded immediately from public works account and asked to adopt a budget amendment in the 2012 budget; Manager Radford supports the solution; equipment will be internal and hosted off-site.

11:15 Financial Review, Finance Director (pg. 23-26)

- (1) Projected Fund Balances & Reserve Funds (General Fund Balance Available: \$5,993,000 noting less an 8% NC Local Govt Minimum; and less 17% Bond Rating Agency Guideline; noted Operating funds projected for 2012-13, and available Capital reserve funds.
- (2) Outstanding Bonded & Non-Bonded Debt was noted; Water Plant Bonds have been paid off.
- (3) Revenue Outlook for FY2012-13; trends are up and sales tax better.

11:30 Parks & Recreation Update, Parks & Rec. Director (pg. 28-32)

Hunter Street Park Phase I complete (\$360,000); funding was re-allocated park bond funds approved in 2004 Referendum; there is no funds for Phase II (\$410,000).

Seagroves Farm Park Phase 1 complete (\$965,000); funding was re-allocated park bond funds approved in 2004 Referendum; there is no funds for Phase II (\$474,000); Town accepted title for 12.22 acres -Villages of Apex project developer will pay fee or complete park construction or \$599,659.

Salem Pond Park 12.33 acre adjacent to Salem School was transferred by Wake County to Town; no planning/design or development has occurred; recommends park design and complete construction plans (estimated cost \$75,000).

Apex Nature Park - 160 acres potential park included in 2004 bond referendum (\$4 million); updated estimate \$5,100,000; trust fund monies were committed to purchase Holleman and Seymour sites; until projects are underway, there is little possibility for the Town to secure additional trust fund monies or grants for other projects; stormwater plans are on hold due to Jordan Lake Watershed conditions.

Manager noted discussion had taken place regarding locating a Raptor Center on 6 acres, however not shown on the plan; are lacking funds to move forward with buildings and paving areas; town has asked they hire an Attorney and Engineer.

Manager Radford stated costs to finish the projects would be under \$6 million if bonds are sold; stated there was no funding to pay for the bond debt now; staff was willing to break down associated costs, and noted phasing of the project completions has not been considered; discussed phasing plan for the Nature Park making effort to stay in good standing for future funding - i.e. maybe trails.

Review of Parks and Recreation Master Plan noted need for update and inclusive in 2013 budget request and necessary to apply for additional grants must be adopted and in place; discussed moving forward with master plan to coincide with funding efforts.

Discussed ADA programs: no staffing in place to work with the special programs; training facilities, fields and play grounds are handicap accessible; if town provides facilities "All for one Sports" could run the programs vs. hiring staff;

County wide meeting will be held; not a lot of calls for special programs; discussed potentially working with Cary - must have vehicles to connect and potential to subsidize costs.

12:00 Lunch - Downtown Apex

1:15 Tunstall House Evaluation, Robbie Johnson, Clearscapes (pg. 34)

Town Campus Tunstall House sits vacant and structurally sound; Town asked Clearscapes conduct a preliminary study of potential revitalization for possible conversion for a Senior Center; study considered needs, accommodations, and similar facilities to determine how facility would best be used. Proposals offer an addition up to the house or a standalone addition with courtyard and parking; proposal is for removal of the small addition to the house, incorporate out buildings into the design, covered drop-off area; addition would honor the site, preserving the front façade, and high-archery of the site and within scale of existing house. Recommendation is for the additional standalone long term facility on site; estimate \$1 million; noted opportunity for expansion.

Discussion evolved around feasibility of the project and whether to invest funds for a center for seniors or potentially seek out other properties; the house is a Wake County Landmark and as such is subject to the Town's demolition disincentive which would not allow Town to submit development applications for 48 months after demolition as well as sending a poor message to development community about saving historic structures; noted the longer the project sits the most costly it becomes. Discussed use of the house as the upstairs of the house could not be used; focus was to honor the house with successful merger into the campus; design sketches were shown; noted redundancy with the existing community center; discussed elevations and how the expansion would be sited on the property and noted there is no additional place on campus for further expansion of the existing community center. Project will be considered with other budgetary requests and prioritized accordingly; noted a finite period of time before the house would become in disrepair and if left any longer time would begin and it may be impractical to restore, perhaps three years out; currently there is no structural settling of the foundation and would become more expensive each additional year out; Mayor noted it was not imperative to start this year, however should focus on the project within the next years; it was noted there is value in keeping green space on campus; the house is unusable as is; Council expressed their views related to the project.

1:45 Public Works Facilities Expansion, Facilities Director w/Smith-Sinnett (pg. 36-40)

Update was given regarding feasibility study for the facility; site plan drawings were shown and would tie existing campus together with materials. Phase I design is ready to bid and includes admin building and warehouse and inventory building and would relieve main building with additional access on Williams Street. John Hitch and Chris Farmer noted facility does not meet needs for six divisions housed there; Alternate 2 design site salt dome staking plan; alternate 3 enclose existing covered storage, and alternate 4 electric locks and proximity card hardware at selected locations: cost estimate Phase I \$6,650,000, including alternates \$7,263,000. Phase II - proposed Electric Utilities Facility at Mt. Zion Electric Substation would give relief to existing facility both buildings and yard space. Bidding and construction timetables were discussed.

Manger stated Council should consider whether to bid the project, and also consider the Water Reclamation facility.

2:15 Break

2:30 Legislative Agenda Discussion, Mayor Weatherly w/Attorney Fordham (pg. 42-43)

Re: Amendment to NC General Statute 160A-393(b)(3) as it relates to Session Law 2009-421

Senate Bill 44. Mayor Weatherly asked to place on the Town's legislative Agenda the removal of the required quasi-judicial process when approving or denying major site plans with general stated standards require a discretionary decision; noted the process prohibits ex parte communication and has become problematic between developers, neighbors, staff, Planning Board and Town Council prior to the public hearing; preference was for all parties to be able to have open, informal discussion regarding the development project prior to decision. Wake County Mayors have been encouraged to place this request on their individual legislative agenda's in hopes that unanimous participation would lead to a unanimous decision by the legislative delegation for removal.

Attorney Fordham presented legal implications as it applies to the planning and zoning process for major site plans, UDO Section 2.3.6(E)(2) Standards, as it relates to Compatibility, when the Town considers whether to approve or deny a major site plan, decision as to whether it meets the rules in place before issuing a building permit. Advised land use regulatory adjudications are classified quasi-judicial when it involves application of the legislative determined policies to individual situations and when the quasi-judicial decision is made, due process requirements

mandates that the decision making process adequately protect the rights of the affected persons and arrives at the correct result; evidence must be competent and not opinion; wasn't sure eliminating the quasi-judicial process would alleviate all the problems; it was noted removal of the compatibility standard from the UDO would remove the quasi-judicial hearing process, however a rewrite or adjustment of the ordinance would be necessary to address specific concerns. Mayor Weatherly asked the request to remove the requirement be placed on the legislative agenda, and if there's a sponsor would work on the stator language for improvement.

2:45 Developing a Capital Projects Plan for General Fund, Town Manager (pg. 45)

3:30 Schedule for Future Capital Projects Planning Session: Town Manager (pg. 46-51)

Potential Capital Projects (\$40 million); service levels have suffered as a result of inability to fund needs for maintenance, technology, vehicles, equipment, and facilities; \$4,500,000 of General Fund Balance could be spent to address immediate needs; 2 cent tax increase would necessary to pay the \$6 million bond debt for parks; consider an devise a comprehensive 3 year spending plan to provide for funding the needs and prioritize capital projects across all funds; incorporate same in 2013 FY budget. Schedule Worksession to focus on these issues.

3:45 Wrap-Up & Evaluation

Mayor Weatherly noted prioritization critical, emphasizing public safety, suggesting a list for needs now and 2nd list for remainder; noted potential bond sale and asking for 2 cent tax increase if parks bonds are sold or less than 5 cent tax increase for things not bondable. When bond referendum went forth, he noted they were committed not to raise taxes, not the case now if the bonds are sold. Mayor Weatherly stressed he wanted full citizen involvement and public participation in the discussion of tax increases, bond projects, and tax increases associated with service levels. Finance Director noted we could wipe the slate clean if we don't intend to sell bonds, and could consider a new referendum; noted if we have voter approval for a tax increase could sell the original bonds with 6 years to decide what to do with the rest of the bonds. It was noted the list would be essential to sell to the citizens for approval. Discussion evolved needs vs. wants, being creative and making do, by phasing, space use. Mayor noted time of reckoning has come, and would be a challenging budget session.

Councilman Jensen encouraged extension of waterlines on US64 as an economic development incentive for non-residential development.

Councilman Olive presented a list of items that had been brought to his attention:

- Accessibility
- Budget (fire, police, ems); vehicle rotation planning
- Nature Park funding
- Completion of Parks: Seagroves Phase 2
- Tennis court surfacing
- Business Regulations: easing as they get started
- Recreation: more concerts
- Waste mgmt.: contract obligations
- Streets: Public Works related; annual allotment for street maintenance
- Streets: identify areas where speed limits should be increased
- Parkway: stops more than they go – complete the loop
- Streets: traffic jams – mitigate the worse areas
- Streets: signals and Turn lanes
- Absorb costs for fees - electric payments made electronically

Councilman Lassiter recognized accomplishments made with less; being attentive to community concerns.

Adjourned 3:35 p.m.

Minutes for the February 24, 2012 Council Retreat was submitted by the Town Clerk to the Town Council for approval during their March 6, 2012 meeting.

Georgia A. Evangelist

Georgia A. Evangelist, MMC
Town Clerk

Keith H. Weatherly

Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA
Council Meeting Minutes for March 06, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 06, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order.
Council Member Rowe gave the Invocation.
Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

Mayor Weatherly presented the following proclamations:

1. Apex Sports Authority Cougar Pop Warner Cheerleaders 2010-2011 Finalists.
2. "Girl Scout Week", March 11-17, 2012.
3. Retirement of Coach Bob Wolfe, Apex High School, and declaring "Bob Wolfe Day", March 17, 2012.
4. Memory of Coach Gene Daniels, Apex High School, and declaring "Coach D Day", March 24, 2012.
5. "MS Awareness Week", March 12-18, 2012; May 31 MS Walk, RBC Center in Raleigh.

Presentation 06

Councilman Lassiter recognized the Parks Recreation & Cultural Resources 2011 Volunteers of the Year for Athletic Programs: Doug and Christie Hampton, and Non-Athletic Programs: Bill and Ana King.

End of Presentations

CONSENT AGENDA

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 Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments to the consent agenda. **Action:** Council Member Jensen made the motion to approve the consent agenda. Council Rowe made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for February 21, 2012 Council Meeting.
2. Minutes for February 24, 2012 Council Retreat.
3. Set Public Hearing for March 20, 2012 for Rezone #12CZ01, 2.61 acres, 910 Windy Road.
4. Set Public Hearing for March 20, 2012 for amendments to the Unified Development Ordinance.
5. Amend Traffic Schedule I as referenced in Section 20-60.1 Traffic Schedules: Section 20-68 (b) Stop Intersections; to be kept on file in Clerk's office; Ordinance No. 2012-0306-03.
6. Amend Section 12-22(c) Town Code, "Reservations of Treatment and Transmission Capacity": Ordinance No. 2012-0306-04.
7. Annexation Petition #471 Wake County Board of Education, owner/petitioner, petitioning to annex 108.456 acres including 0.056 acres of right-of-way, and contiguous to the Town's corporate limits and located off Humie Olive Road (SR 1142); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to schedule date for public hearing March 20, 2012.
8. Annexation Petition #472 Town of Apex, North Carolina: Resolution 2012-0306 -472 Declaring Council's Intent to Annex Town-owned property; containing 0.062 acres (Milano Avenue right-of-way) into the Town's corporate limits; property located off Evans Road; setting date for public hearing March 20, 2012.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Manager Radford asked to amend the agenda to include a request from Police Chief regarding Safer Grant application. Attorney Fordham asked to amend the agenda to include a closed session to consult with Town Attorney regarding potential eminent domain litigation. Mayor Weatherly called for a motion to amend the agenda as requested. **Action:** Council Member Olive made the motion to amend the agenda as requested. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. The agenda was set as modified.

PUBLIC HEARINGS

Public Hearing 01

Brenda Vega Principal Planner

Public Hearing and possible motion regarding Annexation Petition #469 Joyce C. Adams, owner/petitioner, petitioning to annex 5.355 acres and contiguous to the Town's corporate limits and located at 1836 Olive Chapel Road, Apex. Staff noted the location of the property, with petitioner having been connected to public water and voluntarily petitioning for annexation. Mayor Weatherly opened the public hearing at 7:30 p.m. and with no one addressing the petition, closed the public hearing and referred the matter to Council. **Action:** Council Member Schulze made the motion to approve the annexation. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 01

Public Hearing 02

Brenda Vega Principal Planner

Public Hearing and possible motion regarding Annexation Petition #470 Travis Eugene Richardson, owner/petitioner, petitioning to annex 19.493 acres and contiguous to the Town's corporate limits and located north of Milano Avenue and west of Blushing Rose Way, Apex. Staff noted the location of the property, with petitioner

requesting annexation for municipal water and sewer services for development known as Parkside at Bella Casa Phase 3. Mayor Weatherly opened the public hearing at 7:32 p.m. and with no one addressing the petition, closed the public hearing and referred the matter to Council. **Action:** Council Member Rowe made the motion to approve the annexation. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 02

End of Public Hearings

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

Dave Nice, Whispering Pines Subdivision, Whistling Quail Run, opposed the layout change, from open space to more lots adjacent to their subdivision; too many lots, removing buffer and closer to his lot, noted the plan was out of place, noting that higher density was an expense to the community.

End of Public Forum

NEW BUSINESS

New Business 01

Lauren Simmons Planner

Possible motion regarding Traditions at Bella Casa 3E Master Subdivision Plan for property located on Grouse Trail between Evans Road and Whistling Quail Run containing 8.62 acres and 30 lots. Staff presented the revised layout plan for the proposed 30 single family lots (previous approved 15 lots); project description table noted acreage, lots, density and RCA; adjacent zoning and land uses were noted. Applicant conducted a neighborhood meeting January 23, 2012 and neighbors voiced they were not pleased with the proposed layout changes for additional lots where open space had been previously approved. As a result of the meeting, the developer offered to provide a 10' landscape easement along the western property line of the entire Phase 3E. Within this easement the project would provide a wooden privacy fence and evergreen plantings to screen the new homes. Project Data: RCA consists of 2.19 acres or 25%; will be served by public utilities, storm drainage requirements will comply with UDO, grading plan and architectural standards are acceptable; PR&CR Advisory Commission recommended payment for fee in lieu of \$2,980.04 for each lot; plan is consistent with Apex Transportation Plan; access and circulation includes a street sub to the property to the east and connects with Evans Road and Lazio Lane; plan complies with UDO standards; planning report is incorporated as a part of the minutes and referred to by reference.

Staff recommended approval with conditions: 1) Grouse Trail will be connected to Evans Road, recorded as right of way, and open to traffic prior to the first plat west of the creek. 2) All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles. Covered porches are required on the front façade of each single family residential structure facing the public right-of-way. All residential units shall require a crawl space or a minimum of two steps to the front door and 14 inches to the front door. 3) The 10' landscape easement behind lots 193-203 is to be labeled, "Private Landscape and Maintenance Easement" and to be maintained by the Home Owners Association. Planning Board met February 13, 2012 and recommended approval with condition that the privacy fence be labeled a 6' privacy fence.

Stuart Jones, Jones & Cnossen Engineers, spoke in support of the proposed plan: average lot size is 1/5 acre; original buffer was 30' to 40' in width proposed 10' which meets RCA and with no buffer required when residential lots back to residential lots; meets all UDO requirements and Planning Board recommended approval as well as staff and agrees with conditions; noted the market had changed and the reason for the revised plan.

Attorney Fordham advised the proposed amendment meets all UDO requirements and generally would be approved and failure to do so could give way to legal action. Staff stated RCA meets the minimum requirement and is not recorded, and there being nothing different than any other tree areas; RCA for Phase 3C, 3D and 3E is 6.25 acres, and stated any significant changes in RCA would have to come back to Council for approval and staff didn't consider this significant; noted 2.19 acres for the proposed subdivision stands alone. Staff stated UDO does not require buffer between residential developments but the developer will provide the wooden fence and buffered landscape easement for the neighbors and is to be maintained by HOA; it would be required to have permission for any clearing of trees at the back of the residential lots and the HOA must manage same.

Council Member Jensen noted a radical difference between neighboring residences and wanted more buffering along the easement. Mayor Weatherly noted the Planning Board recommended the revised plan and there shouldn't be a negative with Bella Casa neighboring homes, and with the developer voluntarily placing fencing and additional buffering along the easement. Council Member Lassiter was looking at the legal side from the Town's perspective, and noted the proposed plan meets all UDO requirements and was difficult to do anything but approve without opening this up to legal difficulties, noting there was no criteria outside what was approved under the UDO. Attorney Fordham noted this was an administrative matter and not a quasi-judicial matter.

Dave Nice stated fencing didn't help and the proposed was totally different from the rest. Mayor Weatherly understood his concern, and explained the UDO provides property owners with rules as to what they could do and if they invest their capital and abide by the ordinances, then should expect it would be approved. Attorney Fordham further advised if this plan were proposed initially, it would have met all the criteria of the UDO, would have no choice but for approval.

Jones explained the initial subdivision was similar to what's submitted and gave detail regarding price, product, and noted a market study change caused them to look at a different market, dropping one size down in homes, and in looking at the financing component it helps the product keep moving; Phase 3C&D home prices \$300,000 to \$350,000; proposed home prices \$275,000 to \$300,000, noting there was no massive changes, as sizes will overlap; there's 3000 square feet in the proposed and complies with the UDO; noted there was no condition for buffer over the required RCA. Simmons expanded on the project description table on page 1 of the planning report, noting an increase in RCA from 2.09 to 2.19 acres; and would not see a lot of changes overall, as is much the same in size.

Action: Council Member Schulze made the motion to approve the master subdivision plan as presented. Council Member Lassiter made the second to the motion. Council Member Rowe asked if the motion should include the fencing condition and the other conditions described by staff. Council Member Jensen wanted to know if there was going to be additional landscape plantings along the easement. Staff responded, not required; Jones added there would be additional plantings and was noted on the landscape plan. Council Member Schulze amended his motion to include the conditions recommended and the plantings on the easement as noted on the plan. Council Member Jensen wanted to amend the motion to plant the easement with a Type A buffer: magnolias, evergreens things that were opaque. Jones responded the noted plantings in the landscape plan were within the 10' buffer. Staff read the explanation on buffer types and noted there was 700' of easement, and Jones stated he couldn't agree to that; it was noted there was a significant number of trees along the lines. Mayor Weatherly asked if there were a second to the amended motion. There being none, the motion failed. Mayor Weatherly called for the vote on the original motion as amended. Vote on the motion was 4 in favor and 1 opposed with Council Member Jensen casting the no vote and adding he felt the density should be lower, and more buffering. Motion carried.

End of New Business 01

New Business 02

Lee Smiley Director of Finance

Possible motion to approve Budget Ordinance Amendment and Project Ordinance Amendment for Regional Water Reclamation Facility, electric system improvements, and various General Fund accounts. Staff stated the amendment provides additional funding for several accounts.

- 1) recognizes \$38,000 (out of \$175,000) received to settle a dispute with an engineering firm and appropriates it to replace legal fees incurred,
- 2) appropriates \$84,000 of additional sales taxes revenues to repair problems with the bathroom at Fire Station 1 (\$28,000), replace the septic field at Fire Station 2 (\$10,000), and replace a backhoe for parks maintenance (\$46,000),
- 3) appropriates \$570,000 of additional electric sales to fund greater than expected outlays for system expansion (\$500,000) and a study of automated meter reading (\$70,000),
- 4) recognizes \$2 million of proceeds from the Town's upcoming bond sale to pay for further design, bid preparation, and construction supervision related to the regional wastewater treatment plant.

Staff answered questions related to the meter study for \$70,000 and noted technology changes rapidly and the study would be completed for a better understanding of the Town's system, and the company had been recommended by Electricities, "Utility Works". Council wanted more information regarding this and asked to research other communities that may have used this firm, and the results from their reports. Staff will bring the information back to Council for consideration. Mayor Weatherly referred the matter to Council.

Action: Council Member Lassiter made the motion to approve the Budget Ordinance amendment with the removal of the \$70,000 for the meter study, and approve the Capital Project Ordinance Amendment. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of New Business 02

New Business 03 (Add-on)

Jack Lewis, Chief of Police

Chief Lewis addressed reapplying for 2012 funding for additional personnel through the COPS Grant program; noted Apex was an eligible agency being considered based upon submissions in the previous two years which was not funded. Due to the small window of time for application, he deviated from the past practice of having the item heard before Personnel Committee, prior to Council consideration; funding provided 75% for three years and capped at \$125,000, with 25% local match and would enhance employment opportunities, and supplement costs. **Action:** Council Member Schulze made the motion to authorize the reapplication for COPS Grant. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

End of New Business 03

End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 8:40 p.m. to consult with the Town Attorney about legal issues, and eminent domain proceedings. **Action:** Council Member Schulze made the motion to move into closed session. Council Member Olive made the second to the motion. Motion carried unanimously 5-0. Minutes of Closed Session are recorded separate. **Action:** Council Member Jensen made the motion to move back into Regular Session at 8:59 p.m. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

With Council having returned to Regular Session the following action was taken:

Action: Council Member Schulze made the motion to adopt a Resolution No. 2012-0306- 07 Authorizing Eminent Domain Proceedings related to the Olive Chapel Water Line and Electric Line Project for the improvement of the Apex water and electric system. Council Member Lassiter made the second to the motion. Motion carried unanimously 5-0.

WORK SESSION

There were no Work Session items.

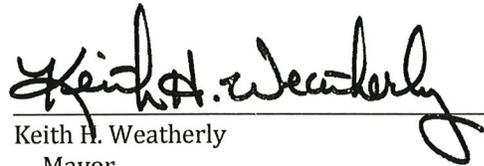
ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 9:00 p.m. **Action:** Council Member Olive made the motion to adjourn. There was no second to the motion. Motion carried unanimously 5-0.

Minutes of the March 6, 2012 Council meeting were submitted by the Town Clerk for Council's approval during their March 20, 2012 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA
Council Meeting Minutes for March 20, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 20, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order and gave the Invocation, and extended a welcome to those in attendance. Pledge of Allegiance was led by Scout Edward Walsh, Troop 316.

PRESENTATIONS

There were no Presentations.

CONSENT AGENDA

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 Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments. The Consent Agenda was set. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for March 6, 2012 Council Meeting; Minutes for March 6, 2012 Council Closed Session (separate).
2. Award construction contract: U-5118AB Lufkin Road Realignment Project; authorize Manager to execute.
3. Revisions to Town Standard Specifications and Details.
4. Interlocal Agreement for Phase VII of the Triangle Area Water Supply Monitoring Project.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Council Member Jensen made a motion to include a closed session item to discuss possible property acquisition related to the Clarence Edwards property identified as PIN #0742828176. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0. The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing 01

June Cowles Senior Planner

Public Hearing and possible motion for Rezone #11CZ17 and Land Use Amendment for .28 acres located at 3525 Old US Hwy 1. Staff presented the Planning report for the subject property known as the New Hill Post Office, NHPO LLC, applicant; current zoning is unknown and previous zoning: Wake County Zoning Highway Commercial; requested zoning: Neighborhood Business Conditional Zoning. Vicinity map was shown and neighborhood meeting report included. Property was annexed into Town and requires Town classification and zoning district. Applicant proposes same Neighborhood Business uses permitted on the recent rezoned property to the East and noted on page 2 of the report; report is incorporated as a part of the minutes; applicant requests land use amendment to include Commercial. Planning Board met March 12, 2012 and unanimously recommended approval with conditions for 2025 Land Use Amendment and Rezone #11CZ17.

Mayor Weatherly opened the public hearing at 7:10 p.m. and with no addressing same, closed the Public Hearing and referred matter to Council. **Action:** Council Member Jensen made the motion to approve Rezone #11CZ17 with conditions for 2025 Land Use Amendment. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 01

Public Hearing 02

Lauren Simmons Planner

Public Hearing and possible motion for Rezone #12CZ01 to rezone 1.10 acres of 2.61 acres located at 910 Windy Road and proposed Bradley Commons PUD. Staff presented the Planning Report for the subject property; applicant/owner Jeff Roach/KC2 Enterprises, LLC requests rezone with conditions stated in the report. Current zoning: Light Industrial; Requested zoning: Planned Unit Development Conditional Zoning. Neighborhood meeting was held and concerns were: parking, development in general, and building height; several uses were eliminated and parking added on site away from Villages of Apex; full report is incorporated as a part of the minutes and all uses noted. PD Plan: one three story mixed use building next to Villages of Apex PUD; rezone would limit more uses than current Light Industrial zoning; is consistent with 2025 Land Use Plan, Apex Transportation Plan and UDO standards. Applicant is willing to remove Ambulatory Services use; staff recommends approval of the PD Plan with condition: there be no on-street parking for the development on Caboose Trail. Site plan, proposed building renderings and proposed layout were shown and are consistent with Villages of Apex architecture; building faces north; plan proposes shared parking with Bradley's Carpet North and closing one entrance to Bradley's Carpet parking lot for shared parking with Bradley Commons, keeping traffic off Windy Road. Proposed grading plan and light plan will be reviewed at site plan; will connect to existing utilities. Planning Board met March 12, 2012 and unanimously recommended approval with conditions. Neighbors are for and against the plan and noted outstanding issues. Discussion evolved around setback of the building from Windy Road, on site self-storage, and building height; current zoning would allow maximum four story building and rezone would be less offensive. Questions evolved around privacy issues and set back from Windy Road; staff saw no problems as this rezone would be improved with reduction in building elevation. Photos of the area reveal changes in the area and showing Village Summit apartments under construction, Bradley's Carpets and view of closest residence to the property from Goose Trail off Windy Road. Question: if shared parking were needed to meet the requirements for the building or if there were enough onsite parking: plan shows 58 spaces onsite and according to the parking study guide, needs 73 spaces and would have those with shared parking and would have to be approved at site plan review. Question: was condition about no parking on Caboose agreed to by petitioner: it was

agreed to by petitioner; Town can restrict parking only by ordinance, and can't be a condition of approval. Mayor Weatherly opened the public hearing at 7: 20 p.m. and speaking in favor:

Jeff Roach, Peak Engineering & Design gave background information regarding the property zoned light industrial, with design and construction before Villages of Apex, with plans to build three buildings; noted changes in the area around Villages of Apex and the rezone to PUD; Bradley's didn't see light industrial uses as the best for this property and requests a downzone to PUD-CZ restricting more obnoxious uses like gas station, chipping, mulching; under current zoning the building could be built four stories in height and wanted it less obnoxious and flexibility would provide for more professional office space and small restaurant; met with Town Transportation Engineer regarding shared parking and connectivity between uses; restaurant hours after 5:00 p.m. would provide walkability from Villages of Apex and Village Summit Apartments, and hours of operation would not be for a 2:00 a.m. business. Mayor Weatherly asked for assurance once the property is zoned, subsequent owners would have same or lack thereof. Roach responded the zoning doesn't allow for adult use and bar, only restaurant general, 1500 to 2500 square feet with second and third floors for professional office. Site plan submitted has buffers around perimeter and will add landscape and meets UDO requirements; Type B buffer to south and west; retention pond answers for itself; request downzone to PUD-CZ. Questions evolved around restaurant time compliance: Applicant noted it hard to place limits on it, and does not want to restrict anyone, not looking at 2:00 a.m. time and would be controlled by the noise ordinance or 11:00 p.m. on weeknights and can't agree to time restriction, but will be discussed at site plan. Council Member Jensen pressed for closure time of the restaurant for 12:30 p.m. as a reasonable time for operation and applicant committed to this condition. Applicant had four neighbors at the meeting and noted others wanting to know what building would look like and hours of operation; pros and cons.

Speaking in opposition: Eric Brantley, Tender Drive, Village of Apex, noted group support, envisioned a quality mixed use development; particular parcel is not a part of the master plan for Villages of Apex and designated light industrial before VOA and understood that; 2025 Land Use Plan indicates surrounding areas will be PUD; development in the area needs to be well received and thoughtfully integrated with adjacent properties and with original Villages of Apex concept; supports rights of the property owner to develop his property in a way that is mutually respectful to both VOA and owner; with respect to rezone of land from LI to PUD, noted several issues that would help the community and Town; four homeowners attended neighborhood meeting, however was not known to HOA, and there was limited representation at the meeting; within the week the rest of VOA residents had become aware of the rezone request; believe concerns have not been addressed by Planning Board or by PEAK Engineering and requests additional time for conversations and come to mutually agreed solutions by maintaining expected quality of life and growth of community as well as success of Bradley Commons.

Carl Whitley, Ambergate Station, requested on-street parking be prohibited on west side of Windy Road, between Caboose Trail and Wando Lane; shared parking study proposes parking in alley ways at front of Bradley's and would drive citizens to park on the street on Windy Road rather than in the alleyway especially at night because of the distance from the property thus would hinder emergency vehicles access to subdivision; have contacted Police in past regarding such incidences that regularly occur on Windy Road; parking study did not address number of spaces for current business, and does not show number of spaces available for current and proposed businesses; asked to revisit parking study which also suggests under existing conditions parking is provided by driveways, garages and alley ways as well as public right of way in a single family development and is not an accurate statement since homeowners are not allowed to park in the alley ways within the community per the HOA documents; concern inaccurate statement may have some bearing on the proposed parking availability; request proposed designate an off-street loading zone to avoid commercial trucks parking on Windy Road when making deliveries to this property; current LI zone requires an off-street loading zone as per UDO and residences are concerned the requirement may be eliminated with the rezone for PUD-CZ; Bradley Commons current suggestion that angled parking spaces on Windy Road near Village Summit Apartments be for overflow and residences are concerned there is no written parking agreement for overflow parking in place between the two places.

David Ritten, Raleigh, will be moving to Windy Road; does not oppose development of the property but desires compatibility with neighbor homes; residences are concerned with proximity of homes to the site of one and two story structures and should limit building elevations and conceal rooftop equipment to 35 feet above street level; noted height restriction are not acceptable and recognize the apartments are not adjacent to the site and reference zoning heights up to 48 feet; elevation could tower over close by residents and request compromise in elevation

height or be limited to two stories in height. Asked to visualize minimum impact on neighbor single family homes and requested an increase in street buffer from the north end of the stormwater retention pond from Type E to Type A, and in this particular section to a 30 foot buffer per the UDO; also that a Type A buffer wrap around the stormwater retention pond around the east, south and west of the building in order to minimize noise to surrounding single family homes; requested no out-door seating areas, terrace or rooftop be permitted for same reason; exterior stairs should be limited as required by fire code; believed the property should be secured and asked outdoor lights be directed away from houses for minimal impact; asked to limit hours of operation to reduce noise and disruption; wants to cooperate with the developer.

Pete Grady, Caboose Trail, addressed property uses and noted ambulatory health facility, emergency, and pharmacy had been removed from PUD uses, however could add back single family townhomes, condo's, duplexes, triplexes, that align with current facilities in the area; asked uses that represent significant traffic volumes be excluded. Applicant stated applicant had told restaurant would be limited to 1000 sq. feet and surprised at a larger size and request size be formalized with zoning change. Concern with location of waste corral adjacent to existing business in light industrial zone - asked to revise plan to include a waste corral that's not shared with existing business as existing business could be sold; stated plan was not compatible with surrounding land use and does not enhance values and lifestyles of surrounding properties without some significant modifications; residents of VOA are reluctant to support the rezone those. Engineer stated he would continue to work with interested parties to develop a project that would provide services to the surrounding community specific to VOA, and since no dialogue had occurred since the December meeting, and no concessions made regarding their concerns, asked any decision regarding rezone be postponed or requested changes be incorporated in the rezone request; looks forward to positive action to their concerns; noted no concessions have been made regarding buffers.

David Richman noted the location of the home closest to the proposed site. Comments: Type A opaque buffers were not considered by staff and not consistent with streetscape 30' buffer, and reason applicant asked for rezone to begin with; could fit building but would not fit parking or other things on site with reduced buffer; buffer would match what's on Windy Road a streetscape Type B buffer; propose Type B buffer on south side and west and 10' street buffer. Council Member Jensen asked if applicant would commit to the condition for a Type A buffer to the west. Roach added he was trying to save some trees, and could do the 20 foot buffer and plant with Type A opaque on the west side, it would be fine as long as there was no change in width. South side is the pond, noted the out pipes, and the building would look onto the pond; to put a buffer there would defeat the purpose of the pond and the visual look of the pond.

Question: explain how lighting ordinance addresses impact of light fixtures: adjacent to residential property would be a .1 spill over maximum. Dianne Khin Director of Planning explained one foot candles adjacent to the east and adjacent to a right of way and would be different if a house touched the property line; one foot candles spillover to the south where the retention pond is and on the road right-of way side; it's not about linear feet but brightness when you take a light meter at the property line and is the standard with any development built in town within the last ten years; its required and lighting plan has not been submitted yet but will be reviewed with site plan to assure it meets the UDO; also required on the east side would be a house side shield and cuts down on glare to the properties across the street.

Question: loading zone issue, would it depend on uses to have a loading area on site: without a full review of the site plan, and not knowing all the uses, can't recommend one way or another for an off street loading zone, typically light industrial uses would have such. Khin explained uses such as pharmacy, restaurant, and more retail uses do require a loading zone, and if they build this building as all office very likely they would not have such. When uses switch out, they have to add a loading zone, and usually recommend people plan for it on the site plan as they have retail potential, or they have to retrofit later.

Question: all issues especially parking, lighting, buffering - there would still be issues if this remained commercial or if light industrial would be the same issues; impacts are lessened by the downzone:
all issues would still be reviewed during site plan, and would still have to meet the ordinances.

Comment: not the appropriate time to have a parking agreement in place: would know more about the uses and square footage and will be reviewed at site plan; would have to have the shared parking agreement in place and a

number of ways to do this; also the waste facility would be a part of that; since it's under the same ownership it would be very easy to put in place.

Question: does Villages of Apex own the angle parking on the street and seems its public parking and not need an agreement: it was built by Villages of Apex for the apartments but is public parking and no agreement is needed.

Question: is PD Plan becomes part of the rezone: correct, and if the plan has modifications of significant size and make much different, it would come back to Council; idea of submitting plans during the process, staff can make the conditions based on a conceptual plan and have a better idea about what site plan conditions are needed at the time of rezoning.

Comment: if the property is sold as a separate property, in itself would not meet parking requirements for a three story building the parking is not there: correct, they would have to have either different uses, less square footage or have a shared parking agreement and would have to be approved by staff, once they know more about the uses.

Question: do you need a shared parking agreement at this point and are we counting on this plan being a part of the rezone and to make the plan work for parking, do we need shared parking and how do we know shared parking will always be available: Khin explained she approves the shared parking plan and not convinced that what has been submitted will be approved; if there is no shared parking agreement that meets the UDO she can't approve, and they will have to reduce building square footage and the parking requirements would go down; if they show there's office on the top and middle floor and only have restaurant on a small portion, it would be the larger parking requirement, they show access space within their light industrial parking area and it gets approved but use changes, they may end up with part of the building empty because a certificate of zoning compliance will not be issued and if parking no longer works because issues have swapped out, and will not approve uses that doesn't have adequate parking; all new businesses are checked even if it's the same use.

Comment: the rezoning eliminates a lot of nasty uses that could potentially go on this piece of property, but with the PD Plan being a part of the rezoning, commits to the three story building; three stories is the maximum height but could do two stories.

Comment: confirmation to control the parking, the piece that could get away, if there's not adequate parking and no parking agreement, people will park on the street and is another issue; looks for comfort that the checks and balances are in, when the agreements are reviewed, that it will be kept in check, and may drive the building to be smaller (it could); Councilman Rowe would hate to approve this on the basis that an agreement or an acceptable agreement may come: staff recommended they look at this and wanted to have this information available, and saw it would be an issue, even though it's not part of the PD Plan, developer wanted to look at this as it would be a public discussion point; staff worked on this issue and was able to add more parking based on the current site plan.

Helen Brantley Pender Drive, requested a Type A buffer noting the two bio retention ponds and pointing to the bottom pond being a Type A, adding you could put trees and create it as wetlands so those beside it do not have to look at it - the house outdoor space faces this building, asking Type A start there and wrap around, not asking Type A go the whole way, basically driving down the street you want see it. Ask to delay the vote as issues have not been adequately addressed.

Roach gave a response in that the bottom pond is for bio retention cell, same as one at the movie theater in Beaver Creek that has trees and shrubs planted, and was looking for the 10' buffer along the street yard and Type E buffer along the street yard basically the same as Bradley's to keep the same look; they do have a grassy area around the BMP they will plant with trees and not just shrubs; Type A opaque buffer would block all screening and a business of that type has to be seen.

Question: do we allow parking in alleyways, can't park in alleyways in VOA because of the zoning: Roach responded there's no parking based on the homeowners documents for VOA, it's not a city requirement. Khin added they are private alleys, and to the town, they are the same as a driveway, you can park in them.

Dee Dee Smith, Ambergate Station, choose Apex because of new urbanism and new alleyways; people park along these alleys - you can't get in your driveway and get back out, and when parked on both sides of the street, emergency vehicles can't get through; when they submit their plans to the city, why can't they just stick to the plans. She bought into this neighborhood because of the way it was, they've made Charleston Style townhomes and five cars parked in front of one of those, and if it gets filled up, there will be a mess; she's talked with the police and asked if there could be no parking on the west side of the street so vehicles could get through; we can't have people parking in alleyways as she could not get in and out of her driveway.

Russell Dalton Apex Transportation Engineer addressed parking on Windy Road; Town ordinance has no parking on east side, mostly drives and angle spaces off street; 32 foot back to back road allows parking on the east side and two 10 foot travel lanes, there is enough room to park cars on the west side; would not necessarily stripe those and not necessarily factor into the calculations for adequate parking but feel parking on this section of Windy Road is handled by the ordinances we have now.

Mayor Weatherly closed the public hearing at 7:50 and referred the matter to Council.

Question: are there ordinance requirements to restrict percentage of the building and would want other things other than restaurant and parking was a concern and think it's self-limiting: could and applicant would have to agree to restrict the restaurant to 30% and would be consistent with other zoning districts (O&I) and still be more than they could do with the parking and would be extra assurance there would be no more than 30% of the building they build for restaurant; 30% could potential be more than 2500 square footage; this standard has been set in the ordinance, however could propose any percentage, for consistency she proposed 30%.

Mayor Weatherly called for a motion:

Question: asked could the project before Council have been built without the zoning request: building could have been built maybe not as large, but with larger buffers on the property, because of the streetscape buffer requirement of 30 feet minimum; in general the uses are less restrictive than what's in the current zoning district; it is developable for a similar type development.

Question: was this rezone request to ease residents minds about what was being put there or helps the plan: Roach responded this gives the same look as comes down from Bradley's carpets as now is with the street yard, as said the buffers are set by the zoning and not by the use; it allows more of the class 4 uses which are typical, retail, restaurant general; with light industrial you get into the class 5 uses which increases those buffers to 30 and 50 feet and said let's take the uses down to a more walkable and not like automotive repair and why the rezone came to downgrade.

Motion: Council Member Lassiter made the motion to approve the rezone. Council Member Schulze made the second to the motion. Khin asked if they were going to add the condition of the buffer with Councilman Jensen adding Type A buffer to the west, and 12:30 p.m. limitation on restaurant hours of operation. Councilman Lassiter preferred not to restrict the time on the restaurant in his motion. Council Member Jensen asked to amend the motion - Attorney Fordham stated some concern with what the motion was and should be clarified and the second as it applies to the motion. Mayor Weatherly asked to hold off on the amendment and asked clarification on the motion asking Councilman Lassiter to restate his motion.

Council Member Lassiter restated his motion to approve the rezoning request with the addition of a Type A buffer, not restrictive, but from a visibility standpoint Type A buffer on the west side. Council Member Schulze withdrew his second from the original motion, thinking those restrictions should be included and didn't want to second the motion until the amendment was made. Mayor Weatherly asked if there were a second to the pending motion. There being no second, Mayor Weatherly noted the motion failed for a lack of a second. Mayor Weatherly opened the floor for another motion. Council Member Schulze made the motion to approve the submitted rezone with two amendments: that a Type A buffer be placed along the west side of the property and any restaurant usage be limited to a 12:30 p.m. closing time. Mayor Weatherly asked if there were a second to the motion. Council Member Jensen made the second to the motion because the town needs to tie businesses as close to residences as we can and this is an opportunity for a live/work solution to help in solving the gas prices. Council Member Schulze agreed with his sentiment but stated this is also a downsize in zoning, so to him is better than what could be there; overall is a better project. Mayor Weatherly agreed. Council Member Lassiter explained the reason he did not include the limitation on the restaurant

hours of operation; he didn't want to tell the business owner a time he needed to close his business, thinking the market should drive that, other forces besides this Council. Mayor Weatherly called for a vote on the motion. Vote on the motion was 5-0. Motion carried unanimously. Mayor Weatherly thanked the residents for their organized presentation, well thought out and in an orderly manner addressing Council.

End of New Business 02

Mayor Weatherly called for a five minute break and 8:05 p.m. and Council reconvened at 8:10 p.m.

Public Hearing 03

Lauren Simmons Planner

Public Hearing and possible motion for amendments to the Unified Development Ordinance:

Staff presented the following:

- 1) 4.1.2 Outdoor Storage-specifying display rules for the Central Business District (*Planning*)
- 2) 4.4.6 Industrial Uses (Supplemental Standards)-specifying standards for an asphalt or concrete plant and allowing production-related silo to be a maximum of 85' in height. (*Administration*)
- 3) 6.1.12 Performance Guarantees (Structural BMPs)-Allowing for phased site plans to submit performance guarantees. (*Public Works-Environmental Programs*)
- 4) 8.6.4 Design Requirements (Lighting)-Removing a provision that does not allow for building mounted lights to exceed 18' in mounting height. (*Planning*)
- 5) Table 8.6.1 Lighting Standards for General Parking with Pedestrian Areas changing the uniformity ratio (average/minimum) from 4/1 to 8/1 for multi-family residential or condominium. (*Planning*)
- 6) Table 8.6.2 Other Exterior Lighting Standards- changing the uniformity ratio (average/minimum) from 4/1 to 8/1 for auto sales yard/enclosed outdoor display. (*Planning*)
- 7) 8.7.1 (A)(11) Incidental Sign-Adding a provision to exempt towing signs from the size restrictions to comply with newly passed state laws that require larger signage for towing. (*Planning*)
- 8) 8.7.7 (A)(2) Sandwich Board Sign-Adding a provision specific to the Central Business District. (*Planning*)

Items 1 and 8: storage display and sandwich board signs were presented; consulted with downtown business association regarding complaint for access to downtown sidewalks and founds inconsistencies and rules would provide for consistent enforcement; amendment would require site plan for businesses downtown; third part outdoor consumption of alcohol will come at a later meeting; must be a 36' clear accessible pedestrian travel path, tables and chairs may not encroach. Sandwich Board signs can be displayed in display areas or on the outer brick utility strip. Items 3 – 7 were presented.

Item 2 there were standards for industrial (asphalt or concrete plant) allowing production in the town's ordinance; potential applicant wants to put a production related silo at a maximum of 85' high and exceeds height restriction for the area; staff proposes four conditions:

B) Production

- 1) **Asphalt or Concrete Plant. An asphalt or concrete plant shall comply with the following standards:**
 - a) The plant shall be located no closer than 600 feet from any residentially zoned property and shall be located on a property equal to or greater than 5 acres;
 - b) An asphalt or concrete plant shall not be located north of US Hwy 1;
 - c) Any production-related silos shall not exceed a height of 85 feet and shall be a neutral color that blends into the sky. All other buildings and structures must meet the maximum height limitation of the LI zoning district found in Section 5.1.2; and
 - d) A silo shall have a fall zone that is equal to or greater than the height of the silo and shall be located on the same parcel. No structures may be located in the fall zone.

Staff noted that applicant looking at this site may propose something different.

Staff was uneasy about plant location to the south of US Hwy 1 next to residential zoned properties and most is south of US1 and saw no problems restricting to south of US Hwy 1; noted this was the only properties these type facilities could go on and site in consideration is off Pristine Water Drive.

Mayor Weatherly opened the public hearing at 8:10 p.m.

Jay and Adam Lofton agreed with the proposal with the exception that there be no placing of structures within the fall zone. Photos of typical plant configurations were shown and noted the site on Pristine Water Drive; structures could withstand hurricane force winds, request they be allowed to place structures within the fall zone and if they can't put structures within 85 feet of the plant, they can't have their business and operates within the law. Khin stated this had been consistent with cell tower ordinances, however wanted them to be able to have their business there, and noted no OSHA requirements regarding this and would be fine with this. Lofton added 85 feet is not an OSHA requirement.

Mayor Weatherly closed the hearing at 8:20 p.m. and referred the matter to Council. Council Member Jensen wanted to assure no fee is charged for outdoor display: it is not. Council Member Rowe assured the area is consistent with all business: yes. Council Member Rowe assured lighting on the buildings were required to be shielded and the amendment wouldn't waive that: it does not. Council Member Lassiter asked JC Knowles, Downtown Business Association, about signage regulations: have studied this for several months and had no negative comments about what pertains to downtown and approve the amendments 100%.

Action: Council Member Schulze made the motion to approve the UDO amendments as submitted with the one exception to amendment No. 2 Section 4.4.6 Industrial Uses: B.1.d. - strike, "no structures may be located in the fall zone". Council Member Jensen made the second to the motion. Motion carried (5-0).

End of Public Hearing 03

Public Hearing 04 - Quasi-Judicial

June Cowles Senior Planner

Public Hearing and possible motion regarding Thales High School Major Site plan, 1300 N. Salem Street.

ALL PERSONS GIVING SWORN TESTIMONY MUST SIGN IN WITH THE TOWN CLERK PRIOR TO TAKING THE OATH.

All persons speaking during this Quasi-judicial public hearing must give sworn testimony limited to the issues that are related to the major site plan, and must be administered an Oath by the Town Clerk prior to speaking. All materials submitted to the Apex Town Council prior to the hearing are available at the Apex Planning Department for review by the public.

Mayor Weatherly introduced the quasi-judicial public hearing and asked to recuse himself due to his close working relationship with Paul Stam representing the applicant. **Motion:** Council Member Schulze made the motion to recuse Mayor Weatherly from participating and voting in regards to this item. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0). Mayor pro tempore Gene Schulze presided over the hearing and called for a motion to move into closed session to receive legal advice from the Town Attorney Hank Fordham at 8:26 p.m. **Action:** Council Member Lassiter made the motion to move into closed session for the purpose stated. Council Member Rowe made the second to the motion. Motion carried unanimously (5-0). Closed session minutes are recorded separately. Council returned to regular session at 8:40 p.m.

Mayor pro tempore Schulze read the rules pertaining to General Statute 160A-393 quasi-judicial hearings. All those who anticipated speaking during the hearing were administered an oath by the Town Clerk.

Disclosure statements by Council: Council Member Olive advised Stam had contributed to his election campaign 2009; he remains unbiased in this public hearing. Council Member Lassiter had contributed nominal financial amount to the election of Representative Stam and he had contributed an amount to his election campaign, however saw Stam in a different capacity as an Attorney representing an applicant and not that of an elected official, he is unbiased and under no obligation to recuse himself and elected by the people to participate where his judgment is appropriate and untainted. Council Member Jensen had no contact with the applicants and had been on Salem Street and tried to pull out of driveways, however was unbiased. Council Member Rowe had no relationship with the petitioners and no reason to recuse himself and unbiased. Mayor pro tempore Schulze divulged Stam held a meeting for his campaign

two years ago and the in-kind contribution amount was less than \$100 and can hear the hearing in an open minded fashion.

Mayor pro tempore Schulze turned to Attorney Skip Stam for his opening statement for the applicant: evidence will show the application for the major site plan for Thales Academy on Salem Street meets all UDO standards, transportation plan, storm water and every other objective criteria. He introduced witnesses: Hillary Herman Administrator Thales Academy, Keith Gettle, Engineer, Christen Greene, Traffic Engineer, Bill Mills, Engineer, and Joe Armistead, AIA Baxter Armistead Architecture. Others speaking and not giving expert testimony were: Bryan Smith, representing himself was a neighbor and had no opening statement. Jacque Burgess, representing herself was a neighbor had no opening statement.

Senior Planner June Cowles stated her qualifications; oriented to the 9.35 acre site at 1300 North Salem Street, size of the building warrants a major site plan 53,258 square feet; gave project description as outlined in the planning report and is incorporated as a part of the minutes. Stated zoning: Residential Agricultural; 2025 Land Use Plan for mixed use-medium density residential, office employment and Commercial; noted current zone light industrial and noted adjacent zonings and land uses; recreation area, storm water pond, and trees; buffers and landscape meet the UDO requirements; RCA: 2.06 acres and buffers meet UDO; 30' buffers, no buffer requirement along the railroad line but are proposing 30' with landscape and six foot chain link fence; noted 20' Type A opaque buffer; are tying into existing church parking lot; noted the 10' Type E buffer ; noted 30' buffer in area along Salem Street; parking is consistent with the UDO with 222 parking spaces on side, some in rear and front; noted one way in entrance and out; elevations of the building were stated and two samples of brick shown and orange- red is the majority of the building and staff asked the two be more in contrast with Thales bricks; columns presented are too ornate for architecture; quoted UDO Section 9.2.2.B repeating design patterns: is over 100 feet in length, and different styles are not to be mixed together; two neighborhood meetings were held, one meeting was held with the church and noted in report. Town Transportation Engineer Dalton will address the traffic impact analysis.

Questions of Cowles: Council Member Bill Jensen asked if the recreation field would be a soccer field only, baseballs could go over the fence and was not addressed in the application; applicant will address this. Attorney Stam asked if after examining the site plan and all reports generated, if it meets the UDO requirements, supplemental standards, general development standards of the Town, Transportation Plan of Apex: Cowles responded yes.

Bryan Smith did not offer his qualifications, asked if the landowner to the north was in agreement with provision of chain link fence along the property fearing students would have access to pond a liability issue; he's aware Booth made request and if case would be included; has the fence been added to the site plan. Cowles responded the fence not been added to the site plan and would have to provide landscape as well; stated applicant would have to agree to that along with the buffer. Attorney Fordham if all parties agree, the can address this now and later in testimony can be more specific. Attorney Stam offered the applicant agrees with fence and buffers.

Transportation Engineer Russell Dalton stated his qualifications and presented the summary and stated major points of the traffic impact analysis of October 2011; lots of discussion between applicants, Town and NCDOT; has received lots of scrutiny from NCDOT with people specialized in school operations and how best to mitigate problems; discussed design beginning with north drive and expanding on storage and left turn lane into site; in bound and out bound drive; channelized short lane into the site at the drive; provisions for double stacking; lots of storage and stacking coming out; noted Salem a major thoroughfare going over to US64 and didn't want traffic backing up into the car-pool; there's exclusive lanes left and right and crosses the incoming cue but was taken into consideration in the analysis; all based on clockwise flow with passenger door opening on site; noted at US64, Peakway and Salem, have Level service D are within required thresholds; no added improvements at off-site intersections; the turn lanes are the improvements being proposed; delays assume people are in the turn lanes being delayed; through traffic on Salem is un-interrupted traffic; noted some issue with drive ways as traffic backs up and could be 15-20 minutes in am/pm; a.m. analysis is critical and coincides with peak hours -8:15 a.m. bell and afternoon 3:00 p.m. lighter.

Questions of Dalton: Council Member Jensen asked if there were consideration to stagger start times of middle and high school, concerns with blocking drives. Applicant will address this; stagger maybe by 30 minutes in start time, however has a problem with p.m. hours as some parents come early, people from later cue may show up early than people from early cues and would prefer all come in at once when traffic is lighter on Salem; analysis is based on worse case and NCDOT's school calculations

for private schools and all data they have. Council Member Jensen noted public schools have buses, and this has no bus service, and may help relieve some traffic. Dalton stated analysis took in to account there were no buses; any amount of carpooling or busing would relieve some traffic. Attorney Stam asked if the plan conforms to the Apex transportation plan: it does. Smith asked if he needed to qualify. Attorney Fordham advised he's only asking questions and did not have too. Smith asked if there were a grade system report DOT/or TOA that addresses the different entrance and exit conditions. Dalton: yes and described the grade system levels of service A - F, for signalized intersections off-site for US64 and Peakway, they didn't fall below level service D and acceptable based on our standards; for un-signalized you look at just the movements that are delayed, Salem Street through traffic is not delayed, and is level service A; in bound morning and the afternoon are level service A because of low delay at the left turn; outbound is level service F is allowed by our standard provided it does not warrant traffic signal and cues are accommodated and are on site based on the analysis. Council Member Schulze asked he show the level service F's just for the people coming out. He noted traffic coming in and through are not delayed and not unusual for long delays; Smith noted 2 D's and 2F's on site - A being best F being worst. Dalton Yes

Council Member Jensen noted service levels are C to D on some intersections and nothing needs to be done to improve them at this time; Dalton correct. Council Member Jensen asked if another comes in and levels of service go from D to F then they are stuck with the cost. Dalton could be correct based on Town standards.

Council Member Rowe asked if he had a recommendation to improve the one condition outbound where peak a.m. and p.m. are both F. Dalton: for the outbound drive there is nothing that could be done, not warranting a traffic signal; if the cue on site became bad enough particularly in the morning when it's worse case, police control may be an option, but would delay Salem Street.

Council Member Jensen if drives are blocked on Salem it impedes traffic; concern without bus system and this amount of traffic, how long will neighbors sit in their drives and wait for a break in traffic to get out; whichever way they are going, there's no break in traffic; this may be an F and waiting in a drive an F minutes; is this correct. Dalton it is correct available gaps may not be many gaps and could increase delay for those living closest to the school; may have to wait a minute or more and may not be that unusual for the way it is now; additional delay.

Smith asked for a minute or more, has an analysis been done to reflect actual times the neighbors are currently waiting in their drives. Dalton noted it a micro-simulation type analysis and not something you would do for individual driveways, it would be compared to the school and level service F or anyone waiting on that street would be experiencing the same amount of traffic, and would experience the same level of service. Smith so no analysis has been done about the existing wait time. Dalton was not sure the analysis would be possible without the school in place, it would be a gap analysis for drive way. Smith so we need to pass a bill before we know what's in it.

Council Member Rowe site plan shows interconnection with the church parking lot; is that intent for another way in and out to access the school. Dalton they intend to use the share parking agreement primarily for the church to use spill over parking at the school on weekends but may be opportunity for the school on special events to use the church parking lot but not planned to be opened on a routine basis. Council Member Jensen asked if it would be physically blocked. Dalton yes.

Further Questions of Dalton: none

Mayor pro tempore Schulze asked if there were further questions of Staff: none

Mayor pro tempore asked Council to reveal whether they had reviewed the site and their observations: Council Member Olive had not visited the site, but driven down Salem historically, had not made a special purpose to investigate the site or look at it in regards to this plan. Council Member Lassiter had not visited the site and nothing to report. Council Member Jensen had not recently visited the site, had in the past with his son for baseball, but not in respect to this plan. Council Member Rowe had driven by the site many times, but did not visit it particularly for this purpose. Mayor pro tempore Schulze did visit site and drove past the wooded area, and drove in the church parking lot and did see the meadow, nothing interesting to report other than what's been seen here, and his observation. He asked if there were question about his observations: none.

Mayor pro tempore Schulze asked if there were evidence from the Applicant Attorney Stam:

Hillary Herman stated her name and role as Administration with Thales in Apex; currently serves kindergarten through eighth grades; enrolment 325 students; 2013 school year will shift students to new facility based on current enrolment 130-150 students in first year; school time 8:15 a.m. to 3:00 p.m. and operates on a modified traditional calendar and not likely would be at capacity based on currently enrolment not until at least 2018 or later.

Attorney Stam asked if there were plans for the soccer field and baseball plans; Herman, no plans at all. Attorney Stam noted there was no commitment from the applicant. Council Member Jensen concern with baseball and if so where there plans for a sports net across the property line so stray balls don't go over. Herman has no knowledge for baseball; no discussion or use. Attorney Stam asked if there were a baseball field there now. Herman there is baseball field now rented to local organizations. Council Member Jensen is aware baseball field and problems and if converted wants to see fencing to impact homes and yards; Soccer no problem, baseball is, and if no conversion there's no problem and if is hopes there a commit to do that; with two other high schools within their organization is not aware of their rules for drivers.

Mayor pro tempore Schulze asked if there were further questions of the applicant.

Council Member Rowe asked the rules for management of driving age students and could be an issue and how they would control that having observed other schools and if kids were allowed to drive. Herman, are allowed to drive and would submit application to receive a privilege and only a number of drivers permitted; not aware of rules outlined in other schools; Thales does not have a high school and no policy. Council Member Rowe asked with the management of the parking and impact to the community would the kids driving that are not managed; he sees a parking lot that could be attractive in adjacent areas, that may provide opportunities for someone to park and thinks there could be rules/regulations to deter that, and was saying do not know of any know. Herman, not under Thales policy, no high school know; does not know about other schools with drives but assumes they have some type of policy and safety expectations.

Council Member Jensen in regard to stagger times between the high school middle school: would there be a commitment if traffic engineer determines a problem with traffic, that there be at least a 30 minute stagger time, 7:15 a.m. problem, none in the afternoon, commit to stagger by 1/2 hour. Herman can't speak for the school owner; do not stagger the school time regularly, but can speak to the regular time. Attorney Stam: can't commit at this time; the obvious would be the people most upset by having to wait in the outbound cue would be the parents trying to get out, so emphasis trying to correct that come from inside the school before anyone else. Council Member Jensen would think it would, but would be easy to commit to. Attorney Stam noted discussion about later start times but needs flexibility to see how it would actually works and don't want to condition and essentially would not come to play until 2017 or 2018 when the school is actually at capacity and to put now when they don't know the situation will be, but if it delays their mind at all, they discussed a later start time, if there becomes a problem. Council Member Jensen asked again would there be a commitment to a half hour stagger time if traffic engineer determines a problem with traffic and would be advantageous to the people along Salem Street. Attorney Stam, its not a condition of proposed site plan and has no authority to commit to that; he doesn't actually think to stagger junior high and high school would work practically when two kids in a family attend the same school and bring one thirty minutes before the other, it's not going to work.

Council Member Lassiter had no questions of the applicant.

Mayor pro tempore asked if there were further questions of Ms. Herman: none.

Mayor pro tempore Schulze asked if there were question from the opponents.

Jacquelyn Burgess lives across from the church, and one of the neighbors that would be affected, but had no questions of Ms. Herman, but made a statement regarding traffic wait time, sometimes three or four minutes and doubled would be six or seven minutes with at least 200 cars coming out and that would be 2018; trucks come in and out all day near Calhoun and busy times with those and don't know if they took that into consideration or the opening of the Peakway. Attorney Stam stated their traffic engineer will be up and town staff the right person to ask. Mayor pro tempore Schulze advised Ms. Burgess that this was a cross examination and she could address this with their traffic engineer. Burgess only wanted to make the statement.

Smith had no questions.

Attorney Stam asked Keith Gettle, Engineer, Civil Consultants to state his credentials. Attorney Fordham asked Gettle if he prepared the proposed site plan, and explain how it applies, and if it complies with Town Standards. Gettle yes; he had worked with Cowles and Dalton and developed the plan and strategy specific to the traffic flow; Green will discuss the traffic situation.

He stated the site was designed to have a stack cue of 1700 feet; requirement from the traffic study was 1100 feet; you enter on the north drive, around back to the front ; you could stack more cars but on the 1700 feet could double stack and is on-site storage; south would be the exit for traffic. Parking is broken up and consistent with UDO; minor parking in front, most along the side and rear; soccer field - mention baseball, there are tall Lelands that surround the perimeter at least along the residential properties that would stay in and a fence erected around the field; sister schools do not have baseball programs on site; any programs would be a park, he doesn't know of any plans and Thales does not have - intention is to utilize the field for soccer; his estimation might be used for PE and other types of activities, but primary soccer; met with church specific to discuss the cross access agreement between the two parking lots, and is not the schools intent to use that on an on-going basis to allow cut throughs or to allow folks to utilize that on school hours; church opposes a gate and rather some other type of soft barrier be use or someone to monitor that kind of cut-through; church would like to use the school site on weekends to allow for overflow parking and a benefit; with others some opportunity for church to utilize; hopeful if there's after hours programs overflow parking, the church site could accommodate that. Have agreed with Booth to put a fence 6' high chain link vinyl coated on the northern property line and consistent with the fence that will be put up at the rear of school separating the school from the railroad track. Attorney Stam asked if that were an agreed to condition. Gettle yes.

Mayor pro tempore Schulze asked if there were questions of Gettle.

Council Member Jensen asked what buffer would be if there was going to be a fence. Gettle will be taking down a current fence and a new fence installed and consistent with the fencing around the site; he believes 6 feet. Council Member Jensen wanted to protect the neighbors noted the Type A buffer was 20 feet wide. Gettle that's right and a resource conservation area along that perimeter. Council Member Jensen noted typical Type A buffers have deciduous and evergreen and properly planted may work as a buffer if baseball takes place and he can't see a school not eventually go to baseball, these folks may not, but in 5 to 10 years out, someone else does. Gettle suspects just for PE would not be an official team, and guess the soccer field primary use would be for soccer and would have any after hour recreation activities associated with soccer more so, small or other type of sports. Council Member Jensen thinks there should be protection for the neighbors asking Gettle if he did not think so. Gettle, depending on where they line up, in the back depending on the houses, foul ball, it's possible; trees along the eastern property line are of good size. Council Member Lassiter indicated they continue to go to the baseball question, and asked if the ball field is current. Gettle yes. Council Member Lassiter asked if they would not be requiring a new development to fix an old problem - a hypothetical question.

Council Member Rowe clarified the fence being an added condition, was he saying full length of the north side Salem Street to the railroad tracks. Gettle noted the location and would not be opposed but the property owner has not requested it with Booths major concern being the pond; this would be buffered and the roadway elevated and noted the location of the stormwater pond.

Council Member Rowe wanted to be clear if the fence was added to the north side, the north side meant a certain limit, wanted to be clear on the condition. Attorney Stam stated on the condition would say as far as Mr. Booth wants it if acceptable to the owner; the school has no problem carrying it all the way but may not look too good up front. Gettle reported the site has more RCA than required and will maintain as much of the existing vegetation in the front as can; a stormwater BMP facility will be placed in the general area, a water quality pond, will have vegetation and aquatic shell around the water area with some landscape around the facility and will pick up the church stormwater runoff directed into this pond; currently the church has a dry retention facility. The stormwater expert will testify next.

Mayor pro tempore Schulze asked Council if there were further questions of Gettle: none

Mayor pro tempore Schulze asked the opponents if they had questions of Gettle: Smith asked if the impact of the overhead utilities had been determined yet running on the east and west side of Salem Street? Gettle no, for the Salem Street road widening; some depends on what NCDOT would require for a gap between the edge of the road and the road widening would take place.

Attorney Stam called Bill Mills Engineer and stated his qualifications and stated he designed the system for the project.

Attorney Stam asked if the plan complies with the town and state's stormwater requirements and possibly improve the requirements. Mills, stated there were several requirements with several town requirements dictated by the state; state produced the design manual for the stormwater BMP's that are being used and other types throughout the application; stormwater management is designed to restrict peak water runoff from the site for various storm events, also is required to treat stormwater quality to remove pollutant materials out of the first inch of rainfall runoff from the site; all impervious areas are captured from the site and from the church site from the dry pond; dry pond helps control the peak flow but provides no water quality treatment for stormwater; will be able to achieve quality improvement on the stormwater coming from the church site as well as rooftop and pavements, and driveways on the school site. Release of the stormwater from the pond will flow to the north into existing lake on Booth site and north under CSX tracks and near US64 near the stormwater facility; stormwater facility will control peak flow to predevelopment conditions or better for stormwater peak flow; controls 1 year 2 year 10 year storm water and 25 year stormwater event and not increase stormwater flow for that event; for stormwater quality this is what the state manual and apex calls a 90% pond removes 90% of the total suspended solids, nutrients and pesticides, various pollutant materials attached to it; doing quality and quantity control.

Council Member Bill Jensen heard water quality will be done for 10 year control, and will do it for 25 year stormwater control. Mills, pond design will control the 25 year storm and current site plan smaller pond has been increased, and showing a 14% increase in stormwater runoff leaving the property and decreasing the predevelopment 25 year flow as well. The stormwater impact statement looked at 25 year flows coming off that location and addressed to highway 64 through Booth's pond, and doing a better job on the 25 year storm flows and 100 year.

Mayor pro tempore Schulze asked if the opponents had questions of Mills: none

Attorney Stam called Christen Greene, Greene Consulting Engineer, to give her credentials.

Attorney Stam asked her to describe her studies and alternatives to consider in her conclusions and how this site plan complies with the Apex Transportation Plan. Greene gave a brief overview of the Transportation Impact Analysis prepared by herself.

Held a joint scoping meeting with the civil engineer, Town of Apex, and NCDOT to discuss perimeters of the TIA, prepared and following all guidelines from NCDOT and Town. Study area: US64 ramps with North Salem Street, Apex Peakway at Salem Street intersection and bike lane locations; study considered full build out of the Trackside development partial complete at this time, and the school full build out; school trips were estimated using a calculator provided by NCDOT for private schools; presentation on their website based on experience, and is a conservative analysis, and confident what they have provided

is a conservative worse case analysis; traffic models acceptable by NCDOT and Town were used to model the conditions and took into consideration traffic volumes and how it would work with adjacent signals primary the Apex Peakway signal that would provide gaps noting lots of traffic there in the morning and will not deny that; results show about a 250 foot cue and using a conservative estimate provides a 400 foot storage lane, based on models typical cues are 250 feet; based on the results of the capacity analysis the recommendations in her study will mitigate the traffic generated by the school traffic and the storage length will accommodate the traffic and is predicted that on site there is ample storage as stated by Gettle , even the NCDOT conservative calculation , onsite storage estimated 1100 feet and 1700 feet on current site, with the option of adding more onsite storage if you go to a double stacking type procedure; you will be able to accommodate the school traffic with the most significant delays are parents exiting the school site in the morning and not expected to cause a stacking problem that would go around the school and back into Salem Street; the improvements are consistent with the Town's transportation plan and calls for a two lane road with additional storage lanes if needed. Attorney Stam asked Greene if she considered other alternatives for right-in and right-out lanes, the stop light. Greene, the site exiting if it met any warrant for a signal; NCDOT has several different warrants and wants to see a lot of traffic consistent throughout the day before they put traffic signals everywhere; if it just met a peak hour warrant and you were required to put a traffic signal there would be one at tons of locations; this might meet one peak hour warrant but traditionally does not call for a signal and discussed if needed, having an officer help traffic out of the site; the negative, they would actually be stopping the traffic on Salem Street; as they have it traffic on Salem Street does not experience additional cues. They did consider everybody going right-in and right-out, and if they did that, would have to provide some sort of channelization some concrete medians to physically stop people from making a left turn in, and concerns were if you did that, people would get to that median

and start making a left wherever they could; concerns with other unsafe maneuver might be caused elsewhere so therefore based on discussions with the Town and NCDOT, this is the best site plan for the school accommodating the traffic and not impede the Salem Street traffic and not causing erratic maneuvers elsewhere on Salem Street.

Council Member Jensen expressed concern if school staggers time by one-half hour would help mitigate problems they would likely see as described by Goodwin getting out of her driveway. Greene, if she is really close to the school you may actually cause a longer time for delay because you are stretching the peak out; lots of schools load in about 15 or 20 minutes; if she's near the end and you do something, it might help; that's not here professional opinion because she's not done studies on that. Council Member Jensen felt bus service would mitigate problems and concerned with traffic. Mayor pro tempore Schulze asked how many driveways were impacted by the delay. Green was not sure, the civil engineer might have that information and in the site plan; she knew how far the predicted cueing is. Mayor pro tempore Schulze asked in her professional opinion was there anything that could be done to improve the delay a homeowner would have getting out of the driveway whether it would be timing signals at US64 and Peakway; is there any other solution. Greene, thinks they would experience typical 15/20 minute delays you would see at almost any school. She asked Gettle how close the nearest driveway was; could she ask. Attorney Fordham advised she could as long as others had the chance to ask questions. Gettle noted a northern driveway. Greene noted nearby residents that would be adversely impacted by longer durations during the morning and might not be as nearly impacted by the p.m. traffic.

Mayor pro tempore Schulze asked her would it be about 15 minutes. Green responded Herman may testify to how long it takes them to load; she has a child that goes to a school with about 800 students and doors open at 8 and class starts at 8:15.

Council Member Olive asked in her analysis did she taken into account this being a secondary school, some drivers would come and park opposed to leaving like carpool, and then reverse in the afternoons, they are not coming, they are just leaving and how is that impacted. Greene, that is taken into consideration in NCDOT's school calculations assuming 100 drivers out of 483 students. Council Member Rowe, with the ability to have more people come and stay, would it help the overall traffic, 243 parking spaces and the plan for 100. Green didn't understand the question. Council Member Rowe said he answered his own question.

Mayor pro tempore Schulze asked if the opponents had questions.

Smith asked the specific reason that the option to go right-in right-out turned away. Greene it was because you would have to put channelization out there and NCDOT was concerned that people would make U-turns or possible erratic maneuvers down Salem Street. Smith asked if channelization was an NCDOT requirement with right-in right-out. Greene yes because you prohibit people will turn left. Smith asked at the intersection of Hunter Street and Salem Street there's a facility that is right in and right out and no channelization. Greene was not familiar with that site; she was basing this on her conversations with NCDOT.

Attorney Stam asked Joe Armistend, Architect, to give his credentials.

Attorney Stam asked if he were the architect that designed the building. Armistend, yes. Attorney Stam asked he tell them how it complies with the UDO and the architecture of the columns. Armistend advised it meets the UDO; brick approved photo shown in another location under construction; original brick orange helps distinguish it from red, a more solid color and visual texture; as far as the Corinthian columns, is consistent with Thales name, on their market materials as well as and incorporated in their other schools, some inside as well as some outside. Attorney Stam advised Thales was a Greek Philosopher. Armistend had heard this.

Questions from Council to Armistend: none

Mayor pro tempore Schulze asked if the opponents had questions: none

Applicant had no further witnesses.

Mayor pro tempore Schulze asked if there was evidence to be presented from the opponents: Smith and Burgess
Burgess had no evidence to present.

Bryan Smith stated his credentials as an Engineer; he fixes architects and engineers problems; his firm has been hired by CH2MA Hemisphere Engineering Hired to do construction reviews for National Institute of Health Lab in Montana, as well as the center for Disease Control Building 23 in CD Campus Atlanta; are asked by design professions to critique their plans; in context of all trades and design groups, he is qualified to comment on the process; by licensing and the

law, he can't comment on civil engineering; he is commenting on the process; he thinks the process has failed; he doesn't understand why a design team would recommend to the owner to spend an inordinate amount of money to construct a road to NCDOT standards and in his professional opinion a lot of questions still not answered and that the design team should already know. He asked what is the impact of overhead utilities? Doesn't understand how they have possibly come this far, this much design and doesn't know whether the utility poles have to be moved; he wouldn't want to have to defend that in front of his client; we're going to suck up that much more money to move the poles and didn't know it. To him, the only answer is right-in right-out; he can't speak to NCDOT requirements, but an obvious example on the same street where right-in right-out was required with 20 cars a day in and out of the facility and 65 parking spaces at Hunter and Salem. Neighborhood meetings: he's not heard a neighbor nor himself against the school; he thinks with the research it's a fine school and will serve the public well; the issues are not with the school and wish them the best; he can't understand why you would place the main entrance on the northern unless you are anticipating your main traffic flow would be moving south and tells him the bulk of the student body will be coming from out of Apex, that is the northern edge of Town; if the main flow of traffic is anticipated in the south bound lane of traffic, again indicating the majority of people come from out of Town; so when you get to the issues of who's being inconvenienced, is it out of town residence who have the means to bring their child to that school, that ultimately will inconvenience people who live on that street. The Town will ultimately have to decide what the northern end should be and the very character of what is on those lands is a grand representation and indeed part of the engine that has driven the growth in Apex; people moving here could go to Cary but they drive south into Town and what do they see, they see his chickens in the yard, Tom's cows; Apex has to look at what they want to do over time. Planning is done and we know what eventually will happen but in the meantime, there are better solutions, right-in right-out is the solution.

Mayor pro tempore Schulze asked if there were questions from the Council to Smith.

Council Member Jensen asked where his residence was. Smith showed he lived south of the pasture and Tom Colhoun is his immediate adjacent neighbor to the north. He noted two properties to the south and the landscape property; noted the northern border joining the school property until you get to the Booth property back of the pond.

Mayor pro tempore Schulze asked if there were questions from the Applicant. None

Mayor pro tempore Schulze asked Burgess if she had questions. None

Mayor pro tempore Schulze announced he would allow time for non-repetitive rebuttal submitted by Town Staff, Applicants and Opponents evidence. Attorney Stam had no further.

Mayor pro tempore Schulze stated this was the time for closing arguments. No more evidence is allowed.

Attorney Stam began his closing arguments asking to approve the application as it meets all the requirements of the law with the additional conditions: a fence along the northern line from the railroad as far to the west and as far to the north as the property owner requests it. He somewhat sympathizes with the idea that be baseball, he prefers soccer to baseball, but does not think it's an appropriate condition and have an active baseball field there now with no condition; there is no evidence; you could hypothesize that they would use the javelin throw, hypothesize all sorts of things, but the only proposal before them is to use it as it is. They have done their work, presented a good plan, and asked to approve it.

Mayor pro tempore Schulze asked Smith if he had closing arguments. None

Mayor pro tempore Schulze asked Burgess if she had closing arguments. None

Mayor pro tempore Schulze closed the public hearing and began Council deliberation. He would allow Council to ask any questions of the witnesses, but keep them limited.

Council Member Olive questioned Senior Planner Cowles, in that she had looked at this and from her perspective, he recalled a North Salem Street plan and he did not hear that addressed at all tonight and wanted to know was there any consideration of that as part of her job in her review. Dianne Khin Director of Planning made the response that with North Salem, the main goal was to keep the streetscape in place and one of the recommendations of that plan was that the RCA of the area be located at the front of the site, and easy for them to do this, where the availability of the parking of the area is in the rear; staff didn't have to tell them to do that, they did it and stayed on the layout of the property. Khin gave her credentials. Attorney Fordham advised Mayor pro tempore Schulze that he should ask if anyone else has questions of Dianne. Mayor pro tempore Schulze asked the Applicant if he had further questions of Dianne. Attorney Stam did not. Mayor pro tempore Schulze asked Smith if he had further questions for Dianne. Smith did not.

Council Member Jensen was pleased with the layout, however noted the Episcopal and Methodist Church were required for their layout upfront was that changing and seems a change from the past where the church was closer to the road and happier with this. Khin noted parking to this property is to the side and rear and meet the requirement. The church met the north Salem Street Plan in terms of the buffer. Council Member Rowe understood clockwise circulation of traffic through the site and as an engineer, its logical, however the idea of the main entrance being the middle entrance and having stacking more in front of the school property seems it may help the situation of cars stacking in front of the homes asking Dalton what would be his position asking he comment. Dalton an acceptable plan to him if he were saying the south driveway on the inbound lane on the north outbound driveway, if they could work it out on site that your southbound driveway was full movement for stacking you would have more storage in front of the school instead of having the full 400 feet north of the school, some of that would be taken up by the frontage, and the outbound north driveway would have to be right-in right-out and would not be able to have lefts out because the standing cue could eventually block the driveway and would want that channelized; that was considered early in the process, it doesn't allow full movement but it does help as far as safety concern it would prevent lefts out if it were ran that way. Council Member Rowe asked if there were any benefit to having the applicant study this; the issue seems to be the southbound traffic that wants to turn into the school is going to back up and looking up Salem Street a series of homes and if they want to get out, thinking is there a better solution. Dalton it would reduce the cue in some way, and bring the cue more in front of the site, correct; drawback again, you would have to have a right out only from the north driveway and those wanting to go south would have to figure a way to go south and figure out how to work the carpool on site. Council Member Rowe noted the door would open on the opposite side of the building; that becomes an internal situation which the school would have to address and doesn't have an impact on adjacent neighbors. Dalton that's correct; keep in mind this was discussed with NCDOT and any major changes would have to go back to them and be embedded in their process as well. Council Member Rowe noted with the idea of right-in and right-out only, we heard from the traffic engineer what NCDOT has said, did the town taken this into account. Dalton right-in right-out is great right at the school, question is how do people get into the site, depending on the way the come you may cause congestion problems elsewhere as people try to make U-turns and get back to the site; it would be great if everyone came from the direction of the Peakway; example if you are on Davis Drive, how are you going to get to the school are you going to look for an opportunity on Salem Street to do a U-turn to turn right in or are you going to cut through Villages of Apex down to the Peakway or divert back to NC55 and come off the Peakway; right-in right-out sends people out of their way trying to get back to the school. It's not a well-protected grid in that area; it's a lot of thoroughfare so they don't have a lot of cross connections.

Mayor pro tempore Schulze asked if there were other questions.

Smith asked if any plan by NCDOT had been approved or are we trying to approve something yet don't know how the state government will rule; he doesn't understand how they move forward yet don't know what NCDOT is going to or not going to approve. Dalton reported the plan is approved by NCDOT for circulation and will be signed off on and he has no reservations it will be something they accept based on conversations with them. Smith added but it's not signed off on now. Dalton, not sure the driveway permits were signed off on yet, not signed off on yet. Smith asked if it has been submitted for permit. Dalton, it's not.

Council Member Jensen asked what percentage of students ride buses for public schools. Dalton was not sure. Council Member Jensen added the purpose is to minimize traffic and would require bus service and might be a percentage requirement and need to consider bus service and a means to minimize traffic. Dalton stated a private school wouldn't work like a public school and wouldn't pick up students from their houses from remote areas; you could have staging areas in large parking lots where kids were dropped off catching a bus or large vans there and over to the school, a possibility but not been presented.

Attorney Stam advised NCDOT doesn't sign off on driveway permits until after the Town approves the project. Dalton added typically would have site plan approval before sign off on driveway permits and with meetings with them, says this is what the site plan is and one they would accept; not that they wouldn't accept something else, would have to have further discussions about it.

Mayor pro tempore Schulze asked if there were further questions of Dalton. None.

Mayor pro tempore Schulze hearing none called for the motion.

Action: Council Member Olive moved to approve the submission of this application including the fence as talked about being extended to whatever distance Mr. Booth has requested. Council Member Lassiter made the second to the motion. Council Member Olive stated the applicants and representatives did a good job in putting together their idea;

he too has concerns with the traffic but thinks all the things they can do has been done to alleviate, the applicant themselves will feel the brunt of the pain having level F at the exit of the property where Salem Street has right of way; without signalization, Salem Street can move freely, at least to the point that the fairly long stacking on site begins to impact the rest of Salem Street; from what he sees at looking at the site and the school capacity of the school, it's not that large for a high school and he also knows that for high schools the comment was they used conservative numbers and knows that they are; his observation of high school students is once they are able to drive themselves to school they often choose to if they have the means; you will find many of the students up to the capacity that the parking lot will support many of them will be driving or carpooling indeed if they live near each other. This project has done everything it can to mitigate the circumstances and thinks this will be a good use of the property; he thinks the parking lot sharing between the church and school will work very well for both uses, and supports this.

Council Member Jensen likes private school and welcomed, good competition to public schools; he's troubled with traffic; applicant/owner not here to commit to mitigate steps in conjunction with traffic engineer; public schools use school buses and suggested shuttle buses would help. If there were a commitment by applicant to be a corporate citizen to commit to or be willing to take steps at this point with traffic potential and there is no commitment to mitigate this problem and he's sure there's going to be a problem and there's already a problem, he will not vote for this under this situation.

Council Member Schulze thinks overall it's a good project and he does recognize the traffic is a concern specific with driveways surrounding the property; the one saving grace is that it's a short time period and not like it's all day long; he thinks it's a good use of the property and overall a good project; he supports it.

Council Member Rowe added there's 243 parking spaces, 35 staffers, 200 spaces available for students, thinks what Council Member Olive was saying is that students 283 as many of them will drive as they can, the models have been around 100 and seems that will improve the situation; there's nothing in place and they can't require it; some ability to share parking with the church both on their benefit but the schools benefit should be worked out and whether that driveway is blocked off or used, it will be used and school people will find it's a way to get into the school and doesn't know that's our responsibility to manage it but should be paid attention to and the school has some kind of program to be able to enforce the ability to keep people from parking elsewhere and can do that within their rules; it would have been nice to have had a representative from the school here that could speak a bit more to that but doesn't think it's enough concern on his part to have objections to it. Council Member Lassiter added this may fall on deaf ears, but he grew up and spent all his childhood life living in his family home across the street from Apex high school and he honestly thinks the worse things to have as a neighbor is a school it is on Laura Duncan Road and at peak time for the traffic is a short window; he's happy this board has this proposal in front of them and doesn't tie the hands of the school administration or the governing body of this school and lets them run their school without us telling them what kind of fence they have to put up, what hours to start, and whether they need to shuttle in kids or not; that's not the purpose of the Apex Town Council.

Mayor pro tempore Schulze called for a vote. Vote on the motion was 4 in favor and 1 opposed with Council Member Jensen casting the vote in opposition. Motion carried.

End of Quasi-Judicial Public Hearing 04

Mayor pro tempore Schulze called for a recess of the Council at 10:35 p.m. and reconvened at 10:40 p.m. Mayor Weatherly retook his seat and moved back to continue the public hearings.

Public Hearing 05

Dianne Khin Director of Planning

Public Hearing and possible motion regarding Annexation Petition #471 Wake County Board of Education, owner/petitioner, petitioning to annex 108.456 acres including 0.056 acres of right-of-way, and contiguous to the Town's corporate limits and located off Humie Olive Road (SR 1142). Staff presented the petition orienting to the proposed site for West Apex High School and petitioning for water and sewer. Staff recommends approval. Mayor Weatherly opened the public hearing at 10:40 p.m. and with no one addressing the request for annexation, closed the public hearing and referred the matter to Council. **Action:** Council Member Jensen made the motion to approve Annexation Petition #471. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 06

Dianne Khin Director of Planning

Public Hearing and possible motion regarding Annexation #472 Town of Apex, North Carolina by adopted Resolution 2012-0306 -472 Declaring Council's Intent to Annex Town-Owned Property; containing 0.062 acres (Milano Avenue right-of-way) into the Town's corporate limits; property located off Evans Road. Staff presented the petition orienting to the right of way to complete Milano Avenue and recommending approval.

Mayor Weatherly opened the public hearing at 10:42 p.m. and with no one addressing the request for annexation, closed the public hearing and referred the matter to Council. **Action:** Council Member Schulze made the motion to approve Annexation Petition #472. Council Member Lassiter made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 06

End of Public Hearings

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

Helen Bradley, Villages of Apex asked to amend the public hearing notification rules reference Village of Apex, no HOA with developer in full control and no neighborhood representation, with various erosion control issues; to review UDO Section 2.2.7 regarding neighborhood meetings language regarding notification from "should to shall"; have Mike Deaton, environmental staff to review sample techniques regarding mosquito prevention and sampling methods regarding retention ponds, asking to compare to Raleigh and State of North Carolina. Dianne Khin Director of Planning expanded on current regulations and with discussion regarding public notice for hearings, where at least one sign is posted on site, regarding the Thales hearing and notice posted to the Town's website, with property owners notified within 300 feet noted map and date posted; UDO language would be voted on next month; the erosion control issue is a Board of Adjustment decision. Attorney Fordham advised the Town can exceed the state regulation rule in regard to notification of residents within 100 feet. It was noted the development Villages of Apex had not been turned over to an HOA, and the interactive development map is available on the website and to consider larger mailings would require additional monetary resources.

End of Public Forum

NEW BUSINESS

There were no New Business items.

CLOSED SESSION

Mayor Weatherly called for a Closed Session at 10:50 p.m. to consult with Town Attorney regarding potential eminent domain litigation; and to consider real estate acquisition, Clarence Edwards property PIN No. 0742828176 to consider stormwater management pond and neighborhood park. **Action:** Council Member Schulze made the motion to move into Closed Session for the purposes stated. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0. Minutes of Closed Session are recorded separately. **Action:** Council Member Jensen made the motion to move back into regular session to consider the following: Resolution No. 2012-0320-08 Authorizing Eminent Domain Proceedings Related to the Olive Chapel Water Line and Electric Line Project for the Improvement of the Apex Water and Electric Systems. There was no second to the motion. Motion carried unanimously 5-0. **Action:** Council Member Olive recommended adoption of the Resolution. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

Council Member Jensen presented a map of the Edwards property and oriented to its location, and asked authorization to look into grant funding with Clean Water Management Trust, should the Town choose to move forward with the potential purchase of the site. He noted much neighborhood interest in this proposal. Mayor Weatherly and Manager Radford led discussion regarding the affordability of the property, and noted the previous Wooten study of the basin and impacts from the development of Villages of Apex revealed no additional impacts on the basin, and any further resolutions would not improve the basin. Mayor Weatherly indicated he would want more evidence that the basin would be improved by such further efforts on the Town's part, prior to purchasing land, and further if a park was within the approved parks plan. Council Member Jensen felt this was a good opportunity and an inexpensive step to helping in protecting the basin downstream and further there was no park in this area of Town, except for the Seagroves Farm Park which was only one acre larger than this site. Council Member Schulze noted staff had stated the Parks plan was in need of an update, however may be in the Town's best interest to finish development of the larger park projects. Manager Radford concentrated his remarks on the Clean Water grant for the Nature Park land to keep the prime land from developing and further the Wooten Study noted minimal impacts from Villages of Apex development on the basin and noted no credit to its improvements for doing this. Mayor Weatherly felt before the Town put out any monies, Council could refer the matter to the Parks and Recreation to consider if a potential park in this area would meet the overall parks plan and have a few weeks to think this proposal out. Mayor Weatherly declared that the matter be referred to the Parks, Recreation and Cultural Resources Advisory Commission for their consideration prior to moving forward.

End of Regular Session

WORK SESSION

There were no Work Session items.

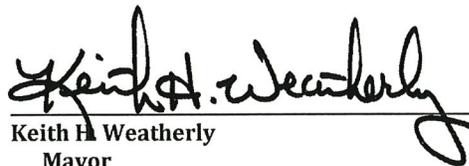
ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 11:17 p.m. Action: Council Member Jensen made the motion to adjourn. There was no second to the motion. Vote on the motion was 5-0. Motion carried unanimously.

Minutes for the March 20, 2012 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council's approval during their April 3, 2012 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA
Council Meeting Minutes for April 03, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 03, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

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

PRESENTATIONS

Mayor Weatherly recognized retiring Town Clerk Georgia Evangelist, effective May 1, 2012 having served the Town 32 years, and noted this would be her last official meeting with the Council.

CONSENT AGENDA

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 Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments and the Consent Agenda was set. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for March 20, 2012 Council Meeting; and March 20, 2012 Council Closed Session (separate).
2. Council Statement and Ordinance for Rezone #11CZ17, NHPO, LLC. petitioner, for property located at 3525 Old US 1 Hwy.
3. Findings of Fact, Conclusions of Law for Thales Academy Major Site Plan, 1300 N. Salem Street.
4. Set Public Hearing April 17, 2012 for Rezone #12CZ02 from Planned Unit Development-Conditional Zoning to PUD-CZ district, changing conditions for the property located at Olive Chapel Road and known as Olive Chapel Park, containing 23.11 acres.
5. Set Public Hearing April 17, 2012 for Rezone #12CZ03 Kelly Grove Phase II from Rural Residential to Medium Density Residential-Conditional Zoning, located at 2293 Toad Hollow Trail, containing 7.134 acres.
6. Set Public Hearing April 17, 2012 for various amendments to the Unified Development Ordinance.
7. Wake County Tax Report approved and accepted during the Commissioners March 19, 2012 Regular Session for Town of Apex.
8. Approve appointment of a committee to consider renewal of the office space lease for Apex Chamber of Commerce.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments. The Regular Meeting Agenda was set.

PUBLIC HEARINGS

There were no scheduled Public Hearings.

OLD BUSINESS

Old Business 01

Council Member Jensen

Council Member Jensen asked Council to consider the purchase of the Edwards property on Old Raleigh Road to erect a retention pond and small passive park space.

Council Member Olive asked he be recused from participating and voting on this item as his father owns property near the property being considered. **Action:** Council Member Schulze made the motion to allow Council Member Olive to be recused. Council Member Rowe made the second to the motion. Motion carried unanimously 4-0.

Council Member Jensen viewed this as an opportunity for the Town to consider purchase of the property; noted the Parks, Recreation and Cultural Resources Advisory Commission did not recommend the property for a park site for the following reasons: property was not on the park plan, were concerned with connectivity, unknown costs for managing the park and its usage, and felt the program was mainly for storm water management and should go through Public Works and DENR first; due to the lack of information he accepted this. He reported on information from the Manager, in that placing wet ponds in the headwaters of the perennial part of William's Creek was not desirable; he commented on reduction of the flow capacity and discharge during 10 and 25 year storm events and the impact of waters as it moves downstream. Estimated costs could push towards \$600,000 and would include construction, land and miscellaneous other costs. He was willing to pursue grant funding in an effort to reduce costs if Council were interested, and had hoped the Commission would have been on board and could pursue combination grants; noted the greenway connection could come through Surry Meadows, Ole Mill Village, could tie into Shepherd's Vineyard Greenway and then into Town. He expressed if there were no interest, there was no reason to proceed, and if there was interest, he would contact DENR seeking approval for a retention pond; noted they would not have to buy the property immediately, nor do the project all at one time, but saw it as a good opportunity. Mayor Weatherly was willing to keep the item open if there was additional information that would have positive bearing, such as grant funding to reduce costs and proved diligence on the Williams Creek issues, not knowing if this would make a significant impact downstream; noted other larger parks projects and need for funding to complete those. Mayor Weatherly continued if there were no motion, then they would move on, and with more information, would revisit this. Council Member Schulze asked if the pond could not be dammed up, would it still work. Council Member Jensen responded the pond could be dammed up to limit flow, but not a retention pond, but could be a wet pond and would have to be left in natural state. No action was taken.

End of Old Business

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

New Business 01

Lee Smiley Director of Finance

Possible motion to approve change in Town's financial policies to increase minimum level of fund balance from 10% to 25%. Smiley noted the approved financial policies and guidelines for the Town requires the Town maintain a minimum amount of 10% fund balance for annual operating budget; rating agencies are not comfortable with the policy which allowed the Town to reduce its fund balance to this level and financial advisors recommend increasing the minimum to 25%; Town currently maintains 45%. In addition the Governmental Accounting Standards Board felt the terminology for fund balance was confusing to the average citizen and required changes in its Statement 54: term "Unassigned" instead of previous term "Unrestricted" and/or "Undesignated." Policy is being corrected to reflect new standard. Mayor Weatherly noted money will be available for use if need be and this change assures bond markets the Town is financially secure. **Action:** Council Member Schulze made the motion to approve the changes as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

New Business 02

Lee Smiley Director of Finance

Possible motion to approve a Service Agreement with Authorize.net and authorize Finance Department Staff to submit online application to Authorize.net and enter into the agreement for processing online payments for utility services and inclusive for building permits. Town will eliminate current fees charged to utility customers when paying online. Attorney Fordham identified three issues with the agreement: limitation of liability, indemnification and governing law and jurisdiction, however noted it appears to be standard throughout the industry and non-negotiable; noted laws applied to the agreement are in the favor of California. Staff believes risks to the Town are low and outweighed by the advantages of having a vendor who is familiar with New World Software; no problems have been reported by the Towns of Wake Forest, Holly Springs and Fuquay, users of the same with less than one year's experience. Town Attorney Fordham advised it may be worthwhile to join with the others that use this to see if there's an interest to negotiate the legal issues expressed by the attorney. Smiley explained how transaction fees are absorbed now for those paying by phone or counter, approximately \$7000 annually; noted no impact on the town long range, entering into the agreement could save in personnel costs and processing time and staffing needs and offset the number of phone calls. Mayor Weatherly questioned potential to consider parks and recreation, and was noted the department uses a different online provider and software package. **Action:** Council Member Schulze made the motion to approve the Authorize.net agreement as recommended. Council Member Jensen made the second to the motion. Council Member Olive agreed this was a good venture, and as the town gets bigger wouldn't have to add processors to handle paper work; he's confident the amount of time saved will be offset by the nominal fees charged for electronic transactions especially when people process their own payments; looking at the one sided pieces of the contract with other towns is worth it especially where it pertains to indemnification and venue and other items such as arbitration, trying to balance those out, and trying to get clout and leverage. Motion carried unanimously 5-0.

End of New Business 02

New Business 03

Chief of Police Jack Lewis

Possible motion to amend Section 14-14 and Section 18-11 of the Apex Town Code of Ordinances as shown in the attached ordinance to allow Downtown Sidewalk Food Service Tables on the public sidewalks in the Central Business District, to allow open containers of and the consumption of malt beverages and unfortified wine at these tables and to update the definitions of malt beverage and unfortified wine in the Town Code.

Chief explained businesses within the downtown operate food service tables on public sidewalks and serve alcohol at these tables and have been doing so for several months. He advised the Town Code does not allow food service tables on any public sidewalk nor does it allow open containers of the consumption of malt beverages or unfortified wine on any public sidewalk. State law does not prohibit open containers of same, and leaves that decision to municipalities whether to prohibit same or not; municipalities have no power to modify state law as they prohibit consumption of fortified wine, spirituous liquor or mixed drinks on any public sidewalk. Amending code Sec. 18-11 would allow food service tables on public sidewalks adjacent to food service provider's place of business on the conditions that a clear accessible travel path of at least 36" be maintained. Amending code Sec. 14-14(d) would allow open containers of and consumption of malt beverages and unfortified wine at downtown sidewalk food service tables on public sidewalks; mixed beverages would be prohibited by the general statute; Sec. 14-14 would define malt beverage and unfortified wine to match state statute. Downtown Merchants supports the amendments. Jeff Hastings represents the Apex Chamber of Commerce and supports the amendments as proposed.

Council Member Schulze is in favor and asked what would stop one from strolling down the street with open containers. Would be unlawful and police would enforce law, however Chief Lewis felt the restaurant owners would be responsible, and patrons would cooperate. Council Member Rowe wanted the amendment clearly communicated to the merchants, keeping paths open would be tough and didn't want police to be responsible for the patrol, wanting to educate the merchants of the expectations. Chief Lewis was confident that the ordinances as proposed would work, advising the merchants want it to work especially for the revenue that it would generate, and realize if they are not in compliance, would be changed, and advised further would return to Council asking so. Discussion evolved around license, temporary permits for areas such as the Chamber lot; Attorney Fordham would have to revisit this to see. Hastings reported they rent the building only. Attorney Fordham confirmed with Chief Lewis if he were saying downtown tables should not be allowed during special events; Chief advised that was correct. Attorney Fordham offered that the ordinance could be amended. Council Member Olive viewed that 36" obstructs and not enough for wheelchairs where tables and chairs encroach the sidewalks, and where two people pass, thinking 48' was more in line with ADA compliance. Chief Lewis advised 36" was the standard and not inclusive of the brick area on the sidewalks, and was capturing the rule noting the extra foot makes the difference with the tables and were movable

and could comply quickly. Council Member Olive commented on the sidewalks being tighter than need be and having to navigate through. Chief again noted 36" is the industry standard and recommended ADA compliance. Mayor Weatherly knew if this became a problem, could address it and the downtown merchants wanted this to work. Attorney Fordham offered the amending language for Sec. 18-11 "...except where the street is temporarily closed to regular traffic for special events." Council Member Rowe advised a previous UDO amendment had set 36" in place and the only way to enforce it based on ADA requirements. **Action:** Council Member Jensen made the motion to approve the amendments to the Town Code as recommended with the additional language stated by the Attorney. Council Member Schulze made the second to the motion, adding the downtown merchants were in favor.

End of New Business 03
End of New Business

CLOSED SESSION

There were no Closed Session items.

WORK SESSION

There were no Work Session items.

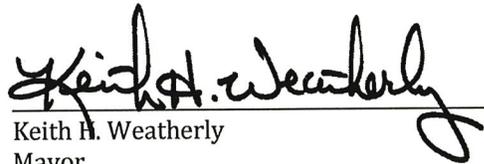
ADJOURNMENT

With no further business to come before Council Mayor Weatherly called for a motion to adjourn at 7:50 p.m. **Action:** Council Member Lassiter made the motion to adjourn. There was no second to the motion. Motion carried 5-0.

The minutes of the April 3, 2012 Council Meeting was submitted by the Town Clerk for the Council's approval during their May 1, 2012 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

~ ~ ~ ~ ~

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for April 17, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 17, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall on Town Campus, 73 Hunter Street

Mayor Keith Weatherly presided over the meeting.

Present were Mayor pro tempore Gene Schulze, Council Members Bill Jensen, Lance Olive, Terry Rowe, and Scott Lassiter.

COMMENCEMENT

Mayor Weatherly called the meeting to order and extended a welcome to those in attendance. Mayor pro tempore Gene Schulze gave the Invocation. The Pledge of Allegiance followed.

Mayor Weatherly made an “historic announcement” that Donna Hosch was now on board as the new Town Clerk, noting that Georgia Evangelist had held the position for 32 years.

PRESENTATIONS

Presentation 01

Graham Wilson

Presentation by Graham Wilson, seeking permission to co-sponsor and participation by the Town of Apex in the Peak-City Pig Fest, June 23, 2012.

Mr. Wilson, representing the Apex Sunrise Rotary Club, stated that this event is sanctioned by the Kansas City Barbeque Society and will involve 30 cook teams from across the country. The competition is for over \$15,000 in prizes and is proclaimed a “state championship” by the Governor. The winning team will automatically qualify for the National Invitational and will qualify for a drawing to the Jack Daniels competition. Beneficiary of the event is Western Wake Crisis Ministries in Apex, Mr. Wilson having positive feelings about supporting this event for a home-town charity. The event will be free and provide food, music, pig races, and more. The judges are certified barbecue judges, Town Manager Bruce Radford being one of them, and contestants will be judged based on what the judges have learned in school.

Each year about \$3 million is awarded in sanctioned barbeque cook-offs across the country, and this is the only sanctioned competition in the Triangle. There is a direct economic impact as these events have a large following of individuals with disposable income. This Pig Fest has many enthusiastic corporate sponsors as well as support from the Chamber and downtown Raleigh merchants.

Mayor pro tempore Schulze applauded Mr. Wilson for bringing this event to Apex. Mr. Wilson clarified that sampling of the entrants’ foods will not be available to the general public except from those competing in the People’s Choice competition. This is because of health regulations; other food items, however, will be available. Town Manager Radford stated that all Town departments involved in putting on this event have been consulted.

CONSENT AGENDA

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments; the Consent Agenda was set. Action: Mayor pro tempore Schulze made the motion to approve the Consent Agenda; Council Member Rowe seconded the motion. The motion carried unanimously 5-0.

1. Minutes for April 03, 2012 Council Meeting.
2. Statement of Apex Town Council and Ordinance for Rezone #12CZ01, KC2 Enterprises, LLC, petitioner for property located at 910 Windy Road.
3. Amendment to Chapter 12, Article III, Division 4.5, Section 12-99.4 of Apex Town Code related to sewer use pretreatment program: Ordinance No. 2012-0417-06.

4. Wake County Tax Report approved and accepted during the Commissioners March 19, 2012 Regular Session for Town of Apex.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Town Manager Radford asked to remove the New Business item "Discussion regarding Annexation Boundary Line Agreement between Apex and Holly Springs" because of new developments. There were no objections from Council.

PUBLIC HEARINGS

Public Hearing 01

Lauren Simmons, Planner

Public Hearing and possible motion regarding Rezone #12CZ02 from Planned Unit Development-Conditional Zoning to PUD-CZ district, changing conditions for the property located at Olive Chapel Road and known as Olive Chapel Park, containing 23.11 acres. Staff presented the Planning Report for the subject property, applicant being Stuart Jones of Jones & Cnossen Engineering, PLLC. Applicant wishes to eliminate planned sidewalks on one side of the street throughout the community. A neighborhood meeting was held on March 21st, one neighbor attended, and there were no issues with the amendments.

This is consistent with the 2025 Land Use Plan. A full report is incorporated as part of the minutes. There are no other changes to the rezoning; the rezoning is in compliance with the Unified Development Ordinance. The Planning Board unanimously recommended approval of the rezoning at their April meeting; staff recommends approval.

Mayor Weatherly opened the public hearing at 7:18 p.m.

Speaking in favor, Stuart Jones of Jones & Cnossen Engineering stated that as new owners they are trying to redevelop this area and work through issues. This rezoning would help with grading and conflict issues with the switch from townhomes to single family homes. The easement maintains enough space for future development, if needed. There was no one in opposition to the rezoning.

Mayor Weatherly closed the public hearing at 7:20 p.m. and referred the matter to Council. There were no questions from Council.

Action: Mayor pro tempore Schulze made the motion to approve the rezoning as submitted; Council Member Lassiter seconded the motion. The motion carried unanimously 5-0.

Public Hearing 02

Brendie Vega, Principal Planner

Public Hearing and possible motion regarding Rezone #12CZ03 Kelly Grove Phase II from Rural Residential to Medium Density Residential-Conditional Zoning, containing 7.134 acres located at 2293 Toad Hollow Trail. Staff presented the Planning Report for the subject property, applicants/owners being Jason and Kara Bertoncino. Current zoning is Rural Residential; proposed zoning is Medium Density-Conditional Zoning. The neighborhood meeting, rezoning meeting, and subdivision meeting were held on February 29, 2012, and concerns were raised regarding the number of units, future roads, and cut-throughs. The applicant agreed to reduce the number of units and the allowable density of the project as a result of these meeting. A full report is incorporated as part of the minutes. Staff stated this rezoning complies with the 2025 Land Use Plan. The Planning Board held a public hearing on April 9, 2010 and unanimously recommended approval of the rezoning with the conditions found in the staff report and agreed to by the applicant. Staff recommends approval of the rezoning.

Mayor Weatherly opened the public hearing at 7:24 p.m.

Speaking in favor, Jason Bertoncino, owner/applicant, stated his intent is to be cognizant of the neighbors and neighborhood. There was no one in opposition to the rezoning.

Mayor Weatherly closed the public hearing at 7:25 p.m. and referred the matter to Council. There were no questions from Council.

Action: Mayor pro tempore Schulze made the motion to approve the rezoning; Council Member Lassiter seconded the motion. The motion carried unanimously 5-0.

Public Hearing 03

Lauren Simmons, Planner

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance public notification distance, neighborhood meetings, setbacks, parking, and definitions. Staff presented the Planning Report for the following:

- 1) **2.2.11 Public Notification** – proposal to amend the written notification distance from 300 feet to 600 feet of the property subject to the application.
- 2) **2.2.7 Neighborhood Meeting** – proposal to amend the language to require neighborhood meetings and the written notification distance from 300 feet to 600 feet. Will require the developer to notify and work with more neighbors.
- 3) **4.5.4 Single Family Recreational Accessory Use** – proposal to amend a reference in the section to match the new Accessory Structures section of the UDO.
- 4) **5.2.2 (A)(1) Setbacks – Measurement** – proposal to amend wording that clarifies what principal setbacks can be used. Allow subdivisions approved prior to the UDO to use the setbacks that were initially approved for additions, re-builds, and to ensure the UDO doesn't create non-conforming structures.
- 5) **5.2.2(B)(2) Setbacks – General** – adding a provision that would allow townhome lots to have attached accessory structures anywhere on their lots as long as they meet building codes. Townhome lots that were approved prior to the UDO will benefit from this new amendment.
- 6) **7.2.3(B) Lots – Setbacks and Yards** – amendment removing a specific reference to front yards that is unnecessary.
- 7) **8.3.4(A) Location – General (Parking)** – removing duplicate language from this provision of the ordinance.
- 8) **8.3.6(B) Parking Lot Design Standards – Site Layout** – revising language in this provision that makes it clear what the definition of side and rear yard for location of off-street parking.
- 9) **8.7.9 Definitions – Signs** – adding a definition from Article 12 that specifically referred to signs.
- 10) **12.2 Terms Defined** – revising some definitions and deleting all the definitions that refer specifically to Article 6.2. Most of the deleted definitions are being moved to revised Article 6.2.

For items 1) and 2), expanding 600 feet would cost about \$1,405.62 in supplies plus the expense of staff time; the same type of costs would also be incurred by developers. While there is no "magic number" for notification distance, 300 feet is in our Ordinance and more or less a neutral number. There are additionally other ways that the public is notified, i.e., our website and posted notices. The Planning Board did not recommend changing the notification distance to 600 feet.

There is a verbiage change related to 2), which would change 'should' to 'shall', staff recommending that neighborhood meetings be required instead of requested. The Planning Board recommends making this change.

For item 3), staff recommends changing a reference to correct the UDO. The Planning Board recommends making this change.

Item 4) will clarify that subdivisions will, in the future, be able to use the setbacks that were platted at the time the subdivisions are built. The Planning Board recommends approval of this item.

Item 5) relates to our old Zoning Ordinance and how we required townhome lots to be developed. In the 1990's, we required that the RCA be located around the units, and the lots are basically the townhome with very little backyard. Staff is recommending allowing attached and detached accessory structures anywhere on the lot as long as they meet all applicable building codes and recognize HOA controls. The Planning Board recommends approval of this item.

Item 6) would remove a reference to front yard requirements of Article 5. Staff would like minimum setback requirements to apply to all requirements of the setback, not just the front yard setback. The Planning Board recommends approval of this item.

Items 7) and 8) would require that 50% of all parking would need to be on the side or rear of a property for a business. The Ordinance is a bit confusing, and changes would clarify that this only applies to parking and not to the other VUAs on the property. The Planning Board recommends approval of this item.

Item 9) would add a definition from Article 12 that refers to signs being incorporated into Article 8. The Planning Board recommends approval of this item.

Item 10) refers to the Floodplain Management Ordinance. The proposed would remove all definitions that have to do with floodplain management to Article 6 from Article 12. Staff also found other definitions which it wants to keep and fix related to accessory structure, encroachment, and structure. A full report is incorporated as part of the minutes. The Planning Board recommends approval of this item.

Ms. Simmons added that the Planning Board also recommends that HOAs be required to be notified of public notices. This is currently in place for neighborhood meetings.

Council Member Jensen questioned if the Planning Department having the authority to expand public notices from 300 to 600 feet for low density areas would be beneficial. Mayor Weatherly stated this could be discussed in the public hearing.

Mayor Weatherly opened the public hearing at 7:40 p.m.

Stewart Jones of 221 N. Salem Street stated that the cost impact to them of expanding the notification area for items 1) and 2) would be tremendous. Over the last two years, there were 11 meetings and only 1.6 people/meeting showed up. The smallest number attending was zero, the largest was six. Mr. Jones stated he does not see more people attending if the notice area were expanded. He also pointed out that if the area is expanded, attending the meetings may be people who may have other concerns about the Town, such as traffic, not specific to the issue. Also, these people may mute those who are in attendance for the proper purpose of the meeting. Mr. Jones stated he would like to see the distance remain at 300 feet.

Council Member Jensen asked if the distance requirement in Raleigh ever fluctuates, to which Mr. Jones stated Raleigh can for controversial issues increase, at their discretion, the notification distance. However, this is under their old Code which they are in the process of rewriting into a UDO.

Jeff Hastings from the Chamber, on behalf of the business community, stated they are in agreement with the Planning Board's recommendations.

Mayor Weatherly closed the public hearing at 7:44 p.m. and referred the matter to Council. Council Member Jensen stated he understands keeping the 300 feet because of cost. However, in a low density area, if a big building goes in that covers more than 300 feet, would it be beneficial to give discretion to the Planning Department to expand the notice to 600 feet to cover all the bases. Mayor Weatherly stated that Apex's notification area is three times the State requirement. Planning Director Dianne Khin stated she would not be in agreement with this, because it would place her in an awkward position of possibly favoring one neighborhood over another. Something like this has not been asked for in a long time. Notifications are for those most impacted, and she would not like to give voice time to those who would not be directly affected.

City Attorney Hank Fordham stated that if discretion is going to be used, it has to have some objective standard by which the discretion is exercised - you can't pick between 300 or 600 feet. Council Member Jensen stated that there would be no need for concern unless the property falls in a low density area. Mayor Weatherly stated our website is very transparent; and since there is a recommendation that the HOA be notified, this would take care of any concerns in the general area. Council Member Jensen stated that the problem here may have been that the developer was running the process and didn't pass along the information. This process has, in fact, worked for the last 15 years as is.

Action: Mayor pro tempore Schulze made the motion to approve amendments 3) through 10), to only approve the verbiage change of 'should' to 'shall' in item 2), and to only approve adding the HOA notification to item 1), per the document modified by the City Attorney. Council Member Lassiter seconded the motion. The motion carried unanimously 5-0.

Public Hearing 04

Adam Stephenson, Senior Engineer

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance Flood Damage Prevention Overlay District. Staff presented the Planning Report stating that in 2000, the UDO was amended to prohibit all new residential development in the floodplain. Developments prior to 2000 that are already in the floodplain have not been allowed to build accessory structures, nor can vacant lots be built on. This proposal is to fix this issue through grandfathering those properties having construction plans approved as of August 2000, allowing the building of accessory structures and building on the vacant lots. This will also prohibit new, non-residential structures. In addition, there are changes to terminology and incorporating of the floodplain definitions mentioned earlier. This fits in with State law, and the Engineering Department has been working a year on this change with the State.

Council Member Jensen asked if flooding will be a problem for houses that have been built upstream, staff responded that the houses in that area should have been elevated. However, there would not be more than a one-foot rise which would not have a significant impact. The floodway-fringe of the entire watershed would have to be filled to get a one-foot rise within the floodway; there are construction specifications in the ordinance to minimize flood damage. There is no encroachment in the floodway. Council Member Rowe asked what was driving the desire for these areas to be built upon, staff responded that requests have been made from time to time to build accessory structures and fences. The Planning Board unanimously recommended approving the amendments.

Mayor Weatherly opened the public hearing at 8:10 p.m.

No one from the audience wished to speak for or against the amendments. Mayor Weatherly closed the public hearing at 8:11 p.m. and referred the matter to Council.

Action: Council Member Lassiter made the motion to approve the amendments; Council Member Jensen seconded the motion. The motion carried unanimously 5-0.

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

Mike Montford stated that in the Budget Meeting minutes, the Recreation Committee stated there have been few requests for programs for people with disabilities. He has met with the Cary Parks and Recreation Director and asked if they had such requests. The answer was that the requests were sporadic; however, when Cary did do a study, it showed a need for programs and the hiring of a therapeutic recreational counselor to direct the programs. Mr. Montford urged the Council to read this report on the Cary website, as there is a need out there for these types of programs. It would be nice if Apex's website had a link to other towns so that people could see what is offered elsewhere. It would also give the towns the opportunity to work together instead of being independent. Once Cary gets their counselor, it would be nice if towns would pool their resources and build upon programs for everyone in the surrounding towns. Mayor Weatherly acknowledged Mr. Montford's concerns and stated that Cary is a town of 140,000 and the scope of the range of issues is different. Town Manager Radford stated he will have his staff look into this.

Jeff Hastings representing the Wake County Historical Commission invited everyone to a celebration on Sunday after Peak Fest, at which time a plaque will be presented to the Seagrove Farm for its historic preservation efforts.

George Green, Pastor of a new ministry, Winds of Change Church of God in Christ located at 426 E. Williams Street, stated his church is looking to collaborate and partner with businesses and entities to continue uplifting the Town and its people to make life better. His church is now under the larger umbrella of Churches of God in Christ Incorporated. Mayor Weatherly thanked Pastor Green and agreed that as we grow in population, faith needs to grow as well.

NEW BUSINESS

There were no New Business items.

CLOSED SESSION

There were no Closed Session items.

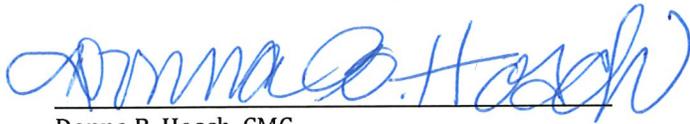
WORK SESSION

There were no Work Session items.

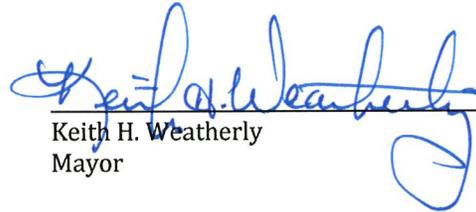
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:21 p.m.

Action: Mayor pro tempore Schulze made the motion to adjourn; Council Member Rowe seconded the motion. The motion carried unanimously 5-0.



Donna B. Hosch, CMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for May 1, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 1, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, Town Campus, 73 Hunter Street



Mayor Keith Weatherly presided over the meeting.
In attendance were Mayor pro tempore Gene Schulze and Council Members Bill Jensen, Terry Rowe, and Scott Lassiter. Council Member Lance Olive was absent.

COMMENCEMENT

Mayor Weatherly called the meeting to order, the invocation was given by Mayor pro tem Schulze, and the Pledge of Allegiance was led by Mayor Weatherly. Mayor Weatherly welcomed all those in attendance.

PRESENTATIONS

Presentation 01

Mayor Keith Weatherly

Proclamation proclaiming June 1, 2012 as the opening of the Latino Arts Festival.

Mayor Weatherly read and presented a Proclamation proclaiming June 1, 2012 as the opening of the Apex Latino Arts Festival. Mr. Hose Lewis accepted the Proclamation on behalf of the sponsors, stating that he was honored. He thanked the Council for their support of this important event and stated this will be a great day for Apex and the Hispanic community. Mr. Lewis stated the event will take place at the Halle Center and Train Depot beginning June 1st. Mr. Lewis additionally thanked the coordinators, artists, and volunteers who assisted with the event, several of whom were present.

Presentation 02

Mark Haraway, Fire Chief

Recognition of Motiva and accepting delivery of a new Firefighting Foam Trailer for use at the Motiva Facility. The trailer will be given to the Town of Apex Fire Department for use on flammable liquid fires both at the facility and in the fire district.

Chief Haraway stated it is a privilege to have this trailer, as it is the largest of its kind in the State. Scott Dilling, Site Superintendent, and Tom Turner, Project Engineer, presented the bill of sale for the trailer to Chief Haraway. Mayor Weatherly stated things that make the community safer are always appreciated. Town Manager Bruce Radford added that the trailer is valued at \$128,000 when loaded with foam. Chief Haraway confirmed that the trailer will be used, as agreed between the Town and Motiva, for the Triangle area.

Presentation 03

Mayor Keith Weatherly

Presentation of cy pres fund to the Town of Apex related to the EQ class action lawsuit.

Mayor Weatherly stated that the EQ incident in 2005 recognized how much the community could pull together and how devoted and well-trained the emergency folks are here and in the surrounding areas. People may not know or

may have forgotten about the class action lawsuit which was recently settled. The attorneys and courts declared that some of the money paid out in the lawsuit would go to Apex for emergency preparedness.

Mr. Zaytoun, Attorney, stated that on the night of the incident, it was divine province and the skill and responsiveness of emergency personnel that made a big difference for the Town. It was fortunate that there were no serious injuries. The lawsuit was on behalf of the citizens of Apex. Part of the settlement is that monies go to the Town to enhance emergency preparedness. Mr. Zaytoun presented Mayor Weatherly with a check for \$80,000, stating that whatever the good Town fathers agree should be done with the funds should be done. Mayor Weatherly stated the budget is stressed like everyone else's, and the funds will be used for the good. Mr. Zaytoun added that Motiva stated it got to know the Manager and Chief during the process and that the Town has a well-trained, orchestrated group of individuals.

CONSENT AGENDA

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Council Member Rowe requested that item 3., Approval of the EQ Settlement Funds Spending Plan and Budget Amendment #8 regarding the settlement funds, be pulled for further discussion, Mayor Weatherly placing the item under Old Business. There were no other amendments; the Consent Agenda was set.

Action: Council Member Jensen made the motion to approve the Consent Agenda with the one stated exception; Council Member Rowe seconded the motion. The motion carried unanimously 4-0.

1. Minutes of April 17, 2012 Council Meeting
2. Approval of the contract for the audit of fiscal year ending June 30, 2012
3. Statement of Town Council and Ordinance for Rezoning case #12CZ03, Jason and Kara Bertoncino, petitioners, for the property located at 2293 Toad Hollow Trail.
4. Statement of Town Council and Ordinance for Rezoning case #12CZ02, Jones & Cnossen Engineering, PLLC, petitioner, for the property located off Olive Chapel Road
5. Set a public hearing for the May 15, 2012 Council Meeting regarding Rezone #12CZ05, portions of seven properties generally located on James Street, from Planned Commercial and Office & Institutional to High Density Multi-Family Residential-Conditional Zoning and a 2025 Land Use Plan Amendment from Mixed Use (High Density Residential and Office Employment) and Mixed Use (Commercial and Office Employment) to High Density Residential
6. Set a public hearing for the May 15, 2012 Council Meeting regarding 2121 E. Williams Street Rezone #12CZ06, subject property being approximately 6.0 acres
7. Award construction contract and authorize Town Manager to execute same for EL-5100 DC Center Street Sidewalk Project
8. Award construction contract and authorize Town Manager to execute same for EL-5100 DB Salem Street Sidewalk Project
9. Annexation Petition #473, Town of Apex, North Carolina: Resolution 2012-0501-473 Declaring Council's Intent to Annex Town-owned property containing 1.628 acres (Section 1 of Beaver Creek Commons Drive Extension) into the Town's corporate limits and setting the date for the public hearing as May 15, 2012.
10. Annexation Petition #474, Town of Apex, North Carolina: Resolution 2012-0501-474 Declaring Council's Intent to Annex Town-owned property containing 1.563 acres (Section 3 of Beaver Creek Commons Drive Extension) into the Town's corporate limits and setting the date for the public hearing as May 15, 2012

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.

PUBLIC HEARINGS

There were no Public Hearings

OLD BUSINESS

Old Business 01

Council Member Jensen

Discussion on Interim Nature Park Development by Council Member Jensen.

Council Member Jensen stated we have been in control of this property for about 10 years and haven't done a great deal of development on it. He has had several people request that the Town get moving on something. Council Member Jensen asked Council to consider directing staff to come up with a low-key start up to survey and flag the trails, cut in briefly with a bobcat, and to set up an inexpensive parking lot out of gravel such as on the tobacco trail. Even though the money is not ours, we are now spending \$60,000 in interest on the \$2.4 million spent for the property, and we are not getting any value out of it for our citizens.

Council Member Jensen asked that staff come up with two or three different scenarios, one being as he stated. Possibly we can get volunteers to assist. The plan doesn't have to be well developed; just something to get us started. Mayor Weatherly stated we want to develop the property as soon as finances allow. The Mayor asked Town Manager Radford could a quick and dirty plan be developed, with a more comprehensive plan to follow when the budget allows. Town Manager Radford stated he can bring this back to Council in two weeks. Council Member Rowe asked that the pros and cons of each option be included.

Old Business 02

Council Member Rowe

Approval of the EQ Settlement Funds Spending Plan and Budget Amendment #8 regarding the settlement funds

Council Member Rowe stated this was pulled for discussion not because he objected to the item, but because he wants to make certain that if we are going to expend monies from the settlement that it is spent on items aligning with priorities in the preliminary budget information. The mission should be to use the money for things we're trying to fund.

Town Manager Radford stated the first spending option was to rehabilitate Fire Station No. 2 in order to maintain our rating with the Wake County Inspections Department. However, the language in the settlement agreement says the funds must be used for fire response. Attention was then turned to a truck to pull the foam trailer. However, because of a serious incident a few weeks ago, it has been determined that we have a shortcoming when it comes to a rescue boat.

Chief Haraway stated a prime hauler was on the CIP list, this being designated to pull the foam trailer. The truck used tonight to pull the trailer was provided through the State, is part of our rescue team, and can be deployed at any time. If the truck is deployed, the trailer will be sitting as there is nothing in town to pull it. Last year we had to buy fire apparatus and didn't get things that we're used to working with, i.e., lighting. Additional needs encompass components on one of the trucks being tied into the system, a rescue boat to give us the capability to avoid situations like several years ago, and personal protective equipment.

Chief Haraway stated that on March 25th we responded to an emergency on the Haw River with a swift water rescue team. Our emergency team members were stranded approximately 200 feet down river because their boat suffered a loss. Because of the current, the boat struck an object and lost its motor. Working with another team, a rescue was prompted; but one member was stranded in a tree offshore for two hours while South Orange Rescue Squad responded to offer assistance. We could do nothing until resources arrived.

Chief Haraway stated he has wanted a new boat, but it has fallen by the wayside because of other priorities. We have two boats designed for lakes and one swift water boat, and we have received our current equipment through grants. A new boat would replace the 16-foot Johnboat which serves no purpose; it has been farmed out to Parks and Recreation for maintenance of the lakes. Chief Haraway further explained that we have an agreement with the North Chatham Fire Department for the boat that they have. However, on the night of March 25th, it had already picked up people up down river and could not get back because of the current. We are only one of two rescue teams in the County. Because of impervious surfaces, there is a great possibility for flooding. We have found out not having a backup is a shortcoming.

Chief Haraway stated we have five sets of protective equipment to outfit one and one-half boats. The protective gear for which he is asking has extra protection and buoyancy for swift moving water. Using the money within the definition of Mr. Zaytoun and the courts will bring the budget down by taking out the cost of the requested items. Chief Haraway added that we have purchased all our equipment through grants and don't have any funding other than our agreement with the County. We have the mutual aid agreement and allocations for the upgrade of equipment maintenance each year. Apex is one of 2 water rescue teams in Wake County. In 2004, we were approached by the State to use our program to tie in as a State resource.

Action: Mayor pro tempore Schulze made the motion to approve the Funds Spending Plan; Council Member Rowe seconded the motion. The motion carried unanimously 4-0. *The Spending Plan and Budget Amendment are incorporated as part of the Minutes.*

PUBLIC FORUM

Paul Kemple, President of the homeowners association of Waterford Green and speaking on behalf of several attendees, addressed Council requesting consideration of moving forward with a missing link of sidewalk in his neighborhood. It has been overlooked since 1998 when a new development was added. With the missing segment of curbing, the biggest problem is that children getting off the school bus are forced to walk in the street, this causing the possibility of sideswiping by vehicles. Mr. Temple has heard that there may be a greenway connection in the neighborhood to Cary, and this would then be a highly-used pedestrian area.

Kent Jackson, Construction Management and Engineering Director, has informed Mr. Temple that the initial estimate for this project was \$38,000 for a section about two blocks long. It may now, however, be less because of current market conditions. Mr. Temple understands the neighborhood is currently number 11 on its priority list, budget numbers indicating this won't happen for three to four years. Since the cost of the project may not be as high as originally projected, Mr. Temple requested this project be moved up on the list. Mayor Weatherly stated Mr. Temple's comments will be considered in conjunction with the upcoming budget hearing.

Todd Fague, also of the neighborhood, stated there have already been two vehicular hit and runs in the neighborhood. There is a sense of urgency to complete this project for the safety of the children. Council Member Jensen stated that if there was a fee in lieu of greenways when the development was built, maybe those monies could be used for this project instead.

Paul Levering, representing the Apex Chamber of Commerce, addressed the Council on the recent public policy statement concerning the Wake County Core Transit Plan. The Chamber will support this Plan, as it believes it is good for business. The Plan is also supported by Raleigh, Durham, and Carrboro. Mr. Levering stated he simply wanted to inform Council of the Chamber's decision. Mayor Weatherly stated several Plans have been in existence, and asked which Plan the Chamber supported; Mr. Levering responded it supports the one with the light rail. The Mayor questioned how this would benefit Apex, since this is not a light rail stop. Mr. Levering responded he was only authorized to discuss what he stated.

Lisa Merritt, a new resident to Apex, addressed Council stating that she loves living here. She wanted to introduce herself, as she'd sent an email to Council asking for a Resolution to ban fracking. Ms. Merritt stated she's been working the last year on trying to get towns to abolish this practice. She believes it is against the NC Constitution, and is hoping to get on the calendar to talk more in-depth about fracking. Mayor Weatherly stated this is also an issue with the General Assembly which they will take up time with in mid-May when they go in session. Town Manager Radford stated he's been to a seminar on the subject and will have a report for the next Council meeting.

NEW BUSINESS

New Business 01

Lee Smiley, Finance Director

Review of the 3rd Quarter Financial Summary and Apex EMS revenues and expenditures.

Finance Director Smiley gave highlights of this month's report: revenues are about the same as last year, sales taxes have done better this year as result of census population adjustment, and other revenues are looking good as well. The income budget is much lower and will continue for the foreseeable future, interest income has hurt the budget. Expenditures are not that far off. Two items will have a hefty debt payment due June 1, and \$2 million will go out of general fund for these.

Utility fund revenues have been hurt by the mild weather; we are seeing more development in the current fiscal year. We should have enough to cover ourselves through year end. Water and sewer are right on target, EMS is in good shape. Wake County has not taken any action to correct a slight budget imbalance that occurred, and we don't know if they've forgotten or if this has fallen through the cracks. June will see three payrolls, so the figures will be a little higher than a typical month.

Mayor pro tempore Schulze stated that in terms of EMS, last year we were not in such good shape, but now we are good. Council Member Jensen asked what would we see of the \$89,000 from Wake County, Finance Director Smiley stating they have made their payments and only two more are due before the end of the year with no indication that the amount will be adjusted. Town Manager Radford stated that projections are based on the Wake County presentation and that we got a better deal than anticipated. If we didn't, revenue expectations would have come through and we would have been significantly short this year. Town Manager Radford added that the County has the right to decide what the budget program looks like, so it could change in any given year. Finance Director Smiley stated Wake County is close to having the numbers set as to what it will give each unit next year. Finance Director Smiley complimented Chief Winstead on running a tight ship as to why things are going well.

New Business 02

Lee Smiley, Finance Director

Possible motion to approve a Project Ordinance Amendment for the Regional Water Reclamation Facility.

Finance Director Smiley stated there was another contract bid opening for the wastewater treatment plant. \$5.7 million is Apex's share for the project. We have 37% of the contract with a 5% contingency. Bids came in good on this piece, although engineer estimates are getting 'iffy'. The project has the potential to come in way under budget, but we can't be sure if the estimates include monies already spent. We can't always get a straight answer from the engineers on this, because they are being conservative and want to cover every potentiality. Town Manager Radford stated up to now each contract has been below estimate, Finance Director Smiley adding that the last contract opened came in closer to budget than expected. Bids are starting to come in a little higher possibly because of the economy. Finance Director Smiley stated we will be selling bonds in four weeks and the remainder of the bond money will go in the next budget amendment.

Action: Mayor pro tempore Schulze made the motion to approve the Project Ordinance Amendment; Council Member Jensen seconded the motion. The motion carried unanimously 4-0. *The Amendment is incorporated as part of the Minutes.*

New Business 03

Dianne Khin, Planning Director

Discussion and possible motion regarding the 2012 Legislative Agenda - NCGS §160A-393(b)(3), House Bill 281, and Senate Bill 731.

Planning Director Khin stated we are requesting an amendment to General Statute 160A-303(b)(3) to remove the requirement for the quasi-judicial process in the approval or denial of site plans with generally-stated standards requiring a discretionary decision. This process is required because of UDO compatibility standards. The main problem is the requirement prohibits ex parte communication, and a lack of communication sets up a contentious process.

For House Bill 281, Planning Director Khin stated it will be introduced in short session. The way the Bill is written now, we would not be able to extend the ETJ in the future. While we want to keep an eye on this, it is not as dire as was originally thought. Mayor Weatherly stated that there have been bad municipal characters outside their jurisdiction. By state law, proportional representation is required on the Planning Board. The Wake County Mayors

Association has decided to put full thrust on fighting the ETJ proposal, and there is unanimous support for quasi-judicial as well.

For Senate Bill 731, Mayor Weatherly stated these are our legislative agenda items for next session. The proposed aesthetic control bill is wacky, because if passed we wouldn't be able to control our community standards.

Action: Mayor pro tempore Schulze made the motion to approve Apex's legislative agenda; Council Member Rowe seconded the motion. The motion carried unanimously 4-0.

New Business 04

Dianne Khin, Planning Director

Possible motion to request the North Carolina General Assembly to legislatively annex a portion of Beaver Creek Commons Drive into the Town of Apex Corporate Limits.

Planning Director Khin stated the agenda cover sheet was written by the Legal Department. Apex doesn't have authority to petition for annexation of this property on our own because the Town does not own the underlying fee, and the DOT who owns the fee says it has not been given authority to petition Apex for annexation. Therefore, this is the only way to annex the land under the Beaver Creek Commons Drive bridge so that we can maintain the entirety of the road. Planning Director Khin stated it is recommended that this be on our legislative agenda. Town Attorney Hank Fordham stated this would give us jurisdiction of about a 90-foot strip of the Interstate. This is a unique situation, and a new wrinkle in the Statute says we can't initiate a Petition if we don't own the fee.

Action: Mayor pro tempore Schulze made the motion to approve the request to the General Assembly; Council Member Lassiter seconded the motion. The motion carried unanimously 4-0.

New Business 05

Council Member Jensen

Mr. Jensen requesting a discussion on the possibility of rehabilitating wetlands in Apex for wetland banking.

Council Member Jensen stated that about three months ago we bought this part of the stream for \$50,000. He is asking to have staff look into the possibility of our rehabbing wetlands in some manner around Apex so that the streams and wetlands would be corrected and we would not be spending money on individuals in other areas to do so.

Engineering Director Kent Jackson stated the last piece of land was purchased for about \$60,000 as stream and wetland mitigation. The Peakway Project was finished last year for \$200,000 for mitigation compensation. Council Member Jensen stated the State messed up one of their restorations, and he wants to take a quick look to see if we can beat their deal. Mayor Weatherly asked if staff had "idle time", as asked by Council Member Jensen, to do such a study, Engineering Director Jackson stating there is none. Engineering Director Jackson stated we do have stormwater and environmental engineers skilled to figure this out who could possibly take a fast look at this, but he was not sure what the outcome would be. Council Member Jensen stated the wants to find out the value of this and whether or not we can do it. The objective is to possibly save money in the future; there is no big rush on this.

Town Manager Radford stated that determining the mechanism not difficult; some funds have been created in trust funds, but they are almost eliminated. Mayor Weatherly asked if maybe DENR could possibly come in and explain this process, Engineering Director Jackson stating this would be a good starting place. The Mayor asked that this be placed on an agenda, staff deciding the best way to go about educating council.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session at 8:31 p.m. to receive legal advice and discuss pending eminent domain litigation relating to the case of Town of Apex v. Sang Ok Park, Hye Kyung Yun, and Bok Sik Yoon and the case of Town of Apex v. Janette and Paul Davenport.

Action: Council Member Jensen made the motion to move into closed session for the purpose stated; Mayor pro tempore Schulze seconded the motion. The motion carried unanimously 4-0.

Closed session Minutes are recorded separately.

Action: Council Member Rowe made the motion to move back into regular session; Mayor pro tempore Schulze seconded the motion. The motion carried unanimously 4-0.

Action: Mayor pro tempore Schulze made the motion to adopt Resolution No. 2012-0515-08 Authorizing Eminent Domain Proceedings Related to the Olive Chapel Water Line and Electric Line Project for the Improvement of the Apex Water and Electric Systems; Council Member Rowe seconded the motion. The motion carried unanimously 4-0. . *The Resolution is incorporated as part of the Minutes.*

WORK SESSION

There were no Work Session items

ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 8:40 p.m.

Action: Mayor pro tempore Schulze made the motion to adjourn; Council Member Rowe seconded the motion. The motion carried unanimously 4-0.



Donna B. Hosch, CMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for May 15, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 15, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, Town Campus, 73 Hunter Street

Mayor Keith Weatherly presided over the meeting
Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter
All Council members were in attendance

COMMENCEMENT

Mayor Weatherly called the meeting to order. The invocation was given by Mayor Weatherly, and the Pledge of Allegiance was led by Mayor Weatherly. Mayor Weatherly welcomed all those in attendance.

PRESENTATIONS

Presentation 01

Mark Haraway, Fire Chief

Recognition of Lt. Kevin Butts and Engineer Jody Paxton for their efforts in a March 25, 2012 water rescue operation on the Haw River. Awarding of plaques to North Chatham Volunteer Fire Department and South Orange Rescue Squad for their efforts in the rescue of Engineer Jody Paxton.

Chief Haraway stated this job comes with inherent risks and staff knows this before they put on their uniforms. On occasion, the risk goes above and beyond and this happened on March 25th. Chief Haraway recounted that on the 25th, the Haw River was just below flood stage due to a week of torrential rain. Two canoeists did not heed the warning of the Canoe Club, resulting in their needing to be rescued from the river. One crew rescued one canoeist without incident; the second crew met with their boat being struck by something in the water, rendering it inoperable and their being thrown out. One crew member, Jody Paxton, could not at first be located.

As the crew members made their way walking back up shore, Paxton had found safe haven hanging onto a half-submerged tree in the middle of the river. Crews realized they could not do a shore-based rescue of Paxton, so a call was made to the S. Orange Rescue Squad. Upon their arrival, a plan was formulated, they got another boat in the water, and rescued Paxton after his holding out in this position for over an hour.

Chief Haraway stated we were fortunate to have brought everyone home that day and that he wished to recognize the members of these crews with Medals of Valor. Recognized were Captain Westbrook, Eric Solomon, Josh Stone, Eddy Freeman, Kevin Butts, Jody Paxton, Ben Smith, and Matthew Mauzy, with Josh Stone accepting for Matthew Mauzy. At this point, the balance of the crews joined this group to be presented with plaques of recognition, one to the North Chatham Volunteer Fire Department and one to the South Orange Rescue Squad, by Mayor Weatherly and Chief Haraway. The Mayor thanked Chief Haraway for the opportunity to recognize these individuals, stating that they are very dedicated public service personnel and the March 25th event makes us see how dangerous their job is. The Mayor thanked the individuals for their dedication and training, adding that he was pleased to have had this brief ceremony to recognize them.

Presentation 02

Lauren Simmons, Planner II

Recognition of the Spring 2012 Appearance Award Winners.

Ms. Simmons stated the residential winners were Apex First Development and JDavis Architects for Village Summit Apartments. Both winners have done a great job making the buildings look like individual units, this what the Town likes to see in housing areas. Mayor Weatherly presented the two awards, Stuart Jones accepting for JDavis Architects.

Ms. Simmons stated the commercial winner was Movin' on Movers, complimenting them on how nicely the property is landscaped and how well it's maintained. It's hard to believe the property is an industrial park. Ms. Simmons added Apex is lucky to have such a property. Mayor Weatherly presented the award. He thanked all winners for their efforts in going above and beyond the call of duty to beautify Apex.

CONSENT AGENDA

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to approve the Consent Agenda; Council Member Jensen seconded the motion. The motion carried unanimously with a 5-0 vote.

1. Minutes of the May 1, 2012 Council Meeting and Minutes of the May 1, 2012 Closed Session
2. Town-sponsored event (for signs and advertising purposes) and street closure request for the inaugural special event, Peak City Pig Fest, on June 23, 2012
3. Budget Ordinance Amendment to provide for safety improvements at Baucom Elementary and Thales Academy
4. Annexation Petition #476 – Standard Pacific of the Carolinas, LLC, owner/petitioner, petitioning to annex 46.018 acres, contiguous to the Town's Corporate limits, and located at the end of the Apex Peakway at the beginning of Salem Village Drive. (1) Resolution Directing Town Clerk to Investigate Petition Received; (2) Certificate of Sufficiency by the Town Clerk; (3) Resolution Setting Date of Public Hearing for June 5, 2012
5. Resolution accepting and endorsing the Solid Waste Management Plan Update of 2012 for Wake County
6. Contract for the Beaver Creek Gravity Sewer project encroachment agreement with Progress Energy

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda. There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01

Lauren Simmons, Planner

Public Hearing and possible motion regarding Rezone #12CZ05, portions of seven properties generally located on James Street, from Planned Commercial and Office & Institutional to High Density Multi-Family Residential-Conditional Zoning and a 2025 Land Use Plan Amendment from Mixed Use (High Density Residential and Office Employment) and Mixed Use (Commercial and Office Employment) to High Density Residential.

Ms. Simmons stated this property is located on James Street at the Damont Hills subdivision, Apex Mobile Estates, and the Lawrence Crossing development. The applicant is asking for a 2025 Land Use Plan amendment. Because of a creek on the property, there has not been commercial development. The applicant is additionally asking for a rezone from O&I planned commercial and office and institutional to high density multi-family residential - HDMF conditional zoning. A neighborhood meeting was held April 24, 2012 with only one attendee who had no objections to what was presented. The applicant has agreed to limit the use of the property as stipulated by the Planning Department. The applicant has also agreed to other conditions relating to a townhome master subdivision plan.

The Planning Board heard this request at their May 14, 2012 meeting and unanimously recommended approval of the amendment and rezoning. Staff makes recommendation with the conditions as presented. The site plan for this property will come at a later date.

Mayor Weatherly declared the public hearing open at 7:25 p.m.

Stuart Jones of Jones and Cnossen Engineering, speaking in favor, stated they are trying to clean up some of the property lines with limiting the residential district to the other side of the creek from the commercial properties on Highway 55. The property has not been developed for 20 years, so they are excited about having a residential project in the area. Mr. Jones thanked the staff for working with them on the conditions.

No one wished to speak in opposition; therefore, Mayor Weatherly closed the public hearing at 7:26 p.m.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to deny the request because of the change to the 2025 Plan and the rezoning. Council Member Rowe seconded the motion in order to invite discussion.

Council Member Jensen stated we are trying to make Apex more of a live/work environment, and this would be going in the wrong direction. To go into high density housing just because the owner wants to do so is a mistake. We already have \$13,000 in housing units on the books; and if housing picks up, we are going to be scrambling. We are going to be out of control, and this will add to the problem. Mayor pro tempore Schulze stated it generally goes against his philosophy to change the land use plan without compelling reason, and he doesn't see one here. Why have a land use plan if it can be changed just because someone wants to.

Mayor Weatherly stated Planning has worked through this request with conditions and the Planning Board has come up with a unanimous recommendation. He was not sure all the criteria was thoroughly developed for this request. Mayor pro tempore Schulze stated he appreciates someone wanting to develop the land after 20 years, but he is open for more discussion. The Mayor stated that Linwood Apartments are in this area along with other duplexes or triplexes and mobile homes, making this pretty much a high density neighborhood. Mayor pro tempore Schulze stated he could see if this was low density, but he feels high density in an area not planned for high density is a problem. Council Member Jensen stated there is housing nearby, and to let this go into high density basically exacerbates our already potential problem.

Action: Council Members Schulze, Jensen, and Rowe voted against the request; Council Members Lassiter and Olive voted in favor of the request. The motion failed by a 3-2 vote.

Public Hearing 02

June Cowles, Senior Planner

Public Hearing and possible motion regarding 2121 E. Williams Street Rezone #12CZ06, subject property being approximately 6.0 acres.

Ms. Cowles stated this property is now owned by MCI Enterprises and they are proposing changes to the approved 2009 rezoning, being they wish allowance for conditions #3 and #7 for sales under the front canopy and outdoor sales/storage under the rear canopy and side of the building beyond the midway point of the building depth. These are allowed by the UDO. The applicant understands they would have to come back through the Planning staff if they wish to put up any additional storage. A neighborhood meeting was held April 18, 2012 and there were no questions from the neighbors. This is consistent with the 2025 Land Use Plan; the Planning Board unanimously recommends approval. The Planning staff recommends approval with the revised conditions.

Mayor Weatherly declared the public hearing open at 7:36 p.m.

Stuart Jones, Jones and Cnossen Engineering, speaking in favor of the request, stated he did not believe anyone envisioned any type of retail business when this was originally rezoned. It has evolved from office-type usage to commercial usage. Therefore, the request for the amendments.

No one wished to speak in opposition; therefore, Mayor Weatherly closed the public hearing at 7:37 p.m.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to approve the request; Mayor pro tempore Schulze seconded the motion. The motion carried unanimously by a 5-0 vote.

Public Hearing 03

Dianne Khin, Planning Director

Public Hearing and possible motion regarding Annexation Petition #473, Town of Apex, North Carolina: Resolution 2012-0501-473 Declaring Council's Intent to Annex Town-owned property containing 1.628 acres (Section 1 of Beaver Creek Commons Drive Extension) into the Town's corporate limits, Ordinance No. 2012-0515-07.

Ms. Khin stated the Planning Department recommends annexation in order that the Town be able to maintain the roads.

Mayor Weatherly declared the public hearing open at 7:38 p.m.

With no one wishing to speak for or against the Resolution, Mayor Weatherly declared the public hearing closed at 7:38 p.m.

Action: Mayor Weatherly called for a motion. Mayor Pro tempore made the motion to adopt the Annexation Ordinance; Council Member Rowe seconded the motion. The motion carried unanimously by a 5-0 vote.

Public Hearing 04

Dianne Khin, Planning Director

Public Hearing and possible motion regarding Annexation Petition #474, Town of Apex, North Carolina: Resolution 2012-0501-474 Declaring Council's Intent to Annex Town-owned property containing 1.563 acres (Section 3 of Beaver Creek Commons Drive Extension) into the Town's corporate limits, Ordinance No. 2012-0515-08.

Ms. Khin stated the Planning Department recommends annexation in order that the Town be able to maintain the roads.

Mayor Weatherly declared the public hearing open at 7:30 p.m.

With no one wishing to speak for or against the Resolution, Mayor Weatherly declared the public hearing closed at 7:40 p.m.

Action: Mayor Weatherly called for a motion. Mayor Pro tempore made the motion to adopt the Annexation Ordinance; Council Member Rowe seconded the motion. The motion carried unanimously by a 5-0 vote.

OLD BUSINESS

Old Business 01

Kent Jackson, Engineering Director

Presentation on a scope of work and probable cost for the construction of interim public amenities at the Apex nature park property.

Mr. Jackson stated he was tasked to determine a scope of work and probable cost for a start-up project at the park, keeping in mind the codes, ordinances, and laws that pertain to its development. The first consideration is the master plan for park. The trails indicated are included in the conceptual part of the master plan but are not completely consistent with the first phase as defined in the plan. Another consideration is the UDO. Certainly nothing about the trails is inconsistent with the UDO, but this has not been reviewed through the TRC process. ADA accessibility guidelines apply to these trails. Mr. Jackson stated that in his opinion, it is reasonable that standards of this act are achievable. There are exceptions allowed for in those guidelines, but we haven't done enough due diligence to determine if we meet any of those exemptions.

The estimated cost of this project would be in the ballpark of \$35-40,000, Mr. Jackson giving a breakdown of what would be needed for completion. Mr. Jackson stated since a parking area and entrance road would be eliminated, there would not be a need for certain site elements. Mayor Weatherly asked about the need for port-a-johns. Parks and Recreation Director John Brown stated that typically when you have these amenities at a park, there is a parking area which is used to deliver and service the port-a-johns. When a parking area goes away and the width of the trail goes away, there is no way to get a truck in to deliver or service the port-a-johns. There is also nowhere to put one, Mr. Brown stating he doesn't think anyone would want a port-a-john sitting on Evans Road.

Mr. Jackson stated also of significance is that this plan is not consistent with the park master plan developed for the site. Mr. Brown stated the master plan was done back before the bond referendum in 2004. As for construction of the trails, at one point it was assumed it would be done in two phases with the trails phased in. Trails now require a 20' wide corridor with a 10' trail and 5' on each side for safety and visibility. This is what is required for public trails, ours being multi use.

Mr. Brown stated the trails were originally laid out with the best topography information available. The site has changed quite a bit since 2002/2003 when we first starting pulling things together. Plans were submitted for trust

fund money and grant funds to help buy the land. There was an expectation of what the park would look like no matter how many phases it took to complete.

Council Member Rowe asked since improvement hasn't been funded to this point, does it make sense to take this step to start to make use of the land. Mr. Brown stated he's concerned that whenever and whatever is done, it is done right and safe and that it's as good as it can be. We wouldn't want to rush and do something not well thought out or consistent with what we do in other parks. The biggest concern is being able to keep the area secure and safe and an enjoyable experience. There is a concern over no public parking – once opened, people will want to see and use the trails. How would we deal with the parking issue? How would PD and emergency personnel get vehicles in there if something happened? Mr. Brown added that our other trails are asphalt or concrete. If these are only mulch, we wouldn't know what kind of access there would be if something happened. Mayor Weatherly asked if there would be an anticipated use of mountain bikes because this is not without risk. Mr. Brown replied that if allowed, there could, in fact, be some serious accidents.

Council Member Lassiter stated this is not what was promised people. He recognizes a need to get something started; however, the Parks and Recreation Board has not seen this proposal to determine if it's consistent with their vision for Town parks. Council Member Lassiter sees a lot of things wrong with this. Parks and Rec is already working with a stretched budget, and they don't have funds to maintain this project. What would this be with no rest rooms or parking? If we create the trails that staff states are possibly not ADA compliant, what would be the liability if they are not? What if EMS and PD can't get in there? We're delegating staff to use their time to do the work on the park. What are they being taken away from doing? Council Member Lassiter stated the way to build this is to make the facility something Apex can be proud of; it needs to maintain our park reputation. He believes this would be creating a ton of problems. We knew two weeks ago we didn't need to pursue this because we've seen the budget and it's slim. What can be cut to get this done? We cannot satisfy the people who want the park with this project.

The Mayor stated Mr. Brown's points were well taken. With a little more patience, we may be able to do a more comprehensive plan in possibly another 24 months. We can get something put out there, but we will have to use expenditures to get around this rudimentary plan. Mayor Weatherly urged patience to do this right the first go round instead of rushing. The obvious deficiencies have already been discussed, like port-a-johns and the safety factor and liability should anyone get hurt. He applauded Council Member Jensen for a good idea, but maybe it's a good idea for which the time is not right.

Council Member Jensen stated he recognizes there could be disasters, and that's the way this should be looked at by people who use the park. The park plan has been in place for eight years. There's always going to be a question as to whether or not things are put in the correct place. We will survey to try to match the plan as it was proposed, but we have to work around the typography whether that is now or in two years. The idea is to cut in a 10 foot wide trail that people can use. Bikes can be banned or limited, the width of the trail is wider than a standard lane on the freeway, and if someone is going to be accosted, that person would have to run 5, 15, or 20 feet. We can have PD patrol the area, and we have a gator which can travel the trail. So access is not a terrific problem.

Council Member Jensen stated we have had the property for 10 years, and each year we lose \$7,500 n property tax if it had of been left in private hands. If we look at the \$2.4 million, money that came from somewhere – most of it from the State – and calculate a 2% interest rate on the money, that's another \$44,000 per year. So it's costing over \$5,000K to just let the property sit, and we promised to try to get this thing in. Of course we ran into a recession, but we're still paying to hold the property and not let anyone do anything with it. So with proper signage and limitations, to put this thing in now is the right way to go.

Council Member Jensen continued that we can work around ADA regulations, and it would not cost too much. Parking was limited because of a concern that we would need a retention pond if we disturb more than one acre of land. The port-a-johns can put up at Evans Road, we would not then need pond, so there would not be the cost of one. Mike Deaton, Environmental Programs Manager, stated land disturbance would have to include the trail and the parking lot in one overall site plan and they would count towards land disturbance. With the land associated with the parking lot, this would kick in storm water requirements.

We would have lost half a million dollars in taxes and interest over the last 10 years for sitting on the land, stated Council Member Jensen. If we do the initial part correctly, it will get people to use the park and it will not disturb the

initial plan if followed as closely as possible. Mayor Weatherly stated that if we put in a trail that would be used more than minimally, pressure would be put on us to provide parking. What would this be worth? Council Member Jensen stated the cost would then go higher, maybe another \$60/65,000. Town Manager Radford stated that would probably be accurate. Mayor pro tempore Schulze stated that weighing the pros and cons of the issue, even for a little bit of cost in an extremely tight budget year, he didn't think we have the funding. It concerns him that this is not a good plan, and he doesn't see spending the overall cost of \$30-60,000 to do the project. He would rather wait and do it right. Mayor Weatherly stated we want to do this as soon as the economy or borrowing power allow.

Council Member Lassiter asked what would be the impact on the State grants received if we started this; what would we have to do to ensure we're not putting ourselves in jeopardy? Mr. Brown stated he spoke with John Poole, State Administrator of the Parks and Recreation Trust Fund Grant and who oversees ADA compliance at State parks, along with Darrell McBain, State Trail Coordinator, and asked them about accessibility, etc. When we signed the contract to accept the money to help buy the land for the nature park, we had a five-year window to start construction and now we're past that. Typically, at the end of five years, they would send a letter asking what have we done and we would say nothing. Because of the economy and their understanding our situation, our saying we're eventually committed to doing the plan is okay with them. This particular plan would not satisfy what they felt the intent and agreement was when we accepted the money. In their opinion, they would rather us do as proposed and like they envisioned when we got the money from them rather than doing something inconsistent. If we don't do so, they will write us a letter letting us know what we did was not under the conditions in which the money was accepted. Mr. Brown stated that the Parks and Recreation Advisory Commission has not seen the plan, Mayor Weatherly stating that we may be putting the cart before the horse if the Commission has not seen this.

Action: Council Member Lassiter made a motion to table this issue indefinitely; Mayor pro tempore seconded the motion.

Action: Council Member Jensen stated he disagreed with tabling this indefinitely and made a substitute motion to have the Parks and Recreation Department contact the State to get their recommendation as to what would be acceptable, and then have those recommendations go before the Parks Commission. Council Member Rowe seconded the motion to invite discussion.

Council Member Jensen stated we don't know fully what the State will or will not say. We should put forth this plan to the State in a more concise manner asking them do they feel taking this interim step is better than not taking any step and doing nothing for the next three years. Council Member Lassiter stated we have spent enough staff time on this, he heard the answer to this question from Mr. Brown. Mayor pro tempore Schulze stated even if the State gives their blessing to this plan, we have other budget priorities. Council Member Rowe stated he wants to see what funds are available before discussion with the State. He also shares concerns about no public parking and no rest room facilities. One missing element, stated Council Member Rowe, is that he gets the feeling it's all or nothing. He feels there have to be some interim levels that follow the plan but in a logical progression so that if money is found in the budget, we will be able to make movement forward in this park. Shared is Council Member Jensen's concern of not making use of the property, but we don't want to rush or not provide true, full public use of the park. Mayor Weatherly stated we are one month away from adopting the budget, and he thought capital projects were to be considered in that discussion. He thinks it is appropriate to see if we have money in the budget during deliberations with which we can fund this project. Council Member Jensen stated we can obtain an understanding from the State as to their preference, which is not expensive and which would provide us information.

Action: Mayor Weatherly stated the amendment to the substitute motion is to have staff refer this question to State authorities, sending them a packet from the agenda, with a letter asking for their opinion based on the information presented at this Council meeting. Mayor Weatherly called for the vote. Council Members Jensen and Rowe voted in the affirmative; Council Members Schulze, Lassiter, and Olive voted in the negative. The motion failed by a 3 to 2 vote.

Action: Mayor Weatherly called for a vote on the original motion to table this matter indefinitely. Council Members Schulze, Lassiter, and Olive voted in the affirmative; Council Members Jensen and Rowe voted in the negative. The motion carried by a 3 to 2 vote.

Old Business 02

Bruce Radford, Town Manager

Discussion by Town Manager Radford on information he obtained at the Lee County fracking meeting and concerns of the Town of Apex regarding municipal oversight of the fracking processes.

Mr. Radford stated he had more complete information on fracking from those living in the town of Towanda, Pennsylvania than from the meeting in Lee County. The economic development people in Towanda are very favorable of natural gas exploration, the jobs it has created, the businesses it has spurred, and the renewed vigor in their housing stock. On the other side of this, materials have been printed by various groups and concerns by environmentalists have been addressed regarding, in their opinion, the potential and actual harm attributed to fracking. It has not been determined there is any natural gas under Apex, but it has been determined there is quite a bit of gas in Lee County. The League of Municipalities has asked the State to be cautious regarding environmental concerns, solely the responsibility of DENR.

We have no staff experts in this field. Our primary concern would be oversight and zoning in the permitting process. Mr. Radford suggested Apex join with the League in seeking authority from legislature not to be left out of the oversight and zoning permitting process. We do have concerns about the potential for well sites.

Mayor Weatherly stated this is a hotly debated issue in the general assembly, and the best information he has is that this will be acted upon, the Governor giving her support. He suspects something will come about in the short session and that wide authority will not be given to municipalities. Local governments may be given the opportunity to be consulted, but won't be given the opportunity to zone this out of local jurisdiction. Therefore, anything that Apex does at this point would be moot. Mayor pro tempore Schulze stated he believes we should have input. Council Member Jensen stated we should have some control particularly in established neighborhoods.

Action: Mayor Weatherly asked was there a motion concerning this issue. Council Member Jensen made the motion for Mr. Radford to come back before Council in two weeks with a Resolution indicating Apex's stand on this issue; Council Member Lassiter seconded the motion. The motion carried by a 5-0 unanimous vote.

PUBLIC FORUM

Lisa Merritt addressed Council on the matter of fracking. She understands Council cannot address all environmental issues because we don't know what's true and what's not. Having grown up in Texas, she has a lot of friends who have made a lot of money leasing their land. Within one to three years of the land being fracked in a small town, they now have 118 cases of breast cancer, 125 cases of leukemia, 25 cases of childhood leukemia, and a cancer cluster study provided a reasonable belief that these cases are being caused by fracking. The fluids are leaking into the water systems. The USDA has proven pollution has occurred in Wyoming because of these fluids. There are polluted water and wells also in Pennsylvania.

Ms. Merritt understands Apex gets water from the deep river area, and this would be the first area to be fracked resulting in polluted water coming to Apex. She is not an environmentalist or part of a group nor has she been in front of legislature of any kind. But when she saw friends of hers getting sick and animals dying, Ms. Merritt decided this needed to be a passion of hers. Fracking scares her! Besides the money issues, the concern for our water systems and children should be above all else. Ms. Merritt added that her family roots are in Apex and she cares about the land. At this meeting Council presented beautification awards. 4,000 truckloads of water would need to go back and forth for each well. This would result in potentially millions of dollars of damage to roadways and bridges for a town we're trying to make more livable for the people who reside here.

Yuri Rohjas addressed Council as a board member of the Downtown Business Association, an Apex resident, and registered voter on the matter of the law passed for Peak Festival. The way it was told to the Association, this law would allow space for handicapped people to normally move up and down the streets. With there being varying widths of sidewalks, Mr. Rohjas stated he did not understand the law – especially when the street would be closed during the festival. They were told about 36" would be needed on sidewalks only three days before the Peak Festival. On the bottom end of that, when the law came out and it was presented to the business owners, it was about not being able to sell food items on the street. Mr. Rohjas stated he would like to have clarity of the law at some point. Under this law, there would not be able to be an Apex Christmas Festival.

Steve Adams also addressed Council on this matter. Mr. Adams stated three or four businesses were shut down, the interpretation being the Town wanted to clear tables and chairs so there would be lots of room on the sidewalks. The downtown did not interpret this law as their not being able to sell food when other business were allowed to sell their stuff.

Mayor Weatherly stated that our attorney would prepare a concise interpretation. He added that when Council undertook this at the request of the Police Chief, it was to help the downtown businesses because the law prohibited selling alcohol outside. Therefore, this was a pro Downtown Business Association initiative. The only exception to helping out the businesses was during times when the streets were closed and throngs of pedestrians would need every inch of sidewalk space plus the streets in between with prohibiting tables.

Mr. Adams stated he, too, wishes to know the intention because they were all wrong about their interpretation in terms of enforcement. The end result, he thought, of the ordinance was to make sure they were not infringing on free-flow of traffic for the Festival or at any time. He assumes this applies equally whether or not someone is selling food or lifesavers, or hats, or whatever - the Town wants to clear the traffic. The enforcement would suggest this was targeting selling food, with or without tables and chairs. Perhaps it was their mistake, but it was written 'food service items' and the example of tables and chairs, etc., was given. Mr. Adams stated he is not going to set up tables and chairs outside the front of his restaurant, give people a menu, and serve them food - that was cleared out. Does it also mean that he cannot sell a food item from the front of this business if he doesn't have tables and chairs out - just like someone might sell a hat or something else. That's where the confusion is.

NEW BUSINESS

New Business 01

Lee Smiley, Finance Director

Possible motion to approve a Resolution providing for the issuance of \$35 million of General Obligation Bonds for the construction of wastewater treatment facilities.

Mr. Smiley stated this is the end of a long road as far as this project is concerned. The Bond sale is scheduled for May 30th. This Resolution makes a couple of findings on behalf of Council, and it sets forth some of the details of the Bonds. Mayor Weatherly stated this has been thoroughly discussed and would finance our share, approximately \$80 million, of the \$300 million project of the wastewater treatment facility. We have savings but need to borrow \$35 million; we need to sell the Bonds previously passed in referendum.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to approve selling \$35 million in Bonds; Council Member Jensen seconded the motion. The motion carried with a unanimous 5-0 vote.

WORK SESSION

There were no Work Session items

CLOSED SESSION

There were no Closed Session items

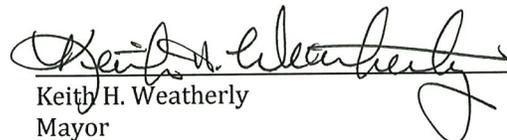
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:46 p.m.

Action: Council Member Rowe made the motion to adjourn. There was no second to the motion. The motion carried by a unanimous 5-0 vote.



Donna B. Hosch, CMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Council Special Meeting (Budget Work Session) Minutes for May 20, 2012

The Special Meeting (Budget Work Session) of the Apex Town Council scheduled for Sunday, May 20, 2012, at 1:30 p.m. was held in Training Room A at Apex Town Hall, Town Campus, 73 Hunter Street



Mayor Keith Weatherly presided over the meeting

Council: Mayor pro tempore Gene Schulze and Council Members Bill Jensen, Lance Olive, Terry Rowe, and Scott Lassiter

COMMENCEMENT

Call to Order
Invocation
Pledge of Allegiance

MEETING AGENDA

A. Opening Remarks by Mayor Weatherly

Mayor Weatherly thanked the team for attending; this meeting was necessary due to time constraints. Everyone is aware of the hard choices to be made to maintain the level of services citizens expect with the anticipated revenue the stream. If there is a disagreement with any of the proposals, there would also need to be an offer of alternatives. Clearly, this is the only way to get to a balanced budget.

B. Overview by Town Manager Bruce Radford

For 20 years Apex's ad valorem tax has either been the lowest or second lowest in Wake County. Proposed is a 5 cents increase on the 34 cents tax rate, a result of varied organizational issues, increased costs, and rates of inflation over the past five years. The Personnel Committee has met and will present their recommendations. Staff has worked diligently to formulate this budget.

C. General Fund Revenue Projections – Finance Director Lee Smiley

Major revenue figures were presented. The tax base this year is roughly 3% higher than a year ago. We received about a 20% boost in sales tax off of the census number. Increases in budget: garbage and recycling.

D. Questions/Discussion

There were no questions or discussion.

E. Recommendations of Personnel Committee regarding new positions, merit pay plan, and employee classification plan

The Personnel Committee heard recommendations on four primary topics: added positions, adjustment to insurance premium increases, the merit pay structure, and the reclassification of positions. Staff recommended 28 positions; the Manager recommended 16 of those. The Committee recommends fourteen positions: four in the Fire Department, one in IT, one in Parks and Recreation, four in Police, one in Public Works, one in Public Works – Operations, and two in Public Works – Electrical. The next step would be to continue discussion as to how these positions would be funded. The two positions not recommended were a Parks and Rec Maintenance Worker and the Public Works Street Sweeper.

Benefits: the Town's self-funded position and claims against self-funding pushed the increase in premiums to 18.5%. Staff has recommended that by implementing an increase in co-pays and deductible amounts, this can be reduced to 13.3%. The Committee is carrying this as a recommendation to Council.

Merit pay system: a new evaluation process is in the works. It will be rolled out in July, and the increases would become effective October this year. The recommendation was for a 4% increase, of which 3% would be funded this calendar year. The Committee is carrying this recommendation forward.

Reclassification: there is a policy requirement to go through one-third of positions annually. For people who fall within certain portions of that range, there is an adjustment which, this year, is broken down into two parts. Part one requires a 5% adjustment for those falling in the lowest 10% of the established development range. The Personnel Committee makes this recommendation. Part two is an adjustment of 2% for those falling in the development segment of the reclassification. Originally Committee was going to recommend the 2% adjustment. It was later realized this is not within the current policy and would require Council to consider a change to the policy in order to have the increase enacted.

The strongest needs are Police and Fire, especially Fire, as we are behind the curb on these positions. Public Works and Electric funds basically take care of themselves. There is a true need in electric, since we are using contractors to cut around power lines. This we can do cheaper in-house. IT has a contracted analyst, and this can be done cheaper in-house.

More than half of these positions have been presented in the past. They have either been dealt with marginally or not at all. The proposed positions would bring us closer on the Fire side to comply with OSHA requirements; and on the Police side, to get more in line with population and future population growth. Our ratio is 8.5 employees per thousand, significantly lower than some. We perform four out of five services, most other municipalities have only three services at best and some have just one. Our percentage would be 7.48 if we took out EMS and Electric.

There were no positions of concern from Council. The original recommendation was on the reclassification adjustment of 5% plus 2% on the performance segment. Since the 2% change will require a change in policy, this will need to be studied further. This would drop cost from \$119,000 to \$56,000. Council consensus was that this would be revisited at the first Council meeting in June, with recommendation to be made at that time.

The results of the benchmarking will be completed Wednesday and overnighted to us.

F. Expenditure Review by Department

1. Governing Body – Town Manager Bruce Radford

The overall budget is \$35,000 less than last year.

2. Administration – Town Manager Bruce Radford

Increases: printing, travel and training, supplies and materials. The result is a \$23,000 increase over last year inclusive of salaries and benefits.

3. Human Resources – Human Resources Director Eleanor Green

The \$27,000 for wellness incentives is a program where employees receive a bonus if they participate in wellness incentives. Increases: tuition reimbursement and professional services.

4. Information Services – Information Services Director Peter LaPiana

Equipment replacement was highlighted; upgrades are included for voicemail and Call Accounting. Increase in training. The proposed personnel change will be accomplished by switching money from one account to another.

5. Legal Services – Town Attorney Hank Fordham

These requests remain the same as for last year.

6. Finance – Finance Director Lee Smiley

Increases: postage, travel and training, contracted services, records storage and disposal, and dues and subscriptions. Council requested looking at the benefits, if any, that would be gained from breaking out postage and telephone.

7. Planning - Planning Director Dianne Khin

Budget has decreased quite a bit over the past couple years. Even though there is an increase from last year, this budget basically gets us back to where we were in 2009/2010. \$61,000 is for the Comprehensive Plan update, \$10,000 is for contracted services, \$5,000 is for a surveying contract, and an additional \$1,500 is for the capital area preservation contract. There is also cost for a service contract on a large-scale plotter contract.

8. Facility Services - Facility & Fleet Services Director Marty Mitchell

Contracted services changed about \$20,000, and there are capital outlay improvements budgeted for such items as roof replacements, generator replacements, security camera system, and a feasibility study. From a facilities standpoint, employees who look after the buildings are limited in their skillsets. Therefore, we have to rely on contractors for such issues as chillers and air handlers.

9. Police - Police Chief Jack Lewis

Increases: fees to Wake County EMS dispatch system, postage, utilities, dues, telephone and cell service, pagers, and various equipment and uniforms. Six positions presented in the budget, four are recommended by Committee. Ten replacement vehicles were presented, eight advanced. Three of the new vehicles are associated with the four new employees, as are uniforms, etc. New vehicles have nothing in them; replacement vehicles are ones that certain things can be taken out of another car and put in them. Old vehicles are sold for surplus on govdeals and the money goes back into the General Fund.

The taser company now has a position that they believe their items have a five-year shelf life. The bulk of our tasers are beyond the five years. In 2010, the manufacturer stated tasers are no longer a non-lethal weapon, as the delivery of a charge impulse can go beyond the deployment of up to five seconds. Our devices can't be changed to prevent overexposure.

In the future, Council wishes to see how much is being paid in overtime vs. a flat salary. Since there doesn't seem to be a major problem with tasers, maybe this can be put off until next year. Pointed out was that basically, a reduction in tasers would not reduce the request for an ad valorem increase.

Mayor Weatherly called for a ten minute break.

Mayor Weatherly called for the meeting to continue. Enterprise funds are balanced. With three minor exceptions (personnel, tasers, and pay and classification), Council was supportive of proposed spending up to this point.

10. Fire - Fire Chief Mark Haraway

Increases: printing, travel and training, equipment maintenance, vehicle maintenance and repair, contract services, dues and subscriptions. Four positions are being recommended by the Personnel Committee. Capital outlay requests cover replacing the deputy fire marshal's and battalion chief's vehicles and for web-based video training.

11. EMS - EMS Chief Nicky Winstead

Increases: phone and there may be a need to do a bit of outside printing next year. A little bit of training will need to be done outside, most of that being done by the County.

12. Public Works - Public Works Director Tim Donnelly

Public Works is about 60% of the overall budget, is 25% or less of all employees, and only about 5% comes out of ad valorem taxes. The only increase is to maintenance and repair.

13. Streets - Public Works Director Tim Donnelly

The Committee supported the addition of a street maintenance worker. Right-of-way technicians were requested, but will go the contract route because of space limitations and having to develop such a program. Capital Outlay improvements show the turnpike reimbursement; the rail reimbursement is coming out because the DOT can't afford their share of this. Monies not used will go back in Fund balance.

14. Powell Bill - Public Works Director Tim Donnelly

The want is to improve road programs, so a little more money will go to contracted services for the resurfacing of roads.

15. Environmental Services – Public Works Director Tim Donnelly

Requested are replacements for the chipper and a pick-up truck. Professional services indicates our need for consultants to help with proposed ordinance changes, as things such as the stormwater program are so specialized. We receive revenue from the State for being progressive in our recycling programs; we're trying to make this easier on our citizens.

16. Fleet Services – Facility & Fleet Services Director Marty Mitchell

The only real request is for replacement of the old parts truck which is about to fall all to pieces. Incurred expenses are charged back to the automotive and maintenance accounts of each department.

17. Construction Management – Engineering & Construction Management Director Kent Jackson

Increases: travel and training, automotive supplies, supplies and materials, and contracted services. In Capital Outlay, there is a request to replace two vehicles based on the recommendation of Fleet Services. The credit card vendor fees are charged per transaction, the bank agreement prohibiting us from charging a user fee. Many developers state it is a great service to them to be able to charge to card for their often multiple permits, etc.

18. Recreation - Parks, Recreation & Cultural Resources Director John Brown

Increases: telephone and postage, utilities, travel and training, building and equipment maintenance and repair, equipment rental, facilities rental, supplies and materials, and contracted and professional services. A little of this will be recovered through fees. Last year \$535,000 was reclaimed and was split between the General Fund and the Halle Center. More than expected revenue was raised; less than expected was spent. Professional services will be used for updating the Parks and Recreation Greenways Open Space Master Plan and for master planning and construction documents for Salem Pond Park. A plan has never been done for this site. At some point, have to have a plan if we're to apply for grants or ask for funding. A thought was to hold off budgeting monies for Salem Pond Park until the master plan is completed to find out where we stand with that. It may be 5-7 years before we get to this. It would not be efficient to come up with design and have it change before we are able do something.

Fee structure: two years ago the fee was raised for non-residents, which is 50% more than for residents. Sometimes 100% or more can be recovered for adult programs, 50% for youth, and 25-100% for seniors. There is a waiting list for the most popular programs; very seldom do residents not get in. Our fees are compared to other municipalities about every two years; we are higher than most. If we go higher, citizens will go other places and revenue will go down.

Capital Outlay: it is recommended to repair the Dam, resurface tennis courts and parking lots, and to fix trucks and fencing. Projected fees were again questioned, with the feeling that we will be creating a tax burden if we can apply these.

19. Halle Cultural Arts Center - Parks, Recreation & Cultural Resources Director John Brown

Basically, the budget is the same as last year. There is a lot of revenue due to renters, the Town getting a take of the sales. While unsure of the percentage of time open, there are programs/activities in the mornings, which vary by month. Question from Council was how much are we spending vs. revenue received; this seems like a money drain. May want to look at half days on Saturdays, incentive programs partnering with downtown businesses, etc. This is an expense not offset in any way. Council asked for a box calendar to get a visual of activities. Then it can be determined if there are times that the center can be shut down and open and available at better times based on real or perceived needs.

20. Cemetery – Assistant Town Manager Mike Wilson

This budget remains the same year in and year out, driven mainly by grounds maintenance who do a good job.

21. Special Appropriations – Assistant Town Manager Mike Wilson & Finance Director Lee Smiley

Increases: TRACS and downtown development. Responding to Council, not sure if data is collected on TRACS. Consensus was to have them come to the June 5th Council Meeting to provide information.

G. Three Year CIP Funding Plan – Town Manager Bruce Radford

The story is there is \$40 million worth of stuff that appears that is not included in the 3-year CIP plan for a contribution from the General Fund balance. There is \$7 million in other General Fund money. Proposing to spend \$4.5 million over 3 years or just over \$1.5 million each year. Contribution towards improvements of the railroad crossings was removed. Proposing roof replacement at town hall, the community center, and fire station

no. 3 the first year. Also proposing replacing the generator at fire station no. 1, new police fleet, and tasers. If anything is taken out of this, it will not affect the proposed ad valorem tax increase. Also in the first year are the Dam, tennis courts, and parking lot repairs. Tasers will stay in the budget for now since there are uncertainties from Council.

We are also looking at a multi-use path for Lake Pine, the widening of Hwy 55, and joining turning lanes on 55 at the Peakway, which is 80/20 federal money. The total for the latter two projects is \$1.2 million, our part being \$250,000 in year one. With these being two year projects, can easily recommend spending \$250,000 from the unencumbered General Fund balance.

H. Questions/Discussion

In response to Council questions, the salary line item is up by more than 4% because of the allocation of salaries between the different funds. Also, there were inconsistencies between the spreadsheet allocations because last year we couldn't totally use the New World system. This year all budgeting done straight from what's in payroll. In actuality, 3% has been budgeted across the board for salary increases. Reclass money is already in the budget but unevenly applied based on who's eligible. Slotted to bring to the Council on June 5th will be a break out of overtime, the pay reclassification, tasers, Halle conditions with a box calendar of events, and a reduction in travel and training.

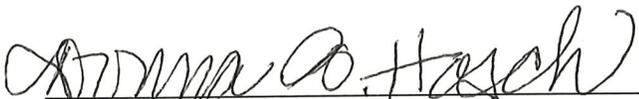
Council asked for a reconfirmation of the revenue side of things at Halle Center and the possibility of partnering with downtown merchants on events, revised figures where positions were eliminated, having a representative from TRACS at the next Council meeting, and the appropriateness of a discussion on all fees. If Salem Pond Park does not need to be done this year, the \$17,000 budgeted for this needs to be removed. From the Personnel Committee meeting, there should be a follow up on selling ad space for ball fields as a revenue generator. Is there an alternative to vehicles being purchased and replaced as a way to save money. Staff stated if we replaced vehicles that met the criteria for such, it would cost over \$4 million; we're down to one-eighth of that.

Mayor Weatherly stated the prospect of a five cents tax increase is pretty scary. But when looking at what we've done with budgeting on the spending side for the duration of the economic downturn, he is confident the manager and division heads have paired down the budget. We could turn it upside down again and wouldn't find the \$1.2 million in cuts that would need to be made to avoid the tax increase. Haven't heard from Council any way to come up with big potential cuts.

Council made comment that fee mania would not be the fair way to raise money. The tax rate is deductible; fees are not. Is it worth \$20 to \$40 for services? We have to weigh what neighbors will think. 33 cents per day will fund the increase to maintain the level of services as in the past. Taxes in Apex where they fall in comparison to larger and smaller municipalities have been the lowest for 20 years. Taxes have been bargain and will continue to be. The Town just can't sustain spending without any additional revenue. Mayor Weatherly stated Apex's tax rate is the second lowest in county, and he's proud of that. It was pointed out that even with raising the tax rate, Apex would remain lower than its neighbors. Additionally, some towns are not providing the same level of services and their taxes higher. Apex has been doing more with less for a long, long time.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called the meeting adjourned.


Donna B. Hosch, CMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for June 5, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 5, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, Town Campus, 73 Hunter Street



Mayor Keith Weatherly presided over the meeting. In attendance were Mayor pro tempore Gene Schulze and Council Members Bill Jensen, Terry Rowe, and Scott Lassiter. Absent was Council Member Lance Olive.

COMMENCEMENT

Mayor Weatherly called the meeting to order. The invocation was given by Council Member Rowe; the Pledge of Allegiance was led by Mayor Weatherly. Mayor Weatherly welcomed all those in attendance.

PRESENTATIONS

Presentation

Mayor Weatherly

Presentation of Proclamation to Graham Wilson proclaiming the 2012 Peak City Pig Fest

The Mayor read the proclamation recognizing the 2012 Peak City Pig Fest on June 23rd and presented this to Mr. Wilson. This event, which is supported by the Apex Sunrise Rotary Club, will be made up of teams mainly from NC and will feature the Swamp Loggers from the Discovery Channel.

CONSENT AGENDA

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to approve the Consent Agenda; Council Member Rowe seconded the motion. The motion carried unanimously by a 4-0 vote.

1. Minutes of the May 15, 2012 Council Meeting and the May 20, 2012 Special Budget Work Session Meeting
2. Town of Apex Tax Report
3. Encroachment Agreement for 2618 Venento Place
4. Amendment #3 to the Shearon Harris contract for fire protection
5. Reimbursement Agreement between Apex and Lufkin Leased Fee, LLC for installation of utility casings underneath Lufkin Road
6. Construction contract and authorization to the Town Manager to execute same for 2012 Apex Barbecue Road 8-inch Waterline Project
7. Set Public Hearing for the June 19, 2012 Council Meeting regarding Rezone #12CZ07 – 1503 Salem Street

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda. There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01

Bruce Radford, Town Manager

Public hearing on the Fiscal Year 2012/2013 Town Budget

Mayor Weatherly stated there were unique challenges in this budget. Very thoughtful input was received on the proposed tax increase. After three lean years, there's a need to increase the tax in order to maintain the level of service expected by citizens. Initially the request was for a five-cents increase; after a budget work session and looking at citizen comments, there is the possibility of reducing this to four cents. With a five-cents increase, one cent would be dedicated to the repayment of bonds.

Mayor Weatherly declared the public hearing open at 7:10 p.m.

Seventeen citizens/business leaders spoke in support of the tax increase. Particular support was for the Halle Center, the value it brings to the community in terms of culture and the arts, and how it is an envied part of Salem Street. There was also support for recreation and park development.

Mayor Weatherly declared the public hearing closed at 8:20 p.m., stating the final budget will be adopted at the June 19th regular meeting.

Over the last three years, much has been cut from Town budgets. Raising taxes are not something the Council wants to do, but many things are needed to do the right thing for Apex citizens. Citizens realize this, as evidenced by their support this evening. The results of the Halle study gives hope we will focus on building upon what Halle has to offer.

Mayor Weatherly declared a five minute recess.

Public Hearing 02

Dianne Khin, Planning Director

Public hearing and adoption of Ordinance No. 2012-0605-09, Annexation Petition No. 476, Standard Pacific – Salem Village Drive

Mayor Weatherly declared the public hearing open at 8:30 p.m. No one from the audience wished to speak; there were no questions from Council. Mayor Weatherly declared the public hearing closed at 8:32 p.m.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to adopt the Annexation Ordinance; Council Member Lassiter seconded the motion. The motion carried by a unanimous 4-0 vote.

OLD BUSINESS

Old Business 01

Hank Fordham, Town Attorney and Bruce Radford, Town Manager

Adoption of a resolution entitled "Resolution to Request the General Assembly, As It Makes Decisions Regarding Fracking, to Preserve the Time Honored Authority of Municipalities to Regulate Land Uses, Load Limits On and Use of Municipal Streets and Adverse Local Impacts With Respect to Fracking

Council previously asked for a Resolution to preserve elements of general authority. Legislature could preempt local authority, but this issue needs to be watched because of the use of our drinking water supply.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to adopt the Resolution; Council Member Rowe seconded the motion. The motion carried by a unanimous 4-0 vote.

Old Business 02

Hank Fordham, Town Attorney and Bruce Radford, Town Manager

Summary of recent amendments to the sidewalk rules for downtown.

Council discovered via PD that downtown restaurant merchants were operating somewhat outside local Ordinances by selling food on outside tables during a public festival. There was felt to be a need for an adjustment, since this impedes traffic and is a safety issue. The town attorney presented a summary of the amendments which was brought about by some misunderstanding by the merchants.

Steve Adams stated his only issue was how “food service” tables were defined. Selling candy bars should be classified the same as selling pottery. The selling of food items might block the sidewalk, the town attorney stating it would be a good idea to clarify the ordinance in this regard. Discussion centered around downtown merchants having the same opportunities as outside vendors, clearing up the gray areas of the ordinance, the merchants setting up booths, and the mandated code related to crowd management.

The focus of this ordinance was for a vibrant downtown and to cover all aspects of public safety. With a suggestion to do so, Mayor Weatherly stated this matter would be brought before the merchants, staff, and the Festival Committee for consideration of downtown merchants being able to set up booths to sell their food products. The matter will then come back before Council for any further tweaking.

Old Business 03

Dianne Khin, Planning Director

Reconsideration of the vote of May 15, 2012 to deny the proposed amendment to the 2025 Land Use Plan and Rezoning #12CZ05

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to reconsider this rezoning; Council Member Rowe seconded the motion. The motion carried by a unanimous 4-0 vote.

Ms. Khin detailed the conditions of the rezoning, stating that there was no opposition from the neighborhood or Planning Board.

Stuart Jones of Jones and Cnossen Engineering indicated to Council what the various areas would look like transitioning from inside the Peakway from single family residential to high density mixed use. The creeks on two sides of the property make it difficult to integrate with retail on Hwy 55 and the Peakway. The town attorney stated Council should consider all possibilities of what might happen in these types of plans; it can't go on subjective intent for a rezoning request. Mr. Jones further explained that this development would be an upscale multi-story condo/apartment which would support mixed use and be adjacent to a shopping center.

Joey Iannone, prospective property owner, stated this is a good opportunity to redevelop this area of town that has not been developed for years, his plan being to do so immediately upon his purchase becoming final. He has met with the trailer park owners and they are receptive, over time, to remaking the trailer park into something that will continue their income stream. The desire is for this area to be the best of the best, Mr. Iannone stating that with the mixed use, there would be restaurants, a bank, a commercial building, and a building for a dance studio.

Action: Mayor Weatherly called for a motion. Council Member Lassiter made the motion to approve the rezoning under the original conditions of staff and the Planning Board; Mayor pro tempore Schulze seconded the motion. The motion carried by a unanimous 4-0 vote.

Old Business 04

Tim Donnelly, Public Works Director and Hank Fordham, Town Attorney

Approval of the final documents related to a transaction whereby Cary will provide sewer treatment service to Colvin Park Subdivision in Apex, including an interlocal agreement with the Town of Cary and an agreement with Kirkpatrick and Associates, LLC

Mr. Donnelly stated this was approved by Council several years ago to be developed on septic and Town water. The developer came back to Council wanting to do a denser, larger subdivision and stated they would need Town sewer. The cost of this was deemed unaffordable for the pro forma, the developer then asking could they pump to Cary. Staff has never been keen on this idea, and a meeting was held with Council regarding concerns. This would set a precedent for other developers and there would be a \$17/household extra cost. Council directed obtaining an agreement with Cary, and Mr. Kirkpatrick and the Cary town attorney worked very hard on doing so. Mr. Donnelly

stated very emphatically that he has never supported a small pumping station for one subdivision for residential that didn't fit our facility plans. However, this is a creative way to get residents in the area, and Apex can certainly make it work.

Speaking to precedent, Mr. Donnelly stated he received an email this week from Toll Brothers basically wanting the same type deal. It is cheaper to hook onto Cary than to build the infrastructure to hook onto Apex. Town Attorney Fordham stated people similarly situated would need to be treated the same; but this is a unique situation. It would be difficult for someone to say they're in a similar situation; therefore, the Attorney does not think there would be a precedent resulting in a legal obligation.

Something which we did not see coming is the northwest corner of the intersection of Jenx Road and Hwy 55. We have been asked if Apex would serve this for Cary, and we have said we would if the utility boundary is moved in order to get us the tax base. Cary declined. A realty person has approached us saying that now that we're doing this for Colvin, Cary expects us to do quid pro quo for them.

This can be considered a stop-gap solution whereby one day this development would be tied into Apex sewer's infrastructure and we could abolish the agreement with Cary. A problem could be that the agreement runs out of time, the area hasn't grown, and then we have a big obligation that we have to fix with taxpayers money because of an abnormal agreement. This will not slow down our development of the basin.

Residents from the Roberts Road area/Green level west Church Road have asked for this same thing, and wastewater capacity was available to them right across the street and their properties were adjacent to our boundary lines. They were told we would not allow them to do the very same thing proposed here tonight. We may be putting ourselves in the position of being continually asked why this can't be done for other areas. Troubling, however, is that a tract of land is in our jurisdiction that we don't intend to provide Town services to, so do we hold the property owner hostage just because we can't/don't/not going to provide an alternative means of providing services. There is a question about the unintended consequences that may ensue, our not knowing at this point what the consequences would be.

Keith Burns, attorney, stated to Council he has litigated issues similar to this in State and federal courts. The issue around precedent was well summarized by the town attorney – this is a due process argument under the US and NC Constitutions. Court will ask for a rational basis for the decision and it doesn't have to be compelling. If there's any question at all that the Town had a reason for its decision, then it would win. The question after the fact would be could anyone look at this and say there was some basis for what was done. Someone defending the Town would find reasons to support its actions. This will most likely fit in with our 2025 Land Use Plan.

Mr. Radford stated staff tries very hard to present policies for approval that don't have to be settled in a court of law. If it would ever have to go to court, the case could be settled because of the reasons outlined by Mr. Burns and this is troublesome. In order for Apex to provide services, there would have to be a petition for annexation, this being roughly a mile beyond our current boundary.

Landowners in the area have expressed wanting this, and it will provide fees and tax revenues. There was a wish that this didn't have to be done. But if this is what it takes to bring a quality development to a side of town that needs it, to fit with our development plan, and to get a development there 20 years sooner, then supporting this would bring a better quality of life. Previous Town Council gave direction to a company to do work on this some years ago, and the company has invested a tremendous amount of staff time and money figuring out our wishes. We have gone too far to back out when they've complied with previous direction of Council. Mayor Weatherly stated Council did, in fact, state that if they brought an agreement back from Cary, there was a fully disclosed closing document showing the differential in sewer rates, then it would be okay with Council. Additionally, this will not cost the Town money and provide a significant tax base on higher-end homes.

The termination point with Cary is about 25 years. If water and sewer are not to this location at that point, Public Works would flip the system to our system at taxpayer cost. In this agreement, these homes will pay the capacity fees, but there would be no extra money received from this arrangement to cover the cost if our sewers didn't get there. Cary would be paid by the Town of Apex to treat the wastewater, and we would pay their retail rates plus \$2 to cover our administrative rates and recovering the cost to run the pumping station. It would not be a great money maker.

The capacity fees paid to Apex would sit in our capital reserve for treatment plant capacity or help pay for the expansion of the water plant and current treatment plant. Acreage fees would also be collected.

Action: With Council stating it would not want to go against legal advice of the town attorney, Mayor Weatherly called for a motion to go into closed session to obtain legal advice from the town attorney. Council Member Jensen made the motion; Council Member Rowe seconded the motion. The vote was carried by a unanimous 4-0 vote, and the Council went into closed session at 10:00 p.m.

Action: Mayor Weatherly called for a motion to return to open session. Council Member Jensen made the motion; Council Member Rowe seconded the motion. The Council returned to open session at 10:10 p.m. by a unanimous 4-0 vote.

Action: Mayor Weatherly called for a motion. Council Member Lassiter made the motion to approve the Interlocal Agreement and the Sewer Connection Agreement; Council Member Rowe seconded the motion. Council Members Lassiter and Rowe voted in favor of the motion; Council Members Schulze and Jensen voted against the motion. Having to break the tie vote, Mayor Weatherly stated he is highly reluctant to go against the recommendation of staff, but there are some unique features to this request. Mayor Weatherly voted in favor of the motion; the motion carried by a 3 to 2 vote.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01

Rabbi Yisroel Cotlar and Cathy Dyer
Request for Chanukah celebration in Apex

Ms. Dyer introduced the Rabbi, giving the meaning of his title and his educational background. The Rabbi stated there are public menorahs in other cities and the question was raised about one for Apex. This would mean a lot to the Jewish community, as it would celebrate diversity and everyone's culture. The celebration would be one night a week, with the Mayor possibly lighting the Menorah.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to allow the celebration; Council Member Jensen seconded the motion. The motion carried by a unanimous 4-0 vote.

New Business 02

Mayor Weatherly
Cancelling the scheduled July 3, 2012 Town Council meeting in observance of the July 4th holiday

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to cancel this meeting; Council Member Jensen seconded the motion. The motion carried by a unanimous 4-0 vote.

WORK SESSION

Budget Work Session

Staff and Town Council

Mr. Radford stated the possible reduction in the tax rate had already been explained in session, the allocation of salaries had been resolved, two positions have been removed from the budget, a contingency is in the budget in order to deal with issues during the year, there has been discussion on the sale of bonds in order to be able to complete several parks, and maintenance of new parks requiring the requested position and two more in the future was discussed. Consensus of Council was that the tax increase would remain at five cents.

Mayor Weatherly called for a short recess in order for Council to attempt to reach Council Member Olive, as he previously indicated he thought he would be able to attend this meeting.

Mayor Weatherly called the meeting back in session.

Don Willis, Transportation Manager for Wake County Human Services, stated the requested increase for TRACS is because of a State cut in the grant that runs the program, resulting in reduced services. The request is conservative and continues to enable citizens to get around using contracted vendors. Last year TRACS made 2,234 trips around Apex, one-third of those entirely in Apex and one-half were employment related. About 10% of costs were funded through a grant. The operating cost/hour is about \$40, the average trip costing about \$30. Consensus of Council was to increase TRACS funding to \$15,000.

It has been decided to eliminate \$95,000 from the budget for tasers and to replace that amount with three police vehicles that were in the Operations Budget but transferred into the CIP, reducing the General Fund budget by \$95,500. Council was in agreement.

Consensus was to fund Halle Center as presented in the budget. There still may be opportunities to save money and more opportunities to fill the open slots for better utilization of the Center. Council may be in favor of increasing advertising to get the word out for more utilization; possibly Apex could piggyback onto the acts from other towns. Consensus was to fund as presented in the budget.

Population to position ratio: with the new employees included and approved in the budget, Apex has 335.56 employees and a population of 39,106, placing our full time employee ratio at 8.58/1,000 citizens. Removing EMS to compare apples to apples, we would be at 8.27. Apex would remain among the most very efficient of operations anywhere in Wake County based on this judgment criteria, along with some in Orange County, and one in Johnston County. Mr. Radford praised the staff for being "the darn best at what they do", this being the most contributory factor as to why there has not been a tax increase over the years. Consensus was to fund the General Fund as presented.

Electric funds: Lee Smiley, Finance Director, stated there is no change in electric rates, a 2% growth rate has been built into the budget for next year. Tim Donnelly, Public Works Director, stated the majority of the money goes for the purchases for resale. One of the two approved employees will held back in order to go slow and develop the team and purchase equipment. Capital outlay shows the wire and transformers to serve new customers and will be spent only if needed. Both funds balance.

Water and sewer funds: Mr. Smiley stated that for water and sewer a 2% growth rate was used, with a 5% rate increase on both the water and sewer side. Sales of bulk water have taken off due to work on the Outer Loop. Mr. Donnelly stated reimbursement to Cary is a main expenditure, and more will be spent on compliance testing of our water system because of regulation changes. There were no surprises for sewage maintenance. Both funds balance.

CLOSED SESSION

There was not a scheduled closed session.

ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn. Mayor pro tempore Schulze made the motion; there was not a second. The meeting was adjourned.



Donna B. Hosch, CMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor

THIS PAGE INTENTIONALLY LEFT BLANK

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for June 19, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 19, 2012, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, Town Campus, 73 Hunter Street



Mayor Keith Weatherly presided over the meeting. In attendance were Mayor Pro tempore Gene Schulze and Council Members Bill Jensen, Terry Rowe, Scott Lassiter, and Lance Olive. Also in attendance were Town Manager Bruce Radford, Assistant Town Manager Mike Wilson, Town Clerk Donna Hosch, and Town Attorney Hank Fordham.

COMMENCEMENT

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

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

1. Minutes of the June 5, 2012 Council Meeting
2. Town of Apex Tax Report
3. Statement and Ordinance for Rezoning case #12CZ06 for property located at 2121 E. Williams Street
4. Statement and Ordinance for Rezoning case #12CZ05 for property located off James Street, across from Briarcliff Street, between Schieffelin Road and E. Williams Street
5. Public hearing for the July 17, 2012 Council Meeting regarding various amendments to the Unified Development Ordinance
6. Public hearing for the July 17, 2012 Council Meeting regarding a Land Use Plan Amendment and Rezone #12CZ04 for property located on Laura Duncan Road
7. Abandonment of sanitary sewer easement area
8. Resolution authorizing the Wake County Revenue Director to collect taxes on behalf of the Town of Apex
9. Ratify the Easement Agreement between Motiva Enterprises, LLC and the Town related to stormwater BMP access and maintenance easements
10. Position Classification Plan for FY 2012-2013
11. Encroachment agreement to allow a business to run communications lines under Classic Street between its two buildings located on opposite sides of Classic Street

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to approve the Consent Agenda; Council Member Jensen seconded the motion. The motion carried by a unanimous 5-0 vote.

REGULAR MEETING AGENDA

Action: Council Member Rowe made a motion that a New Business item be added – discussion on a possible amendment to the 2025 Land Use Plan. Council Member Jensen seconded the motion. The motion carried by a unanimous 5-0 vote.

PUBLIC HEARINGS

Public Hearing

Brendie Vega, Principal Planner

Rezone #12CZ07, 1503 N. Salem Street. The subject property is approximately 3 acres identified on Wake County Tax Maps as PIN 0742-37-6342. The applicant seeks to rezone from Residential Agricultural (RA) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ).

This area is designated as medium density residential, office employment, and commercial. The applicant proposes several exclusions and has agreed to conditions regarding single family. A neighborhood meeting was held on May 15th with discussion on current traffic conditions and future land uses. The Planning Board and staff recommend approval with the conditions of permitted uses outlined in the staff report.

Mayor Weatherly declared the public hearing open at 7:12 p.m.

Staley Smith of 611 W. Chatham Street stated he's received calls from folks interested in renting property for office use. He's formulated an appropriate/interim zoning district that would help give the flexibility to repurpose the residential structure for office type locations, this being the primary reason for the request.

Mayor Weatherly declared the public hearing closed at 7:13 p.m.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to approve this rezoning; Council Member Rowe seconded the motion. The motion carried by a unanimous 5-0 vote.

OLD BUSINESS

Old Business 01

Bruce Radford, Town Manager

FY2012-13 Annual Budget Ordinance.

Mayor Weatherly thanked the Town Manager and staff in working through a difficult budget year. The recommended tax increase has been avoided a long time. The current economy has kept revenue from growing as it has in the past.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to adopt the Budget Ordinance; Mayor pro tempore Schulze seconded the motion. Council Members Jensen, Schulze, Rowe, and Lassiter voted in the affirmative; Council Member Olive voted in the negative. The vote carried by a 4-1 vote. Mayor Weatherly asked Council to reconsider the vote in order to get Council Member Olive's comments. Mayor pro tempore Schulze made a motion to reconsider the vote; Council Member Lassiter seconded the motion. The motion carried by a unanimous 5-0 vote.

Mayor Weatherly stated he and Council Members Schulze, Rowe, Jensen, and Lassiter reluctantly agreed there was no other alternative to the Budget. Unfortunately, Council Member Olive was not present for the public hearing, but there were 18 speakers and all testified in favor of the Budget. Emails have overwhelmingly stated support. Mayor Weatherly asked Council Member Olive how he would balance the budget, it being \$2.1 million out of balance and needing to be balanced by the end of this month. Council Member Olive stated he really did not have anything to say; but since there was a call for discussion, he offered that when he was stripped from all Committees, it was made clear there was no interest in his input. Therefore, he did not have anything else to add. Mayor Weatherly stated Council Member Olive was, in fact, giving his input by voting 'no' on the Budget. Council Member Olive stated this is what the voters want him to do, which is to vote and he votes 'no'.

Mayor Weatherly stated it was Council Member Olive's responsibility to help produce a balanced Budget, and the Council was looking for his guidance since he obviously has a better plan. Council Member Olive stated the Mayor's administration came up with a Budget that had a tax increase in it from the beginning. He asked for a budget without the tax in order to see where we needed to go next. He was not able to get this. The rest of it was a discussion that didn't need to be had. Mayor Weatherly stated it is the Manager's responsibility to produce a draft budget and Council's responsibility to either adopt it or make recommendations to change it.

Council Member Lassiter stated he was under the impression all Council Members had the opportunity to participate in Committee meetings, Mayor Weatherly confirming this fact. The Manager's Budget spelled out very clearly what would be funded by the tax increase. Council Member Olive stated there was nothing else he was interested in discussing. Mayor Weatherly stated that the assumption will be that Council Member Olive will talk about how he voted against the tax increase, but he will leave out the obvious other part that he did not offer any positives as to how to balance the budget. Mayor Weatherly stated that if Council Member Olive is against the Budget, then the Council was looking for leadership from him as to how to balance it without using the Manager's recommendation. Council Member Olive stated the Mayor has already brought the leadership that includes the tax increase and that's where we're going to be, stating that the Mayor got his tax increase. Council Member Lassiter stated this is not the Mayor's tax increase; the Mayor does not have a vote.

Mayor pro tempore Schulze stated that with all due respect, he felt Council Member Olive was shirking his responsibility. He was elected to lead the Town and he is not. He cannot claim that since he had not been at Committee meetings that he is not going to vote for the Budget; this would be voting out of spite and that's not what the people elected him for. Council Member Olive stated he intended to look at a balanced Budget that did not include a tax increase from the beginning to see where we would go from there and it was never produced. Mayor pro tempore Schulze asked where was Council Member Olive for the public hearing and why didn't he insist on this. Council Member Olive stated he was working late due to a published, world-wide web launch. He did hear the public hearing from recording as well as the public input.

Mayor Weatherly stated that missing the public hearing was bad enough, but we had an all afternoon Worksession where we went over the Budget line by line and gave every Council Member the opportunity to make suggestions in the minutest detail. Mayor Weatherly stated Council Member Olive was there but working on his personal computer and not engaged in the budget discussion, which would have been the time to offer any suggestions. There was no hint of displeasure with the Budget, and Council Member Olive certainly did not offer anything positive suggestions about what the alternatives would be. Council Member Olive stated he had nothing else to add. Council Member Jensen stated he would like to call for a vote.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to adopt the Budget Ordinance; Mayor pro tempore Schulze seconded the motion. Council Members Jensen, Schulze, Lassiter, and Rowe voted in the affirmative; Council Member Olive voted in the negative. The motion carried by a 4-1 vote.

Old Business 02

Tim Donnelly, Public Works Director and Hank Fordham, Town Attorney

Option and Structure Lease Agreement (Water Tower Lease) between SprintCom, Inc. and the Town to add indemnity from the Town in favor of SprintCom, Inc. for any claims related to any Hazardous Substance present on or affecting the Town's property before the Lease starts, unless caused by the activities of SprintCom.

The Town receives \$2,800/month in rental fees for antenna space on the water tower. SprintCom's attorney's felt there was liability for the old gas station leak prior to Apex purchasing the site, which has always been disclosed. We are being asked to change the decision, remnants of the old leak are there, but studies show the land is fine. The Agreement is at the option point; SprintCom could choose not to exercise it. An indemnity would be an unfavorable clause for the Town, even though possibly not legally enforceable. The indemnity is related only to preexisting conditions; and if SprintCom causes the release, then the indemnity would not apply.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to amend the Agreement; Mayor pro tempore Schulze seconded the motion. The motion carried by a unanimous 5-0 vote.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01

Reed Huegerich, Transportation Planner

Municipal Agreement between the Town of Apex and NCDOT for TIP project U-5118 AC, NC 55 Corridor Improvements, and authorize the Town Manager to execute same.

This is Federal funding through the Capital Area MPF with 80% Federal funding and 20% local match. Project cost would be \$613,000, \$122,600 being the local match. Legal has several concerns about the Agreement as far as indemnity. However, this is SprintCom's standard Agreement and cannot be changed without several months of legal discourse.

Action: Mayor Weatherly called for a motion. Council Member Lassiter made the motion to approve the Agreement; Council Member Jensen seconded the motion. The motion carried by a unanimous 5-0 vote.

New Business 02

Reed Huegerich, Transportation Planner

Municipal Agreement between the Town of Apex and NCDOT for TIP project EL-5100 DD, Laura Duncan Multi-use Path, and authorize the Town Manager to execute same.

This is a \$605,000 project with a \$121,000 local match. The Agreement has the same legal concerns regarding indemnity.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to approve the Agreement; Council Member Rowe seconded the motion. The motion carried by a unanimous 5-0 vote.

New Business 03

Brendie Vega, Principal Planner

Master Subdivision Plan for Kelly Grove Phase II, including 15 lots on 7.134 acres at 2239 Toad Hollow Trail, Wake County PIN #0731-18-6174.

This area is zoned medium density conditional, with the proposed density being 1.86 units/acre. At the February 29th neighborhood meeting, attendees raised concerns about the number of units, timing, future cut-through traffic, and trespassing. The applicant has reduced the scope from 8 acres and 20 units to 7 acres and 15 units and will make improvements to the original retention pond. Parks and Rec reviewed Phase II on May 30th and recommended a fee in lieu for 15 units. The cul de sac exceeds a length allowed by the UDO, but Council can approve this. Staff and TRC discussed this and agreed the existing turnaround and the future area where firetrucks could turn around make this a safe length. The Planning Board and staff approve the Plan with Council's approving the cul de sac.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to approve the Plan; Mayor pro tempore Schulze seconded the motion. The motion carried by a unanimous 5-0 vote.

New Business 04

Lee Smiley, Finance Director

Budget amendments for electric power purchases, wastewater bonds, recreation bonds, Hughes Street/NC 55 improvements, and closing of general capital projects fund.

Mr. Smiley explained each of the amendments, pointing out donations from citizenry were short of expectations, and the large donation of land which was received remains for sale. On the Capital Project amendment, the \$605,000 on the expenditure side should be corrected to state it is for the Laura Duncan multi-use path.

Action: Mayor Weatherly called for a motion. Council Member Jensen made the motion to approve the Amendments; Mayor pro tempore Schulze seconded the motion with the correction to the Expenses for Laura Duncan. The motion carried by a unanimous 5-0 vote.

Council Member Lassiter asked for clarification as to whether or not Council Member Olive could vote for the Amendments. Does his vote against the Budget not approve the allocation of these monies? This is both legally and financially appropriate.

Added New Business 05 – Council Approved
Council Member Terry Rowe

Council Member Rowe began discussion on a study of the 2025 Plan and whether or not we need to combine more commercial development as we approve residential. There is not a percentage placed on mixed uses. The suggestion is to have staff go back and look at the current map and make recommendations to Council which might provide the ability to require a greater mix of uses. Perhaps recommendations could be given at the next Council meeting. A better balance of commercial and residential is beneficial; and the fear is as the market begins to turnaround, we would see many more residential developments.

There was concern that it would be premature for staff to come up with recommendations without any kind of market analysis in the current economic condition. Also, it would not be appropriate for staff to make recommendations without receiving citizen and EDC input. Mixed use is encouraged via rezonings brought before Council.

Suggested was a worksession to show Council industrial, light industrial, or mixed use areas in order for Council to determine if it wishes to amend the current land use plan. It would be beneficial to include all appropriate groups in a separate worksession around the third week of August and then have the outcome brought back to Council. The Economic Development Committee has worked on this same issue.

WORK SESSION

There were no Work Session items.

CLOSED SESSION

Closed session to receive legal advice from and give direction to Town Attorney regarding an eminent domain matter.

Action: Mayor Weatherly called for a motion. Mayor pro tempore Schulze made the motion to go into closed session to receive legal advice; Council Member Rowe seconded the motion. The motion carried by a unanimous 5-0 vote.

At the end of Closed Session, Council will return to Regular Session for further business, if any.

Action: Mayor Weatherly called for a motion to return to Regular Session. Council Member Olive made the motion; Council Member Rowe seconded the motion. The motion carried by a unanimous 5-0 vote.

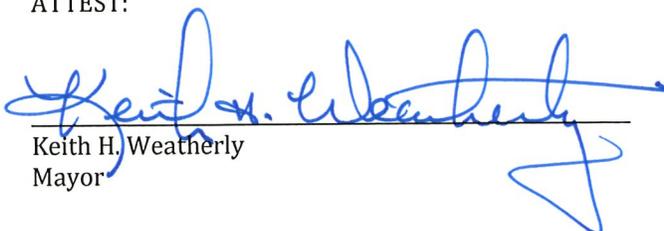
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn. Council Member Jensen made the motion; there was not a second. The meeting was adjourned.



Donna B. Hosch, CMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, JULY 17, 2012

Keith H. Weatherly, Mayor
Gene Schulze, Mayor pro tempore
Council Members Terry Rowe, Scott Lassiter, Bill Jensen, and Lance Olive
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, July 17, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street.

In attendance were Mayor Keith H. Weatherly, Mayor Pro tempore Gene Schulze, Council Members Terry Rowe, Scott Lassiter, Bill Jensen, and Lance Olive. Also in attendance were Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, CMC, and Town Attorney Henry C. Fordham, Jr. Town Manager Bruce A. Radford was absent attending management training.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. The invocation was given by Rabbi Yisroel Cotlar; the Pledge of Allegiance followed.

PRESENTATIONS

Presentation 01 : Mike Couch, Electric Utilities Manager

Presentation of Proclamation to Electric Utilities employee winners and participants in the 15th Annual Lineman's Rodeo

Mayor Weatherly read the Proclamation and congratulated the team. Mike Couch introduced the team, stating the Rodeo was part of the NC Association of Municipal Electric Systems (NCAMES) Annual Engineering and Operations Conference. Ken Weatherman placed first in the State in the Journeyman category, and Matthew Kiecker placed second in the State in the Apprentice field. Ken and Matthew will go on to represent North Carolina in the American Public Power Association (APPA) Public Power Lineworkers Rodeo in Kissimmee, Florida in the spring of 2013.

CONSENT AGENDA

1. Approve Minutes of the May 3, 2012 Personnel Committee Meeting, the May 29, 2012 Personnel Committee Meeting, the June 5 and June 19, 2012 Closed Sessions (Closed Session Minutes are recorded separately), and the June 19, 2012 Council Meeting
2. Approve Town of Apex Tax Report
3. Adopt Resolution authorizing Finance Director to file an application for state revolving loan funding for water plant improvements
4. Adopt Revisions to the Apex Personnel Policies, Article III, Sections 7 and 8
5. Approve Statement and Adopt Ordinance for Rezoning Case #12CZ07, Staley Smith, Martha Smith, and Marlou S. Bacon, petitioner for the property located at 1053 N. Salem Street
6. Adopt a Resolution Directing the Town Clerk to Investigate Petition Received and adopt a Resolution Setting Date of Public Hearing for August 7, 2012 on the Question of Annexation – Apex Town Council's intent to annex Thales Academy's property containing 4.771 acres located at 1300 N Salem Street, Annexation #477 into the Town's corporate limits
7. Approve Active Network Agreement and authorization of Town Manager to sign all relative documents
8. Approve and ratify, if already signed, an encroachment agreement to allow a business to run communications lines under Classic Street between its two buildings located on opposite side of Classic Street with signature authorized by the Assistant Town Manager
9. Approve abandonment of the public utility easement area shown on Exhibit A as "Public Utility Easement Area 0.495 Acre" on the terms stated in the attached Resolution

Council Member Jensen requested that the item "Allow Stand-up Paddle Boards on Apex Community Park Lake" be pulled for further discussion. This item would be moved to New Business.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE CONSENT AGENDA, MOVING THE STATED ITEM; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda. Council Member Jensen requested discussion on improvements for the Halle Center. This item would be added as New Business.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REGULAR MEETING AGENDA WITH THE ADDITION OF HALLE CENTER DISCUSSION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Lauren Simmons, Planner

Public hearing and possible motion regarding a Land Use Plan Amendment from Office Employment to High Density Residential, and Rezone #12CZ04 from Rural Residential (RR) to High Density Multi-Family Residential-Conditional Zoning (HDMF-CZ). The subject property is approximately 7.82 acres generally located at 2050, 2080, and 0 Laura Duncan Road, and identified on Wake County Tax Maps as PIN#s 0752-08-9770, 0752-08-8516, and 0752-18-2461.

Ms. Simmons provided details of the Amendment, noting that the Planning Board suggested a flat maximum of 48 units. The neighborhood meeting of March 27th raised questions on sidewalks, traffic, clear-cutting development alternatives, and housing values in the adjacent neighborhoods. Staff and the Planning Board recommend approval of the request.

Responding to Council questions, medium density was not considered, partially because of noise and odors from the pump and sub stations. Townhomes are probably the highest and best use of this property with the possibility of developing a small office. This lot cannot be stubbed out in any direction, and it is not required. A multi-use path is scheduled by the Town for this property; discussions with the developer will ensue to make the path more useful.

Mayor Weatherly declared the public hearing open.

Four persons spoke in favor of this request, including Glenda Toppe, agent for the property owners, who stated a stub could be included if needed, this use will generate less traffic than that of office development, the requestor will provide its portion of the multi-use path on their three parcels along Laura Duncan Road, and the developer will connect the multi-use path to the Town park. Three citizens addressed the difficulty in selling their properties, but were in favor of the progress this project signifies.

Four citizens spoke against the project, citing traffic and speed limit concerns, asking for a traffic study to be done due to past catastrophic accidents, requesting the public hearing be continued for further study, and addressing the issue of safety to pedestrians.

Staff stated that if DOT believes there should be additional site distance, then this could be addressed with the developer. It is unlikely DOT will do a traffic study, and this would need to be done before DOT would lower the speed limit.

Mayor Weatherly declared the public hearing closed.

Council reiterated the multi-use path is important and may take traffic off of Laura Duncan. There may be interest, as a side issue, to pursue DOT investigating the speed limit because of the schools and parks. Mayor pro tempore Schulze stated he was not in support of this request as it chips away at the 2025 Land Use Plan. If this request is approved, then other properties in the Plan can be rezoned which doesn't make sense. The Mayor stated the Land Use Plan was approved before utilities were put in. If doing the Plan today, it might be different than it is now. The Plan is made to be a living document for developers and landowners to follow.

Town Attorney Fordham stated that the vote shouldn't be conditioned on something that's not a formal condition. If requesting a traffic study is influencing the vote, then that ought to be made a condition. The landowner stated they are more than willing to cooperate with DOT and are willing to pay for a study with site plan approval. They are also willing to add and pay for a multiuse pathway, according to the Town's specifications, on the east edge of the utility property should Planning decide this is needed. Staff will make the request for DOT to do the study.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REQUEST WITH THE FOLLOWING CONDITIONS: THAT THE DEVELOPER WILL WORK WITH DOT AND THE TOWN TO FIND A SUITABLE SPEED LIMIT ON LAURA DUNCAN, THAT THE LANDOWNER WILL PAY FOR A DOT TRAFFIC STUDY TO BE REQUESTED BY THE TOWN, AND THAT THE DEVELOPER WILL ADD AND PAY FOR A 10' WIDE MULTI-USE PATHWAY TO THE EAST EDGE OF THE APEX UTILITY PROPERTY PER TOWN SPECIFICATIONS SHOULD THE PLANNING DEPARTMENT FIND IT WARRANTED. COUNCIL MEMBER LASSITER SECONDED THE MOTION. COUNCIL MEMBERS JENSEN, LASSITER, ROWE, AND OLIVE VOTED IN THE AFFIRMATIVE; MAYOR PRO TEMPORE SCHULZE VOTED IN THE NEGATIVE.

THE MOTION CARRIED BY A 4-1 VOTE.

Public Hearing 02 : Reed Huegerich, Transportation Planner

Public hearing and proposed amendments to the Thoroughfare and Collector Street Plan map

The first amendment was requested by JDI Developers to remove the Perry Road Extension from east of NC55 to the Peakway, as this would create a challenging intersection. Staff is in agreement, noting that DOT will most likely not approve a signal in this location. The second amendment was initiated by the Town to remove rural special street designations from five roads.

Mayor Weatherly declared the public hearing open.

Stewart Jones, Clossen Engineering, stated the impacts of a four-way intersection would be fairly severe. There will be a pedestrian connection at the end of the development to eventually connect to the Peakway; a stub will be provided to connect a local street to the Peakway. One resident spoke in support of this request; no one spoke against.

Mayor Weatherly declared the public hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE AMENDMENTS; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 03 : Lauren Simmons, Planner

Public hearing and possible motion for various amendments regarding application expiration and correction of erroneous references to the Unified Development Ordinance

The first amendment is to add language that would give expiration to projects submitted, not approved, and not resubmitted. If resubmitted, they would need to follow current ordinances. The second and third amendments are to correct erroneous references to the Use Table and correctly referencing the buffering section.

Mayor Weatherly declared the public hearing open. With no one wishing to speak, Mayor Weatherly declared the public hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE AMENDMENTS; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

There were no Old Business items for discussion.

PUBLIC FORUM

Public Forum 01 : Greg McGhee, Citizen

Discussion concerning a Special Use Permit issued to Alan and April Maness of Old Jenks Road

Mr. McGhee presented a Petition signed by 13 residents requesting revocation of this Special Use Permit based on public safety being jeopardized, disturbance of the peace, and violation of the noise

ordinance. A large event tent had been set up for six consecutive weeks, which is inappropriate for this residential area. Other concerns addressed by members of the neighborhood who spoke to Council included neighbors not being notified of a hearing before issuance of the SUP; an environmental study being conducted to determine where waste water is going, where what's coming out of cars is going and wanting to see a reserve for environmental cleanup; music being played after 11:00 p.m.; traffic being backed up, at one point for one hour and five minutes; busses being parked which tie up traffic; event guests asking neighborhood residents to be quiet; and more than 100 guests attending an event.

The Town was called about the noise; the caller was told to call the sheriff. An off-duty officer was at the event, but no one else came out. There is one port-a-john, which means guests are probably using bathrooms in the house, raising concern about the environmental impact on the wells and the septic system. Large groups using this septic system could have a negative impact.

The Mayor asked staff to look into the SUP to determine if any of the allegations are true and if there are violations. A report will be forthcoming and Mr. McGhee will be given a response in writing. Mr. McGhee asked if the SUP could be suspended until it is investigated. Dianne Khinn, Planning Director, stated that on advice of the Town Attorney, only she could suspend the SUP. She was not interested in doing so until an investigation. Mayor Weatherly stated this was fair, and staff will look into this as expeditiously as possible. Town Attorney Fordham stated a SUP authorizing a temporary use permit can have conditions attached to the temporary permit.

NEW BUSINESS

New Business 01 : Lauren Simmons, Planner

Possible motion to approve 55 James at Midtown – Master Subdivision Plan – for the property located at James Street across from Briarcliff Street, between Schieffelin Road and W. Williams Street containing 14.5 acres and 109 townhome lots

All conditions have been met, and the Planning Board and staff recommend approval of the request.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER ROWE SECONDED THE MOTION.

WORK SESSION

There were no Work Session items for discussion.

CLOSED SESSION

There were no Closed Session items for discussion.

ADJOURNMENT

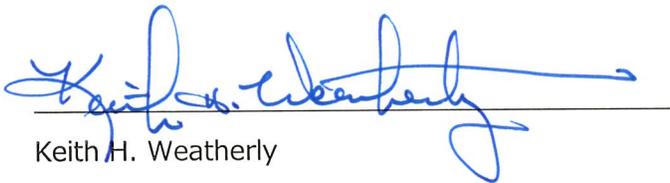
WITH THERE BEING NO FURTHER BUSINESS, MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.
MAYOR PRO TEMPORE SCHULZE MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC

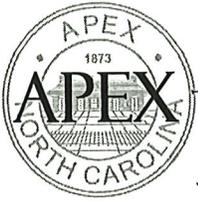
Town Clerk

ATTEST:



Keith H. Weatherly

Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, AUGUST 7, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 7, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street.

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry Rowe and Scott Lassiter.

Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, CMC, and Town Attorney Henry C. Fordham, Jr.

Absent were Council Members William Jensen and Lance Olive.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. Mayor Weatherly gave the Invocation and led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

1. Minutes of the March 20, 2012 Closed Session (Closed Session Minutes are recorded separately) and the July 17, 2012 Council Meeting
2. Statement of the Apex Town Council and adopt Ordinance for Rezoning Case #12CZ04, Glenda Toppe, petitioner for the property located at 0, 2050, and 2060 Laura Duncan Road
3. Construction contract and authorize Town Manager to execute same for 2012 Roadway Rehabilitation Project
4. Request from NCDOT on the 25 mph school zone ordinance for Apex Middle School along NC55 between South Hughes Street (west end) and James Street

5. Resolution naming Review Officers for the Town of Apex to then be approved by the Wake County Board of Commissioners
6. Set Public Hearing for the August 21, 2012 Town Council Meeting regarding various amendments to the Unified Development Ordinance
7. Contracts for shelter/restroom facilities at Seagrove's Farm and Hunter Street Park
8. Fire Chief to submit an application for the FY2012/2013 SAFER Grant through FEMA
9. Annexation Petition #478, Mabel Burton, owner/petitioner: adopt Resolution Directing Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing for August 21, 2012

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

REGULAR MEETING AGENDA

There were no modifications requested by Council.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE REGULAR MEETING AGENDA; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

Public hearing and possible motion to adopt Annexation Ordinance No. 2012-0807-19, Annexation Petition No. 477, Thales Academy's property containing 4.771 acres located at 1300 N. Salem Street into the Town's corporate limits.

Mayor Weatherly declared the public hearing open. With no one wishing to speak, Mayor Weatherly declared the public hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ADOPT THE ANNEXATION ORDINANCE; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

OLD BUSINESS

There were no Old Business items for discussion.

PUBLIC FORUM

No one wished to address Council.

Mayor Weatherly recognized two Boy Scouts from Troop 202 who were in attendance working on their Communications Badge. Both Scouts hold the rank of 'Star'.

NEW BUSINESS

New Business 01 : Lee Smiley, Finance Director

Possible motion to approve budget ordinance amendment for costs of extending electric facilities to the regional wastewater treatment plant.

This will be the largest customer on the electric system due to the need for additional and redundant power.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE BUDGET AMENDMENT; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

WORK SESSION

There were no Work Session items for discussion.

CLOSED SESSION

Closed Session to receive legal advice and give direction by Town Attorney in the condemnation case entitled Town of Apex v. Jeannette Long Davenport and Paul S. Davenport, 11 CVS 12080 (Wake County). (At the end of Closed Session, Council will return to Regular Session for further business, if any.)

Mayor Weatherly asked to be recused from participation in this matter due to Representative Paul Stam representing the other party in the matter.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO RECUSE MAYOR WEATHERLY FROM PARTICIPATION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

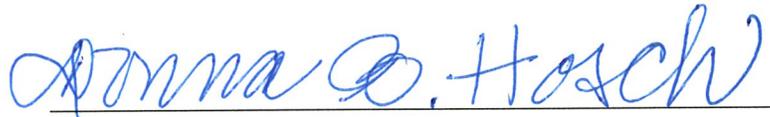
Mayor Pro Tempore Schulze, therefore, presided over Closed Session.

MAYOR PRO TEMPORE SCHULZE CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO GO INTO CLOSED SESSION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

MAYOR PRO TEMPORE SCHULZE CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER ROWE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.

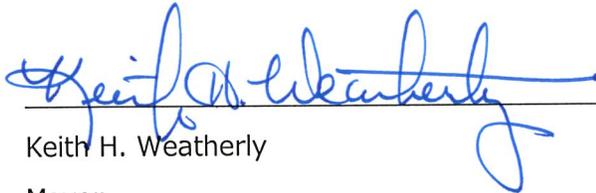
ADJOURNMENT

WITH THERE BEING NO FURTHER BUSINESS, MAYOR PRO TEMPORE SCHULZE CALLED FOR A MOTION TO ADJOURN.
COUNCIL MEMBER LASSITER MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 3-0 VOTE.



Donna B. Hosch, CMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



Eugene J. Schulze
Mayor Pro Tempore



TOWN COUNCIL MEETING

TUESDAY, AUGUST 21, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 21, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street.

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, Scott R. Lassiter, William S. Jensen, and Lance Olive. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. Council Member Lassiter gave the Invocation; Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : Lauren Simmons, Planner

Recognition of the Summer Appearance Award Winners

Ms. Simmons stated the residential winner to be Diane Reaves of 605 Abraham Circle for exceptional curb appeal, colorful and charming landscaping, and a well-maintained yard that positively influences the neighborhood's image. The commercial winner was Daniel's at 1430 W. Williams Street for an upgraded, attractive façade that adds character to an original Apex establishment. Signs will be placed on their properties; the winners will receive an award from the Mayor and Council.

CONSENT AGENDA

1. Approve Minutes of the August 7, 2012 regular Council Meeting and the August 7, 2012 Closed Session (*Closed Session minutes recorded separately*)
2. Approve Town of Apex Tax Report

3. Accept 6,150 square feet, 0.141 acres of street right of way and approve Resolution for same
4. Approve Budget amendment for upgrades to the Chamber of Commerce building
5. Approve Beer Garden at the Jazz Festival on September 15, 2012

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Weatherly asked for the Old Business item to be addressed prior to the Public Hearings.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE REGULAR MEETING AGENDA WITH THE ABOVE MODIFICATION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

Old Business 01 : Brendie Vega, Principal Planner

Possible motion to strike through a scrivener's error on "Findings of Fact" for Special Use Permit #11SUP01

Recommended language by the Planning Board and approved by Council did not include the sentence "there shall be no more than two events per calendar month". The original draft of the Planning Board staff report did include this sentence. After meeting with the applicants, staff agreed to revise the staff report. The Planning Board received the revised staff report prior to their meeting and were instructed to disregard the previous version. The version unanimously voted on recommending approval was the same version as that voted on by the Town Council which did not include the above sentence. Unfortunately, staff used the first version of the staff report to draft the Findings of Facts, Conclusions of Law, and Decision currently on file. Per the Town Attorney, this type of scrivener's error must be corrected by the Town Council

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO STRIKE THROUGH THE SCRIVENER'S ERROR; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Lauren Simmons, Planner

Public hearing and possible motion for various amendments regarding application expiration and correction of erroneous references to the Unified Development Ordinance

Five amendments were presented to clarify ordinance language: two amendments related to on-premise alcohol sales at retail establishments in downtown, a change related to outdoor serving areas in bars and nightclubs, a change to the general section relating to restaurants, and a change to the retail sales category as it relates to percentages, these suggested percentages being reasonable. The bar and restaurant definitions do not change an establishment's perception of what they perceive themselves to be.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ADOPT THE ORDINANCE CHANGES; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 02 : Dianne Khin, Planning Director

Public hearing and possible motion regarding Annexation Petition #478, Mabel Burton owner/petitioner, petitioning to annex .779 acres, non-contiguous to the Town's Corporate limits, and located at 2237 Old US#1 Highway

This property is currently in the ETJ and is serviced with water.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO ADOPT THE ANNEXATION ORDINANCE; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 03 : Brendie Vega, Principal Planner

Quasi-Judicial Public Hearing for an amendment to Special Use Permit #11SUP01 located at 6304 Old Jenks Road, PIN #0743-20-2783. The amendment is being requested by staff to correct an omission that occurred when the SUP was originally approved without including a limit on the number and consecutive days of future Temporary Use Permits to be issued under the Special Use Permit.

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

Mayor Weatherly presented his opening statement "Explanation of Issue, Standards, and Quasi-Judicial Procedures" (*incorporated as part of these Minutes*). After deciding this case, asked Lassiter, will the decision apply to every SUP or just to this SUP, the Mayor responding just to #11SUP01. Schulze asked if a decision was made this night, when would it take effect. Fordham stated it depends on if something is grandfathered in, the law allowing certain things to be grandfathered. In reference to the fix made by Council action earlier, Schulze asked if it had already been decided to allow two events/calendar month, would Council be deciding that again in this Hearing. Fordham stated they are two separate issues. What was done earlier was to take language out of the SUP that was put in by accident (scrivener's error). This Hearing was not part of a scrivener's error; there was a substantive error from the original SUP in that it did not include a limit on the number and consecutive days as required by the UDO. The only way to correct a substantive error in the SUP is to go back through the same procedure by which the SUP was originally approved.

Mayor Weatherly declared the Public Hearing open and asked all persons who believed they would be offering testimony to sign in and be sworn in with the Town Clerk. Nineteen individuals signed in and were sworn in by the Town Clerk (*two sign-in sheets incorporated as part of these Minutes*).

Attorney Julia Kirkpatrick of Raleigh stated she was representing the applicants. Radford introduced Dr. Noral Stewart on behalf of the Town, his being an acoustical engineer and the Town's key advisor on anything having to do with sound or sound technology. Fordham stated Stewart would be a witness like anyone else, so his credibility would be based on his testimony. Even though he is being paid by the Town, he does not get any special treatment.

Jensen asked since addressing the number of special permits and the consecutive days as a basis for making a decision, could Council ask the applicants if they'd be willing to take certain steps in order to expand the number of permits. Fordham stated the only thing the Council had the right to do was to set a number and consecutive days limits; that was the only thing omitted from the permit. The applicant could agree to something beyond that if it mitigated an impact and had some impact on Council's decision, but cannot be forced to do that.

The Mayor asked if any Council Member had any contact with the parties prior to tonight. The Mayor stated the public came before Council on this issue at a previous meeting before this was declared a quasi-judicial proceeding, his hearing comments on that evening. He talked with the applicants well in advance of this quasi-judicial; one email was received and only the first two sentences were read; there was no question in his mind that he would not be able to preside over the case in a fair and deliberate way without letting prior comments sway or bias his consideration. Jensen was also at the prior meeting; he has had minor contact with the applicant in the past; he has had no contact with anyone in the last month or two regarding this case; he has not read emails; he did visit the site; he will be able to make a fair judgment on this. Rowe was part of the prior meeting; he has had contact with Mr. Maness in the past as Mr. Maness is a regular attendee at these meetings; he received two emails and scanned them prior to this becoming quasi-judicial; none of this will hinder him from making a decision based on tonight's facts. Schulze was in attendance at the prior meeting; the applicant called him prior to the first meeting; aerial photos have been viewed; no emails have been read since the quasi-judicial status; a fair decision can be made. Lassiter attended the prior meeting; no contact with the applicants since then has been made; no emails have been read. Olive did not read any emails in detail; he has not been in communication with anyone involved in the issue; he feels he can judge this issue fairly.

OPENING STATEMENT BY APPLICANTS: Kirkpatrick stated that in February 2011 when the SUP was granted to operate a function venue, The Oaks at Salem, from the Maness' residential home, the limitation on the numbers of days permitted under each TUP up to 12 was not included in the SUP. Kirkpatrick has to how the business has been run and the applicants' beliefs as to its impact on the neighborhood. Sought is commercial use of the property for approximately 25% of the available year's time which would meet the standards under the SUP. Believed is that Council, at the close of evidence, will have heard from folks who think this is a good operation and the use sought of eight days under one TUP is reasonable and meets the standard under the law.

OPENING STATEMENTS FROM OPPONENTS: Tina McGhee of 200 Howell Road, challenged everyone to conduct this meeting in a professional manner and to not throw words or innuendoes.

EVIDENCE FROM TOWN STAFF: Brendie Vega, Principal Planner, stated her qualifications and length of service with Apex. The original SUP was approved by Council on February 15, 2011. A

recent review resulted in the conclusion that two staff errors were made. The first was a scrivener's error. The second was that the applicant shall comply with section 4.6.1 subsection c.7 of the UDO, which requires the TUP issued under the SUP to be "limited by the number and consecutive days established in the individual Special Use Permit". No one caught the SUP would be limited by the number and consecutive days of the TUPs. The Town Attorney advised this must be taken back to the Planning Board and Town Council as a quasi-judicial public hearing in order to consider a limit to the number and consecutive days TUPs can be issued. Vega read the staff recommendation (*incorporated as part of these Minutes*) which was to add conditions 1a. and 1b. to the SUP. The Planning Board recommendation (*incorporated as part of these Minutes*) was also read.

Jensen asked how many TUPs have been issued through December 31, 2012, Vega answering eight, each permit covering more than one day of operation. Thirteen additional days have contracts for which TUPs have not been applied. Staff proposes to grandfather these 13 with evidence from the applicants that they have entered into contracts for these days. Eleven days are scheduled for 2013. Rowe asked how many events grandfathering would include, Vega stating 13 days for the remainder of 2012. Then there are 11 contracts for 2013. Staff recommends that from January 1 through December 31, 2013, an additional eight TUPs be allowed with no more than three consecutive days each and three days between each TUP. Jensen asked how the number of events could be limited to make everyone in the neighborhood happy. The Planning Board, stated Vega, asked the applicants to agree to doing this on a monthly basis; but the applicants did not agree to anything less than eight/month under 12 TUPs. Fordham added that at the Planning Board the applicant agreed to the one TUP per month but only if the applicant was granted 8 days per month.

OPPONENTS ADDRESSING STAFF: Steve Clark, 1125 Holt Road, expressed confusion about the permit language and how the Planning Board uses this language vs. how staff uses the language. Lassiter asked if the language can be changed for greater clarity. Vega stated staff gave the Planning Board their recommendations, but the Planning Board did not follow them. Fordham stated that as a legal matter, Council would have to stay within the issue as presented as to what was erroneously omitted from the SUP. Council would have to stay with language of the ordinance unless there is agreement that it doesn't have to.

APPLICANTS ADDRESSING STAFF: Kirkpatrick read portions of the staff presentation from Minutes of the February 2011 meeting, asking if this was what Vega recalled. Vega responded 'yes'.

COUNCIL RESPONDING TO VIEWING OF SITE: Jensen viewed the site and a neighboring house behind the lake. Rowe has not visited the site since this becoming quasi-judicial, but viewed the site when it was on the holiday tour. Schulze, Weatherly, Lassiter, nor Olive have visited the site. There were no questions about these observations.

APPLICANT TESTIMONY: Kirkpatrick clarified the SUP fails to have any limitations in it; limitations would apply to each TUP. The applicants' request is to have eight days of use under each of the 12 TUPs, limited further by no more than three consecutive days. Kirkpatrick called April Maness to speak about her business and how things have been since February 2011. Maness stated the proper channels were pursued in 2011 to obtain the SUP and the TUPs. Approximately 19 functions were held up until June 23rd; there were no complaints until after this day. They have gone above and beyond certain conditions of the SUP, and they voluntarily chose to abide by the Town's sound ordinance. The applicant employs neighbors; they have contractual relationships with other Town retailers/vendors which help the local economy.

Maness spoke about an altercation with a neighbor on June 23rd and efforts to conduct an informal sound study. The applicant verified that emails shown her by Kirkpatrick from Amy Amy (Amy Brown) and herself were received and sent (*incorporated as part of these Minutes*). There was never a condition to have the tent taken down within a certain timeframe; she did not circulate any sort of documents prior to the issuance of the SUP. The applicant verified and read her letter of June 30, 2012 to her neighbors as well as an email copy to Council (*incorporated as part of these Minutes*). Maness verified a quote, which is a preliminary estimate, from a sound engineer, LP Hitzigrath (*incorporated as part of these Minutes*). Fordham indicated that if this is not something they intend to do, in other words it is theoretical the relevance is questionable. Maness stated if a study is conducted and they are unable to meet the sound ordinance without implementing the results of a study, they would implement the methodology of the study. Kirkpatrick presented a calendar of events thus far (*incorporated as part of these Minutes*), verified by Maness, showing there may be months where there are no events at all. It also showed upcoming events for 2013. Kirkpatrick presented a copy of all contracts to date and upcoming dates in 2013 (*incorporated as part of these Minutes*) which were verified by Maness. The applicant stated no TUPs are pending at this time.

As required under the UDO, environmental, noise, safety, and traffic impacts have been addressed. There was a brief traffic issue on one occasion when they were short one valet. Maness stated they do not believe they will ever hold the 96 events that could be held if they are granted the eight days/month. They are asking for the eight days because it was recommended by the Planning Board, and it is an easier way to count the uses. Lassiter asked if Maness would prefer to have the terms spelled out differently, Maness stating she would have to think about that. She did offer three day events would be rare. The largest attended event was 244 people, the smallest about 40 people. Jensen asked and Maness stated noise tests have been informally conducted on their property, and they have received no citations about noise.

Dianne Khin, Planning Director, introduced herself and stated her qualifications. The Planning Department doesn't have a sound meter, but the Police Department does. Khin requested PD to go out to a rehearsal dinner to take readings during the time the sound ordinance was in effect, but the event was over when PD arrived.

Kirkpatrick stated she had no more questions for April Maness.

CROSS EXAMINATION OF THE APPLICANT BY OPPOSITION: Steve Clark asked the applicant about the tent and TUP requirements for charitable events.

Tina McGhee asked the applicant about use of indoor and outdoor toilet facilities. Responding to the Mayor, McGhee confirmed her concern is with overloading the septic system.

Noral Stewart, Acoustical Consultants, and hired by the Town stated his credentials. Fordham stated Stewart could not ask cross-examination questions because he is not here on his own behalf and he is not attorney. He could, however, testify at the appropriate time about what he's heard.

Amy Brown asked about an Apex Historical Society event held at the facility. Lassiter asked would he need to have a permit for a non-profit event held at his home, Khin stating that if this would not be a personal event, then Lassiter would need to get a type of TUP. Nonprofits fall under a different section of the UDO.

WITNESSES FOR THE APPLICANTS: Called by Kirkpatrick, Clay Molitor, 6724Wavecott Drive, Fuquay Varina, began speaking about noise levels. Fordham stated this witness would need to be an expert in order to make this testimony. Molitor could not be a proxy for an expert. Informal instruction from an expert who was not present would not qualify Molitor as an expert. Fordham further stated this may not be able to be resolved on this evening, that more evidence may be needed, and in fairness to the applicants, give the applicants the opportunity to take measurements at another time. Kirkpatrick stated relevant to Council would be that effort was made by the applicant to determine levels. Maness stated, in response to the Mayor, the pond takes up 1.05 acres.

Called by Kirkpatrick, Richard Gray, 6308 Old Jenks Road, spoke about industrial-sized dog kennels, a workshop, a church at the end of the street that has a couple carnivals a year, and schools with sporting events and dances – all events which bring noise, these events being growth and progress for the community. Gray spoke about the condition of the Maness property, the tent, traffic, and the music. Gray spoke about his working for Delta Airlines and what he was up against as far as noise in putting in new flights and services.

Called by Kirkpatrick, Daniel Perry, 100 Ackworth Court, Cary, stated they do catering for the Maness', which helps them to hire additional people. It allows them to grow their business, and this helps the community.

Called by Kirkpatrick, Patty McDonald, 6312 Old Jenks Road, stated she lives directly behind the Maness' and is employed by them. She presented her views on how the Maness' run their business, her observations of the neighbors, sewage, music, and traffic. Responding to Jensen, McDonald stated revenge by neighbors has taken place. Lassiter stated he encourages neighbors to anonymously, if necessary, report any such revenge. Responding to Schulze, McDonald stated the neighbor involved in the weed eater incident lives across the street across Old Jenks Road.

Amy Brown attempted to ask McDonald about her email, Fordham stating there could be from McDonald only answers and no counter questions.

Called by Kirkpatrick, Erik Lentue (spelling), owner of Nationwide Parking and Valet, spoke about procedures and parameters put in place during events. Responding to Schulze, Lentue (spelling) explained the entering of, dropping off, and exiting procedure of the busses.

Called by Kirkpatrick, David Dillon, Deputy Fire Marshall for the Town of Apex, stated he inspects the tent which has always been in compliance, enabling him to issue the proper permits.

Called by Kirkpatrick, George McDonald, 6312 Old Jenks Road, stated he lives directly behind the Maness' and shares 600 feet of boundary with them. He spoke about the maintenance of the property, noise, and traffic. Responding to Schulze, McDonald stated if his window is open, he can hear music, but it's much less noise than the cars going by on the road. His bedroom faces from where the noise would come, they sleep with the windows open a lot, and noise has not been a concern.

Called by Kirkpatrick, Allan Maness, applicant, spoke about the other businesses/establishments in the area, the use of their property, their compliance with the permits, the septic system, an incident with a neighbor, traffic, and maintenance of the port-a-johns. Responding to Schulze, Maness pointed to the (Brown) Mills property on the map, the property where the weed eater incident occurred. Responding to Rowe, Maness stated they did not design the septic system; it was done by contracted engineers. An eight-unit restroom trailer was brought in for a larger event of 240 attendees.

Tina McGhee, on cross of Maness, commended them for what they are doing, her main concern being the septic system and the ramifications the neighbors will eventually suffer. McGhee asked several questions which would put conditions on the Maness' regarding the septic system, Fordham stating this would be a personal conversation, and questions need to be those pertinent to what had come before the Council. Fordham continued that a relevant question would be if the Maness' would be willing to have special conditions placed on the SUP. Otherwise, what Maness stated he would or wouldn't do would not be binding.

Responding to Schulze, Maness stated that if tests show the sound ordinance is being violated, they feel they can devise a strategy that will bring them within ordinance limits. Responding to Jensen, Maness stated they could hire a consultant if determined that needed to be done. Fordham stated this was not pertinent to the evidence unless it was made a condition of something.

Attorney Kirkpatrick rested her case.

Mayor Weatherly called for a 10 minute recess. The Hearing continued at 10:25 p.m.

SPEAKING IN OPPOSITION: Greg McGhee, 6314 Old Jenks Road, stated he wished to speak about last week's Planning Board meeting and the petition distributed at the July 17th Council meeting. Fordham stated the petition would be hearsay and what happened at a previous meeting was irrelevant.

McGhee addressed the Findings of Fact and other information received from the Planning Department regarding temporary permitting. Responding to Rowe, McGhee stated he was expecting two events/month over 12 months of which he did not have a problem. The problem is when there were eight events/month, which is not what was set out to be dealt with. Fordham asked did McGhee hand out a document to Council, asking for an explanation. Fordham instructed the documents to be handed to the Clerk and assisted McGhee in the proper distribution of the documents. Kirkpatrick objected to Council relying on any evidence outside of this hearing, especially to the extent it was hearsay, objecting to the petition being distributed to Council. The petition was removed from the packet of information; the information (*incorporated as part of these Minutes*) was redistributed to Council by the Clerk. Fordham stated McGhee could then use the information as evidence.

McGhee spoke on the TUP dated May 2012. Khin responded to McGhee that she remembered talking to him on the telephone, letting him know that she was investigating the issue. McGhee spoke on another TUP on the 17th in order to get the police to monitor the traffic. Responding to Rowe, McGhee stated the TUP written from May 5th to June 23rd was not complied with by the Maness'. Responding to Jensen, McGhee stated noise is a great concern. McGhee continued about issues relating to the music and septic system. In response to Jensen, McGhee stated there is also a light issue. Jensen complimented staff for working hard to be fair on this issue and assured McGhee there is no collusion between staff and the Maness'.

CROSS OF OPPOSITION: Kirkpatrick asked McGhee about police going out to the Maness' property. Patty McDonald asked McGhee to show her where he lives, Fordham stating he'd already done that. McGhee objected to the question. Fordham stated McGhee needed to stand for cross examination and explained the cross examination process. McDonald asked again about McGhee's living arrangements, the Mayor stating the question was relevant if McGhee was attesting to nuisances. McGhee answered the question. McDonald asked how the music bothered McGhee, his stating the noise vibrates the window panes.

Steve Mills, 6253 Old Jenks Road, spoke to the noise issue, what the permit states, and traffic. Responding to Schulze, there were three other occasions, making four in total, that traffic was backed up for an hour. Responding to Rowe, Mills' complaint about the noise is that it is loud and rattles his window panes. He does, however, have a willingness to have the Maness' fix this.

Steve Clark spoke to the frequency of events, his closing down a show dog kennel because of wanting to be considerate in the neighborhood, and noise issues. He praised the Maness' for their business and what they are trying to do, but considered should be the type of activities compatible with the neighborhood. Fordham stated the Apex noise ordinance does not apply to the Maness' property as a criminal ordinance. It applies as a zoning condition, Clark stating he was not interested in enforcing criminal actions.

Fordham clarified that the Planning Department responds to complaints about violations. Responding to Lassiter, Fordham stated that if the Wake County noise ordinance is being violated, the Sheriff's Department can be called. This would be quick enforcement. For zoning enforcement, zoning officers can't arrest people. This would have to go through the normal process of investigating a complaint. Responding to the Mayor, Fordham stated the Apex Police Department could go out if a complaint is registered to verify compliance of the SUP. Responding to Rowe, Clark stated that he has not noticed traffic issues when traveling in the area. Responding to Jensen, Clark stated that with his house being about 1,200 feet away, trees are a big help in scaling down the noise. Nothing is rattling his windows.

Steve Mills spoke about the incident in his yard and guest behavior.

Noral Stewart spoke about permits and noise ordinances, the nature of some sounds, meeting noise limits, issues with tent-like structures, pond effects, and human tolerance to noise levels. Responding to the Mayor, Stewart stated he hesitated to say what would be boundaries or whether or not the Maness' could comply with the ordinance because he had not done any analyses. Experience with similar types of situations is what tells him it will not be easy. Responding to Jensen, Stewart stated modern meters can continuously monitor sound and give reports of the sound levels. Responding to Rowe, the most common time set in federal regulations for quiet time is 10:00 p.m. until 7:00 a.m. Responding to Kirkpatrick, Stewart stated he has not been to the property nor has he done any real investigation.

REBUTTAL BY TOWN STAFF: None.

REBUTTAL BY THE APPLICANT: Kirkpatrick calling Khin, Khin stated that the TUP form in use was created several years ago by Buildings Inspections so that each Town department would have a space for sign off. The new TUP form was created prior to the Maness' application for a SUP. 10:00 p.m. was added by the Police Department for Town events. Kirkpatrick referred to the SUP permit handed out by McGhee, speaking to the findings under paragraph 3. Kirkpatrick stated the overriding SUP has differing hours. Maness stated one of the Planning Board members recommended the form be amended since the form was meant to be used for festivals, etc. Fordham pointed out that the Planning Department has authority under the existing SUP to add additional conditions to mitigate adverse impacts. Responding to Jensen, Maness stated all music is ended by 11:00 p.m. if not before.

Schulze stated someone spoke to the tent coming down and on-street parking but that he did not see these anywhere in the permitting process. Khin stated she did not know where the 24-hour time period for the tent to come down came from; this was not discussed in the hearing, with staff, or the applicants. There was a site plan, as required, which addressed parking. Khin explained the process if TUPs were violated. Fordham added that Khin has authority under the UDO to revoke the SUP if certain levels of violations occur. There is not a standard as to how many violations this would be, and this is not an issue before anyone. Responding to Rowe, Khin stated the original SUP intended that the tent could be up for the duration of the TUP, meaning that it could be up for longer than one wedding.

Stewart read the exact wording of the ordinance for the record which supposedly applies: "Other Prohibited Noises: the following acts are specifically declared to be unreasonably loud, annoying, frightening, loud or disturbing noise, the omission of which shall be unlawful" and a number of situations are listed. The third situation states, "the playing of any radio, phonograph, amplifier, television, tape deck, tape recorder, or musical instrument in such a manner or with such volume during the nighttime hours as to annoy or disturb the quiet comfort or repose of any person or persons in any dwelling, hotel, motel, or other type of residence".

Mayor Weatherly closed the evidentiary part of the Hearing.

CLOSING ARGUMENTS: Amy Brown hoped the Maness' did not think the community came out with ill-will towards them. They simply want peace and quiet. Brown stated maybe the Maness' weren't aware of the issues, her having faith they will rectify the situations. It was surprising to her that one event could cover 40 days, and Brown admitted this is a learning experience for all. She expressed wishing to see the business do well; she simply wants to see the permit standards complied with.

Kirkpatrick stated it is the Oaks at Salem's intention to be good neighbors and to conduct this business on a temporary basis no more than eight days/month, which they do not see as unreasonable. While not conceding there are noise issues, the Maness' will take steps to address the noise. They are mitigating impacts and taking proactive steps to be sure they are operating within the permits they have been granted. The Maness' do not think eight events/month unreasonable, and they do not see this happening every month. There does seem to have been miscommunication with the scrivener's error which allowed misconception, and the Maness' are not at fault because of this. The applicant's do feel they have met the burden and that they are minimizing the impact and asking for eight days under each TUP.

With no further closing arguments, Mayor Weatherly declared the Public Hearing closed.

On advice from Fordham as to procedure because of the late hour,

MAYOR WEATHERLY REOPENED THE PUBLIC HEARING AND CALLED FOR A MOTION TO CONTINUE THE PUBLIC HEARING TO THE SEPTEMBER 4, 2012 REGULAR COUNCIL MEETING. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC FORUM

No one wished to address Council. However, Council Member Rowe stated someone was in attendance earlier, he assumed, who wished to mention the fundraiser for Lufkin Middle School.

NEW BUSINESS

There were no New Business items for discussion.

WORK SESSION

There were no Work Session items for discussion.

CLOSED SESSION

There were no Closed Session items for discussion.

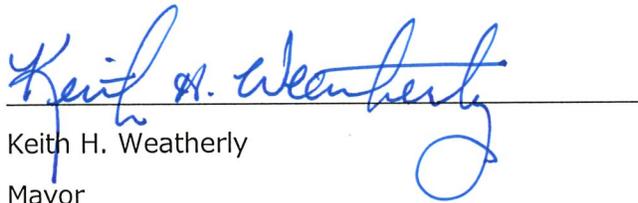
ADJOURNMENT

WITH THERE BEING NO FURTHER BUSINESS, MAYOR PRO TEMPORE SCHULZE CALLED FOR A MOTION TO ADJOURN.
COUNCIL MEMBER ROWE MADE THE MOTION; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, SEPTEMBER 4, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 4, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street.

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. Mayor Pro Tempore Schulze gave the Invocation; Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

1. Annexation Petition #479, Travis Richardson Et Al, owners, petitioning to annex 35+ acres contiguous to the Town's Corporate Limits, property located west of Milano Avenue and on the east and west side of Mt. Zion Church Road. (1) Adopt Resolution Directing Town Clerk to Investigate Petition Received; (2) Accept Certificate of Sufficiency by Town Clerk; and (3) Adopt Resolution Setting Date of Public Hearing for September 18, 2012.
2. Set Public Hearing for the September 18, 2012 Town Council Meeting regarding Rezone #12CZ08, 103.6 acres generally located at Milano Avenue
3. Set Public Hearing for the September 18, 2012 Town Council Meeting regarding 1928 Olive Chapel Road, Rezone #12CZ09
4. Approve Minutes of the August 14, 2012 and August 28, 2012 Personnel Committee Meetings

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE CONSENT AGENDA; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega, Principal Planner

Continuation of Quasi-Judicial Public Hearing from the August 21, 2012 Regular Town Council Meeting regarding an amendment to Special Use Permit #11SUP01 located at 6304 Old Jenks Road, PIN #0743-20-2783. The amendment is being requested by staff to correct an omission that occurred when the SUP was originally approved without including a limit on the number and consecutive days of future Temporary Use Permits to be issued under the Special Use Permit.

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

Mayor Weatherly declared the Public Hearing open and continued. The Mayor explained he would call on staff to give the standards which must be met, the petitioners would have an opportunity to offer any additional information, and the opponents would be able to ask questions of the petitioners and to present their rebuttal. Council would then deliberate with no input from the public.

Dianne Khin, Planning Director, stated the standards (*incorporated as part of these Minutes*) and how these were met or not applicable to the 2025 Land Use Plan. With respect to the first Standard, Ms. Khin distributed to Council the Executive Summary of the 2025 Land Use Plan and addressed the goals which are part of the Comprehensive Plan (*the Executive Summary incorporated as part of these Minutes*). Fordham stated one other standard in the UDO in another section is that the proposed use is in the public interest Fordham also addressed two other standards in the UDO that are listed at the bottom of the standards sheet indicating that the applicant does not have the burden on these last two standards, but a permit should not be issued if these are true (*the Standards Sheet is incorporated as part of these Minutes*).

No Council Member stated he had had ex-parte communication of any sort since the last hearing. Mayor Weatherly spoke with the Town Manager on the morning of this day, being told that Environmental Services received an inquiry about the Maness' septic system and indicated they would review the system.

PRESENTATION BY APPLICANTS: Attorney Kirkpatrick stated there was no new information to offer, but they would like to respond to any opposing information. Responding to Weatherly, Kirkpatrick stated the Town has approved the tent to go up so that the sound system studies can be done.

PRESENTATION BY OPPONENTS: Tina McGhee contacted Kent Daeke of Wake County Human Services by telephone, stating she held a copy of her letter as well as the wording from Daeke's phone conversation. McGhee began reading Daeke's letter, Fordham interjecting and stating this was hearsay. It would be acceptable to have Daeke called and sworn in to testify. McGhee stated Daeke would not come out since the Maness' don't have a Change of Use Permit, therefore being a waste of his time to evaluate the septic system. Daeke spoke with Town Manager Radford. Fordham stated that even if Radford was sworn in, his testimony of his conversation with Daeke would be hearsay and not permissible.

McGhee asked to submit her documents as evidence, Fordham stating that anyone at the end of the proceedings after a decision is made could submit any evidence that was denied as an "offer of proof". The person would submit the information to the Clerk, record a statement, and then if an appeal is filed, the Superior Court would determine if the evidence should have been considered by this Council. At this point, McGhee submitted to the Town Clerk the following documents: (1) a letter dated August 30, 2012 from Tina B. McGhee to Whom It May Concern, and (2) a letter dated August 24, 2012 from Tina B. McGhee to Mr. Daeke, Wake County Human Services. Kirkpatrick received a copy of the letters.

Jensen asked staff about buffer requirements as those required for businesses. In the requirements for the SUP, Jensen asked if Council could require the property line to be buffered by Cypress' to try to mitigate light and sound spill over. Khin's understanding was that in original approval, it could have been required; but she was not sure this could be required now. Fordham stated this cannot be imposed; Council could only ask [not require] the applicants to do this. Fordham reiterated Council

can only consider number and consecutive days. Jensen asked that the applicants look into and consider this.

Mayor Weatherly declared the Public Hearing closed.

Council addressed each standard. Fordham stated it would make sense to consider the standards in relation to some number and consecutive days. Brendie Vega, Principal Planner, read the recommendations from the Planning Board as well as those from staff. The Maness' schedule of events was presented (*incorporated as a part of these Minutes*).

Council deliberated the standards:

- Standard 1: believed to be met.
- Standard 2: Schulze believed that an event hall on a permanent basis would not have been allowed. Based on the number of events, this does not seem to be a temporary use. Jensen agreed, stating this was his concern about buffering for compatibility with the surrounding areas. There is a responsibility by the applicants to try to minimize any effects on this rural neighborhood. Schulze stated 36 days was a good number in his mind; 96 is definitely out of the question. Rowe stated having events eight weeks in a row between May and June seems to have started the controversy, and the acoustical consultant had already pointed out noise once in a while is not bothersome while continual noise can become irritating. There almost needs to be a break each month.
- Standard 3: not applicable.
- Standard 4: Schulze believed the noise would become a nuisance after 36 days.
- Standard 5: Jensen addressed concerns about the septic system, stating that sewage could possibly get under neighbors' property. Wake County should assure that the system is acceptable. The Maness' agreed to accept approval by Wake County of the system as a condition.
- Standard 6: not relevant.
- Standard 7: staff will ensure this is met.
- Standard 8: believed to be met.
- Standard 9: not a specific concern.
- Additional two standards: these would be moot points if the other standards are agreed with.

Schulze stated his suggestion of 36 days is consistent with what staff recommended; events for 2012 and 2013 would be grandfathered. The initial impression was this would be a sideline and not a full-fledged business.

Olive stated he likes the simplicity of the Planning Board's solution. It is easy to measure and determine for the applicant and neighbors whether or not the SUP was being adhered to. The staff recommendation might lead to confusion since it goes another one and one-half years. Additionally, the 3+3 rule is a good way to break up events sufficiently. Maybe there needs to be a per month limit as proposed by the Planning Board, as in 9 or 10 days/month. Maybe a per year limit needs to also be imposed, as in 36-40 events/year. For either plan, the summer may see events every weekend. Olive's recommendation, therefore, would be 3+3, 10 days maximum/month, and 40 events per. Rowe stated this would allow for events every weekend, almost allowing this to be a permanent installation with no break from the activity. From history looking forward, only weekdays would provide a break.

Schulze stated it would be fair to the neighbors, as he sees the calendar growing, to have one weekend/month without an event. Fordham reminded Council of the noise levels of the ordinance. Rowe would like to see eight days/month with a maximum, meaning that every month could not be loaded up. Olive felt there would be some statistically, natural separation. The Mayor clarified that the events already contracted would be included in whatever numbers Council settles on. If they are, however, inconsistent with the number of days, they would still be allowed.

Responding to Olive, Fordham stated that there will not be an opportunity to reconsider the SUP at some point in the future. The SUP will say what it says and the Planning staff will have authorization over the TUPs to mitigate impacts. If there are violations, enforcement will be through the Planning Department. The SUP is valid for 10 years of its issue date.

Mayor Weatherly asked if this Hearing could be kept open for a period of time in order to give the applicants time to address the noise issues before Council makes a final determination. Fordham stated the Hearing cannot be left open indefinitely or for an unreasonably long length of time. The purpose of the Hearing is not an enforcement mechanism, but to set the appropriate number and consecutive days. Council can take additional time if it feels it is needed to hear relevant evidence. Weatherly questioned Council as to going through the end of September to allow mitigation of the

issues of the neighbors before making a decision. The applicants as well as McGhee and other opposing parties were agreeable to this. Responding to Lassiter, Fordham stated that setting a low threshold with the possibility of raising that threshold at a later time would not be legally binding.

Mayor Weatherly declared the Public Hearing reopened, with consensus from Council, in order to continue the Hearing. Olive stated he understands the mitigation attempts, but he knows where he stands on this issue, does not need an extension, and that he would not oppose a vote on this evening. However, if there is surprising future evidence, that may make a difference as to how many consecutive days Council considers.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO
CONTINUE THE HEARING TO THE FIRST COUNCIL MEETING IN OCTOBER;
COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Radford stated he had a proposed contract with Mr. Stewart the acoustical engineer, Stewart agreeing to oversee and collaborate with the tester. Radford asked Council if it wished to enter into the contract. Council discussed not being entirely comfortable with this, objection because of this costing an additional \$1,600, the independent tester being qualified to do the testing, and what more the Town would be getting from Stewart.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO
CONTRACT WITH STEWART; LASSITER SECONDED THE MOTION.

Council Member Jensen felt it unfortunate that the applicants could not give the money to the Town and have the Town hire the contractor. This is an opportunity to get verification. Rowe stated this study would not be like a traffic study, pointing out that the tester would be getting readings strictly from a meter.

COUNCIL MEMBER JENSEN WITHDREW HIS MOTION; COUNCIL MEMBER
LASSITER WITHDREW HIS SECOND TO THE MOTION.

OLD BUSINESS

There were no Old Business items for discussion.

PUBLIC FORUM

No one wished to address Council.

NEW BUSINESS

There were no New Business items for discussion.

CLOSED SESSION

Closed Session to consult with the Town Attorney about legal issues and potential litigation.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO GO INTO CLOSED SESSION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR PRO TEMPORE SCHULZE CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER ROWE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Mayor Weatherly called for a five-minute recess after which the Meeting was resumed.

WORK SESSION

Council Member Jensen: Mr. Jensen will present his ideas and plans for the Halle Cultural Arts Center. Council will discuss, consider, and ask questions. Council may choose to direct Staff to pursue this plan or another as may be presented in the future.

Council Member Jensen stated his reason for this discussion is that he wishes to see a more detailed Marketing Plan, as it appears from the calendar that the facility is not used to the degree it could be. In the budget meeting, it was determined the Center was not going to make money. Mayor Weatherly stated Council should give the advisory commission and staff something to think about and formulate in order to get people to consider using this venue as an option. The Parks and Rec Director's mission statement does not speak to developing a revenue stream; more direction would be needed from Council if this is to be a goal.

Parks and Rec Director John Brown presented Council what he and his staff have done based on Council's wishes. A programming plan was not asked for; the Master Plan is currently being updated with citizen input. The draft of this Plan was discussed at the Advisory Commission meeting last week with some of the same concerns as Council. If the concern is downtime at the Center, then we need

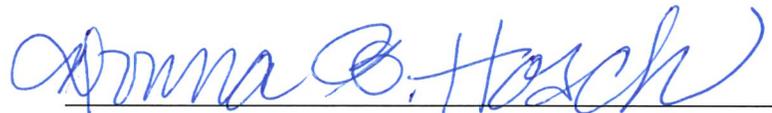
an advertising campaign. The direction by Council to the Advisory Commission and staff is to give Council options that they feel are the best utilization of service and time, not necessarily revenue generated.

Renee Anderson, Programming and Marketing Specialist, Halle Center, presented Council with a summary of current and past activities, Council stated as long as there is an increase in marginal use of the building and the community sees it as a viable place for events, then the Center should run on its own steam. Marketing costs could go up \$20-30,000 if a plan is in place.

Angela Reincke, Chairperson, Parks, Recreation, and Cultural Resources Advisory Commission, spoke about the Master Plan being started and goals needing to be made clear. At the end of the Master Plan process in March, an entire package will be published utilizing five points: desired service/set of services, a metric to measure utilization, a measure of the current utilization as a baseline, active marketing for services, and measuring usage after the fact to see if the marketing campaign helped.

ADJOURNMENT

WITH THERE BEING NO FURTHER BUSINESS, MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.
MAYOR PRO TEMPORE SCHULZE MADE THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



TOWN COUNCIL MEETING

TUESDAY, SEPTEMBER 18, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 18, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street.

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. Mayor Weatherly gave the Invocation and led the Pledge of Allegiance.

Mayor Weatherly introduced former Apex Mayor Bob Barker who also served as Mayor of Fuquay Varina and as a Senator in the State Legislature. Mr. Barker stated this is the 40th anniversary of Bob Barker Company, giving a brief history of the largest detention supply company in the country. Mr. Barker has written a book, "I'm in Cells", and read a brief passage from the book relating to Apex. Mayor Weatherly and Council were presented a copy of the book

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

1. Minutes of the August 21, 2012 Regular Meeting and the September 4, 2012 Closed Session
(*Closed Session Minutes recorded separately*)
2. Town of Apex Tax Report dated August 6, 2012
3. To transfer Plot 3 in Block H of the S.S. Rogers Section of the Apex Town Cemetery

4. 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 October 2, 2012 on the Question of Annexation – Apex Town Council’s Intent to annex Wake County Board of Education’s property containing 3.919 acres located off Humie Olive Road, north of Old US 1 Hwy, Annexation #480
5. Street closures for Apex High School Homecoming Parade
6. Section 20-167 of the Code of Ordinances of the Town of Apex to include a subsection for one-hour parking and to limit parking for the first four marked, angled spaces excluding the two handicap accessible spaces on Town Side Drive north of Heritage Village Lane
7. Interlocal Agreement For Interim Cost Sharing And Capacity Allocation Related To The Western Wake Regional Wastewater Management Facilities

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega

Quasi-Judicial Public Hearing and ~~possible~~ motion regarding the Major Site Plan for West Apex High School at 7901 Humie Olive Road

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

Mayor Weatherly gave his Opening Statement – Explanation of Issue, Standards, and Procedures for Quasi-Judicial Hearing on West Apex High Site Plan (*incorporated as a part of these Minutes*).

Mayor Weatherly declared the public hearing open. All parties wishing to testify and those wishing to participate as interested parties were sworn in by the Town Clerk.

RECOGNITION OF APPLICANT: Kenneth Haywood, attorney for the Wake County School System, stated he was the applicant.

CONTACT WITH APPLICANT/CONFLICTS BY COUNCIL: The Mayor and Jensen stated they have had no contact with the applicant and no conflicts. Rowe has business relationships with Chris Hilt and Charles Todd, none having to do with this project; this would not influence his decision. Responding to Fordham, Rowe stated there is no present relationship, nothing is currently on the table, but these individuals may end up on a job in the future. Fordham stated Rowe would not have to recuse himself if nothing is currently in progress and if Rowe felt he could be impartial. Lassiter stated he has not had contact with the applicant but that he is employed by the Wake County School system; therefore, he asked to be recused.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO RECUSE COUNCIL MEMBER LASSITER; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 4-0 VOTE.

Olive stated he has had no communications with anyone involved in the case and could be impartial in his decisions.

OPENING STATEMENT BY APPLICANT: Haywood stated he has appeared before the Planning Board, and that this site plan for West Apex High School has support of neighbors, community, staff, and the Planning Board. Requirements of the UDO have been met.

COUNCIL RESPONSE TO VIEWING OF SITE: Mayor Weatherly nor any of the four Council Members had viewed the site.

EVIDENCE FROM STAFF: Brendie Vega, Principal Planner, presented her credentials and employment history with Apex. Vega presented particulars of the site. A neighborhood meeting was held and concerns were presented; a subsequent meeting was held. At this time only the high school, utilities, and parking will be reviewed.

Lauren Simmons, Planner II, presented her credentials and employment history. Lighting will be compliant with the UDO, most of the landscaping will be new. Architectural surfaces meet UDO standards. Jensen asked about the Type D buffer along Humie Olive and if that satisfied the

neighbors, Simmons responding that berms and a multi-use path will be included. She believed neighbors were satisfied.

Russell Dalton, Transportation Engineer, presented his qualifications and employment history. Various meetings regarding a traffic analysis were attended; a traffic impact analysis addendum was done. Future buildings were discussed, the applicant having to come back through the Town if they want to expand later. Responding to Jensen, Dalton explained 85% of the traffic would be coming from the north and east, 10% from the west end of Humie Olive, and 5% from Richardson Road. In response to requiring a light on US1, there will need to be more residential growth before this is done. If there are serious issues after the high school opens, then we may need to look at safety warrants and consider a recommendation for a signal. Rowe asked if it is believed the 45 MPH speed limit will be in place, Dalton answering yes. This is not critical enough to be made a condition of approval. Widening of the road will be considered if it appears traffic is a problem. Responding to Jensen, Dalton stated DOT is satisfied with the current realignment plan.

Vega stated the Planning Board recommended approval, but raised concerns about the reduction in parking and the Humie Olive Road and Old US1 realignment. The buffer should be a Type E. Staff recommends approval with the recommendation that the buffer label be changed from D to E to meet the UDO.

QUESTIONS FROM COUNCIL TO STAFF: Schulze asked the grounds for reducing the parking; what happens as the school grows? Dianne Khin, Planning Director, who earlier presented her qualifications and employment history, stated enrollment figures were used to compute the parking ratio. When the two additional site plans are ready, this will be looked at again. Two separate expansion plans have been reviewed, and the school system does go back and looks at parking if necessary. There is also a bussing system.

Jensen was still concerned about the realignment of Humie and US1. Dalton stated if there is a serious safety concern, DOT will be petitioned to solve the problem later. The Planning Board did express concern about this. Jensen asked if the properties are owned by one person, Simmons stating the owner had previously been spoken to and he was not necessarily opposed to realignment at some point. There was not a plan, however, at the time of this conversation.

TESTIMONY FROM PROPONENTS OF THE APPLICANT: Chris Hilt stated she is a landscape architect and gave her credentials. She presented why the new high school is needed and addressed roads, traffic, and parking. Responding to Schulze, Hilt stated there would be ample parking even for athletic events. Off-site parking is not managed, and the Principal would be allowed to determine who gets parking spaces.

Joshua Reinke, Professional Engineer, gave his credentials and discussed offsite roadway improvements. In a meeting with DOT and the Town, discussed was not interfering with any property development; a realignment would be discussed if there was development on the property. Responding to Jensen on realignment, Hilt stated when other schools come in, an impact analysis would be done to determine if the intersection does warrant improvements. Every request coming out of the impact analysis has been met. No parties have been asked to realign this road. Commitments have been made for other intersections which will substantially improve roads. Jensen suggested determining if realignment could be done now.

Hilt presented the landscaping plan, the impact of utilities, regulatory approvals, a no parking ordinance, and the schedule. Responding to Schulze, utility routings will be able to be properly tracked and neighbors were given drawings of where the force mail will be.

QUESTIONS OF WITNESSES: Haywood asked Hilt if a school fits within the zoning district, the response being 'yes'. The zoning district supplemental standards do not apply to this site; slope mitigations comply; along Humie Olive Road, the ROW dedication on the Thoroughfare Plan is met; and the required improvements regarding site standards of the UDO are met.

Haywood went through the legal aspects related to compatibility, zoning district supplemental standards, site development standards, mitigation of steep slopes, dedication of the ROW, required improvements, utilities which will be onsite, and compliance with other standards. Haywood thanked everyone, making assurances that all requirements are either met or exceeded.

QUESTIONS FROM INTERESTED PARTIES: Cathy Deely of 2508 Whistling Quail Run asked about time constraints of the traffic flow at the intersection of Whistling Quail and Blazing Trail. Reinke presented an explanation of the how the traffic flow was assessed and the resulting improvements from their studies. Hilt further explained the creation of a right turn lane to help alleviate peak traffic

times. Deely stated she hoped annexation would not occur with the advent of public utilities unless it is by choice of the neighbors. The Mayor stated this would not happen.

Jeff Farlow of 2628 Whistling Quail Run expressed concern that if Grouse Court was punched through, it would create a shortcut off Whistling Quail to Evans Road, thus bypassing all the improvements being done.

Mayor Weatherly declared the Public Hearing closed.

Mayor Weatherly presented the standards to Council (*incorporated as a part of these Minutes, Staff Report Page 4 of 4*). Standard a – met; b – not applicable; c – met; d – met; e – met; f – the Mayor asked if this standard related to the reduced parking. Khin stated that would have been standard c. However, the standard has been met since the UDO gives her the authority to make the decision on reduced parking and she has already done so. Standard g – met; h – met.

Schulze re-expressed his concern over the reduction in parking when he feels there is a clear need for the spaces, especially when there is talk about putting up signs in neighborhoods. The Mayor stated there is not an obligation to provide a space for every student since bus service will be provided. Rowe stated promises are hanging out there like about aligning utilities; and although these are not conditions regarding what has been heard tonight, we need to make sure the promises are followed up on.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO
APPROVE THE SITE PLAN; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 4-0 VOTE.

Mayor Weatherly called for a five minute break. The Meeting resumed at 9:28 p.m. Council Member Lassiter rejoined Council for the remainder of the Meeting.

Public Hearing 02 : Dianne Khin, Planning Director

Public Hearing and adoption of Ordinance regarding Annexation Petition #479 – Travis Richardson Et Al, owner/petitioner, petitioning to annex 35+ acres, contiguous to the Town's Corporate limits, located west of Milano Avenue and on the east and west side of Mt. Zion Church Road

Council was oriented to the site; staff recommends the annexation.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak for or against the annexation, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO
ADOPT THE ORDINANCE; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 03 : Reed Huegerich, Transportation Planner

Public Hearing and adoption of proposed amendments to the Thoroughfare and Collector Street Plan map

Three separate amendment requests were made by three different developers. Staff and the Planning Board support the first request. For the second request, staff recognizes there are benefits to not having driveway access from residential lots, so the Planning Department is fine with the change. The third request dealing with changes in the roads is felt to be appropriate by the Planning Department.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Clossen Engineering, addressed Council, stating they proposed the first and second items. They have agreed to eliminate driveway access between Milano Avenue and Mt. Zion, which takes up a good portion of the street through the development. Brian Castleman, introduced himself as the engineer for the third request.

Dan Howard, 1016 Starita Court, stated the removal of the section of Apex Barbeque Extension is a great idea. The neighborhood calls it "dead man's curve" because of no visibility in one direction.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO
ADOPT THE AMENDMENTS; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 04 : Lauren Simmons, Planner II

Public Hearing and motion regarding Rezone #12CZ08, 103.6 acres generally located at Milano Avenue, between Vincenza Drive and Mt. Zion Church Road from Low Density-Conditional Zoning, Medium Density-Conditional Zoning and Wake County R-80W to Planned Unit Development-Conditional Zoning

and a 2025 Land Use Plan Amendment from Low Density Residential to Medium Density Residential for the portion of the proposed PUD north of Blazing Trail

There are existing approvals on some of the properties. The land use plan was changed to low density residential at one point, the applicant now asking this to be changed back to the original designation of low and medium. No changes were proposed as a result of the neighborhood meeting. The Apex Transportation Plan was amended to address issues the applicant had with layout. The Planning Board unanimously recommended the rezoning with the condition the applicant provide a 150-foot right turn lane and continuous shared-through left lane on Blazing Trail Drive approaching Humie Olive Road prior to dedication of Blazing Trail as a paved, public street. The Parks, Recreation, and Cultural Resources Commission recommended a payment of fee in lieu for each lot.

Russell Dalton presented the traffic impact analysis, stating Engineering agrees with the findings and a summary report has been prepared.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering, on behalf of the Parkside Development Group stated the owners of Parkside still own approximately 50 acres of what is being proposed in the PUD. Another 50 acres are under contract to add to Parkside. A PUD is being proposed to consolidate all parcels into one unified development plan, this being consistent with the Land Use Plan.

Jeff Farlow addressed Council. The neighborhood thinks this a good idea because it will eliminate a possible shortcut for high school students, which would bypass the improved traffic flow.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO
APPROVE THE REZONING WITH THE CONDITIONS OF STAFF AND THE PLANNING BOARD;

MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.

THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 05 : Lauren Simmons, Planner II

Public Hearing and possible motion regarding 1928 Olive Chapel Road, Rezone #12CZ09. The subject property is approximately 27.46 acres identified on the Wake County Tax Maps as PIN 0722-81-3731.

The applicant seeks to rezone from Rural Residential (RR) to Medium Density-Conditional Zoning (MD-CZ).

The property is currently in the ETJ; annexation will be required prior to construction plan approval. A neighborhood meeting was held; no changes were made as a result of this meeting. The rezoning is consistent with the 2025 Land Use Plan, the applicant agreeing to certain zoning requirements. The Planning Board and staff recommend the rezoning with conditions agreed to by the applicant.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Clossen Engineering, stated they are in agreement with the conditions of the Planning Board and staff.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. AFTER RECONSIDERING THE FIRST MOTION BY COUNCIL MEMBER JENSEN, COUNCIL MEMBER JENSEN THEN MADE THE MOTION TO APPROVE THE REZONING WITH THE CONDITIONS AGREED TO BY THE DEVELOPER; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

There were no Old Business items for discussion.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01 : Lauren Simmons, Planner II

Possible motion approving Covington – Master Subdivision Plan – for the property located at 1928 Olive Chapel Road containing 27.46 acres and 77 lots

This plan is in keeping with standards. The Planning Board unanimously recommended approval along with staff with conditions agreed to by the applicant. Stuart Jones, Jones and Clossen Engineering, was present on behalf of Green Olive Investments.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE PLAN WITH THE CONDITIONS AGREED TO BY THE APPLICANT; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 02 : Brendie Vega, Principal Planner

Possible motion approving Colvin Park – Master Subdivision Plan – for the property located in the area of Smith and Stephenson Roads containing 62.6 acres and 148 single-family home lots

Annexation will be required prior to approval of the construction plans. Three neighborhood meetings were held with issues raised concerning traffic and the rezoning and utility agreements. Architectural standards were conditioned as part of the rezoning. The Parks, Recreation and Cultural Resources Advisory Commission recommended a fee in lieu of \$2,980.04/unit, the applicant appealed the decision based on appraised value, a fee in lieu of \$1,294.59/unit being granted on appeal. Discussion centered on the reduction in fee, Khin stating this was rather a fair market value determination. The process was explained by Khin and Fordham which is driven by State law. The Planning Board unanimously recommended approval; staff recommends approval with conditions.

The applicant is okay with the conditions; the final design of Stephen and Smith Roads are still being worked out with DOT and the applicant. Conversation re-centered on the appraisal and fee amount. Fordham gave Council options if it wished to have the appraisal reconsidered. There may be recourse; but if that is done at this late hour, it may cause a problem. A project cannot intentionally be delayed in order to change the rules.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE PLAN BASED ON LEGAL NECESSITY AND WITH THE STIPULATED CONDITIONS; COUNCIL MEMBER OLIVE SECONDED THE MOTION.

Questioned was the value of the appraisal at a point in time where the value of the land was quite a bit lower. The Town set the rules and the applicant followed those rules. This may be something to be discussed in the future. Most communities can only charge rec fees based on tax value. Apex was awarded special legislation in 1995 which requires the fee to be determined at the time the initial development application is submitted to the Town. The Town can request the General Assembly to change the legislation, although this particular circumstance will probably never come up again.

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

CLOSED SESSION

Closed Session for a personnel matter: routine review related to the Assistant Town Attorney and to receive legal advice about potential litigation and to give direction to the Town Attorney.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO MOVE INTO CLOSED SESSION; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

COUNCIL MEMBER LASSITER MADE THE MOTION TO MOVE BACK INTO OPEN SESSION;
COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

ADJOURNMENT

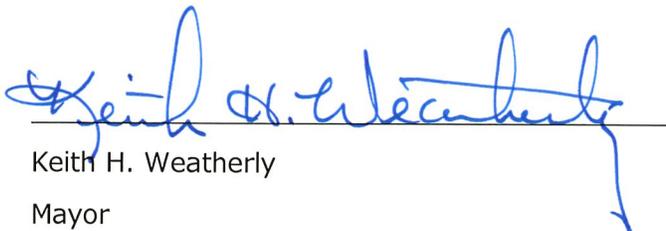
With there being no more business before Council,

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO ADJOURN;
COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



TOWN COUNCIL SPECIAL WORKSHOP MEETING

TUESDAY, SEPTEMBER 25, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

A Special Workshop Meeting of the Apex Town Council scheduled for Tuesday, September 25, 2012, at 6:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, and Town Clerk Donna B. Hosch. Absent was Council Member Lance Olive.

COMMENCEMENT

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

Mayor Weatherly stated this meeting was a result of several Council members wanting to take a look at the land use plan to identify several potential non-residential sites.

Radford stated the Town identified several sites for non-residential development, utility costs being determined for each. Wooten Company was given the task of costing out the utilities. Marty Stone, Professional Engineer with Wooten, was then asked, because of infrastructure costs, to identify the most suitable two or three sites. Stone expounded on information in his PowerPoint presentation (*incorporated as a part of these Minutes*).

The estimated infrastructure costs include throw away costs for sewer facilities. A developer would be responsible for infrastructure costs; the Town would use its monies to "jump start" the process. As far as economic opportunities, Veridea is the most suited right now for these opportunities. The Town's current and future identified projects are financially covered. Estimated water and sewer costs for the three identified, suitable sites were given.

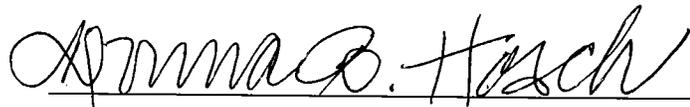
Tom Hendrickson representing Veridea spoke on the timeline for the proposed 2014 DHHS project, which is ambitious. If the DHHS project does not come to Apex, a substantial part of the design element would still be viable for another occupant. Administration will provide Council with these estimated figures in three weeks.

Dianne Khin, Planning Director, presented an update of the Comprehensive Plan (*incorporated as a part of these Minutes*). Responding to Council, the public will be invited to be involved with and to comment on the Plan through workshops, the website, etc. The update will be a 9-month process, which can't be shortened. Consensus of Council was to proceed with the budgeted \$60,000 cost of this process.

ADJOURNMENT

With no further business before Council,

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION
TO ADJOURN; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 4-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:


Keith H. Weatherly
Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, OCTOBER 2, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 2, 2012, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. Council Member Rowe gave the Invocation; Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

Mayor Weatherly presented, on behalf of Council and the Town, a Certificate of Recognition to Toler Webb, the Pokemon Video Game Senior Division World Champion for 2012 and a resident of Apex. Toler gave a brief background on his rise to becoming world champion.

CONSENT AGENDA

1. Minutes of the September 4, 2012 Regular Meeting, the September 18, 2012 Regular Meeting, the September 18, 2012 Closed Session (*Closed Session Minutes recorded separately*), and the September 25, 2012 Special Workshop Meeting
2. Budget Ordinance amendment for insurance reimbursement for lightning damage at the wastewater treatment plant
3. Set Public Hearing for the October 16, 2012 Town Council Meeting regarding various amendments to the Unified Development Ordinance

4. Adopt a Resolution Directing the Town Clerk to Investigate Petition Received, accept the Certificate of Sufficiency by the Town Clerk, and adopt a Resolution Setting Date of Public Hearing for October 16, 2012 on the Question of Annexation – Apex Town Council’s intent to annex the Gaster Family Trust property containing 7.450 acres located off James Street, Annexation #481, into the Town’s corporate limits
5. Accept Statement of the Apex Town Council and adopt Ordinance for Rezoning Case #12CZ08, Stuart Jones – Jones & Crossen Engineering, PLLC, authorized agent for Peak Property Group, petitioner for the property located at the end of Blazing Trail, Milano Avenue, and Mt. Zion Church Road
6. Accept Statement of the Apex Town Council and adopt Ordinance for Rezoning Case #12CZ09, Stuart Jones – Jones & Crossen Engineering, PLLC, authorized agent for Green Olive Investments, LLC, petitioner for the property located at 1948 Olive Chapel Road
7. Approve the rules and guidelines governing the use of dog parks

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega

Continuation of Quasi-Judicial Public Hearing from the September 4, 2012 Regular Town Council Meeting and motion regarding an amendment to Special Use Permit #11SUP01 located at 6304 Old Jenks Road, PIN #0743-20-2783. The amendment is being requested by staff to correct an omission that occurred when the SUP was originally approved without including a limit on the number and consecutive days of future Temporary Use Permits to be issued under the Special Use Permit.

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

Mayor Weatherly presented the Impartiality Statement for the Mayor and Council (*incorporated as a part of these Minutes*) and declared the Public Hearing open.

Mayor Weatherly asked Council had any member developed a conflict of interest since the last meeting; there were none. All witnesses were sworn in by the Town Clerk.

EVIDENCE FROM STAFF: Dianne Khin, Planning Director, presented her credentials and employment history with the Town of Apex. Khin distributed the Special Use Permit (SUP) and a calendar with the dates of current contracts, information which was distributed to Council previously. There is no limitation of permits based on weather; the tents can be air conditioned and heated. The SUP does not limit the use of the house. The house can be used provided it meets building and fire codes. Presented and distributed to Council was a cost breakdown to the Town to administer the SUP and TUPs (*incorporated as a part of these Minutes*). Based on prior experience, these costs are expected to continue for future events. This is the only instance of TUPs being associated with an SUP.

There was no cross by the applicant or any of the opponents.

NEW TESTIMONY BY STAFF: Khin submitted into evidence reports from the Town's Compliance Officers and Police Captain (*incorporated as a part of these Minutes*). Cliff Joyner, Zoning Compliance Officer, presented his credentials and employment history with the Town. Joyner stated the results of his inspections, with there being one lighting issue.

Joe Curtin, Zoning Compliance Officer, presented his credentials and employment history with the Town. Curtin stated the results of his inspections, with there being a few delay issues with traffic entering the establishment.

CROSS BY APPLICANT: Responding to Julia Kirkpatrick, Attorney for the applicant, Joyner clarified there was no temporary lighting on the evening of the lighting issue. Curtin gave reasons for parking where he did in making his inspections, and cited incidences where he could and could not hear music coming from the property.

CROSS BY OPPONENTS: Ralph Sigler and Cheryl White of 311 Parkknoll Lane, Cary, stated their questions were related to the number of people using the sewage system on the property, the Mayor

and Radford stating the applicants are not connected to the sewage system of the Town of Apex. Questions regarding noise would be addressed later.

Greg McGhee, 6314 Old Jenks Road, asked questions regarding light readings.

NEW TESTIMONY BY STAFF: C. Blair Myhand, Police Captain, explained the reports he composed regarding sound readings pertaining to Town and County noise ordinances. There were a few violations, but the violations were not all necessarily related to the events being held. Responding to Council, Myhand stated it was hard to say if the music was manipulated during the time readings were being taken, and readings were taken on the 'C' and 'A' scales.

CROSS BY APPLICANT: responding to Kirkpatrick, Myhand explained what the percentages were based on and stated that he has an understanding of the Town's noise ordinance. Responding to Council, readings which were above the threshold could be attributed to things other than events.

NEW TESTIMONY BY STAFF: Kent Jackson, Construction Management Director, presented his credentials and employment history. Jackson stated his role was to review the TUPs and to make sure the home met certificate of occupancy guidelines. Jackson has been working with the applicants on building code issues. Responding to Council, use of the home's space and restrooms by guests is not in compliance with the certificate of occupancy. The applicants did not agree to cease use of the home but they did agree to continue working with the Town on compliance.

CROSS BY APPLICANT: Jackson stated handicapped restrooms are an example of a means to mitigate, and the applicants have consistently worked towards compliance.

CROSS BY OPPONENT: Responding to White, Jackson stated an appropriate classification of the home has not yet been determined. Questions about a fire suppression system were answered.

CROSS BY APPLICANT: Responding to Kirkpatrick, David Dillon, Deputy Fire Marshall, spoke on inspections as it related to the tent.

CROSS BY OPPONENT: Steve Mills, 6253 Old Jenks Road, asked about maximum occupancy of the home as it relates to the fire code. Dillon responded allowed are 49 residents in the home and 429 people in the tent.

NEW TESTIMONY BY THE APPLICANT: Kirkpatrick reiterated the reason for being in this Hearing, adding that the applicant is now asking for a lesser amount of events taking into consideration some of the neighbors' concerns. Alan Maness presented information related to meetings with the neighbors and Town Boards and officials. Maness presented what they feel has "really been happening" in the neighborhood.

NEW TESTIMONY BY WITNESS FOR THE APPLICANT: Lawrence Hitzgrath, 2925 Legging Lane, Raleigh, stated he was the sound engineer for the applicant and gave his credentials. He gave details for a permanent sound system which would address noise issues.

CROSS BY OPPONENT: Mills stated he appreciated the music being toned down.

NEW TESTIMONY BY THE APPLICANT: Kirkpatrick distributed additional documents to Council. Maness presented the details of her business and its expenses, its impact on the local economy, and being agreeable to 72 events. Fordham instructed Council not to read the documents handed out by Kirkpatrick as some were inadmissible until a foundation had been established for their being entered into evidence. Fordham stated proper procedure relating to the documents. After further presentation from Maness, Kirkpatrick withdrew the inadmissible documents (*admissible documents incorporated as a part of these Minutes*).

CROSS BY OPPONENT: Responding to White, Alan Maness stated what year they moved into the house and what year the business was started. Sigler asked if the intent was to start a business. Kirkpatrick objected to the question; Maness did not answer.

Fordham stated some of the items on the Police report needed to be clarified; Myhand made the clarifications.

NEW TESTIMONY BY OPPONENT: Steve Clark, 1125 Holt Road, gave his qualifications in order to speak about noise levels and sound pressure. Clark redacted a previous comment relating to the

police department and the noise level and also complimented the Maness' for making the effort to correct the noise issue. After presenting information on noise levels, Clark stated he wished to demonstrate how a hand-held sound meter worked, Kirkpatrick objecting as Clark's credentials and training were not clarified. Mayor Weatherly overruled the objection; Clark gave his demonstration. Clark stated he wished to demonstrate how a larger sound meter worked, Kirkpatrick objecting since their original witness was not allowed. The objection was overruled. Kevin Blanton, 1028 Holt Road, assisted Clark with his demonstration, Blanton stating the machine had been calibrated. Clark explained his reason for the demonstrations.

CROSS BY APPLICANTS: Kirkpatrick asked Clark about his prior testimony as to hearing music from the property.

TESTIMONY BY OPPONENTS: Mills spoke on the issue of the tent, stating that he did not lie in his testimony, as well as speaking on zoning and notification of neighbors of the business. Sigler spoke on the number of attendees at events and the effect on sewage. Kirkpatrick objected based on previous testimony. Sigler spoke on the noise levels.

CROSS BY APPLICANT: Sigler responded to questions about an email sent by him which was presented and read by Kirkpatrick.

TESTIMONY BY OPPONENT: Greg McGhee, 200 Howell Road, spoke about a lawsuit. A copy of the lawsuit was given to Fordham who stated it was irrelevant. McGhee then spoke about the scrivener's error.

CROSS BY APPLICANT: Responding to Kirkpatrick, McGhee stated the Maness' are a part of the lawsuit. McGhee confirmed he ran a cabinet shop on his adjoining property to the Maness' for 25 years.

Responding to Council, Kirkpatrick stated that the applicant has committed to working with the County on the sewage issue. Khin presented the facts of the scrivener's error, explaining it was a simple clerical mistake. The error has been taken care of. Neighbors could have seen the Findings of Fact with the error.

Mayor Weatherly declared with Public Hearing closed; a ten-minute recess was called.

After the recess, Mayor Weatherly reopened the Public Hearing in order to hear closing statements. Kirkpatrick made a closing statement on behalf of the applicants.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE 72 DAYS ANNUALLY, NOT TO EXCEED MORE THAN 3 DAYS OF CONSECUTIVE EVENTS, AND NO MORE THAN 8 DAYS PER MONTH. MAYOR PRO TEMPORE SECONDED THE MOTION.

Council entered into discussion as to whether or not the applicants complied with the issues raised by the neighbors and if standards had been met. Discussion also centered on lowering the 72 days annually, and increasing the 8 days since this is a seasonal business. With Fordham's assistance, Lassiter clarified his motion:

COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE 72 DAYS ANNUALLY USED IN SPECIAL, NO MORE THAN 3 CONSECUTIVE DAYS, AND NO MORE THAN 8 DAYS USED IN ITS SPECIAL CAPACITY PER MONTH.

COUNCIL MEMBER OLIVE MADE THE MOTION TO AMEND COUNCIL MEMBER LASSITER'S MOTION TO NO MORE THAN ONE TEMPORARY USE PERMIT PER MONTH. MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

COUNCIL MEMBER OLIVE MADE THE MOTION TO AMEND COUNCIL MEMBER LASSITER'S MOTION TO NO MORE THAN 10 DAYS AVAILABLE FOR TEMPORARY USE PERMITS PER MONTH. COUNCIL MEMBER LASSITER SECONDED THE MOTION. COUNCIL MEMBERS OLIVE AND LASSITER VOTED IN THE AFFIRMATIVE. COUNCIL MEMBERS SCHULZE, JENSEN, AND ROWE VOTED IN THE NEGATIVE. THE MOTION FAILED BY A 3-2 VOTE.

MAYOR WEATHERLY CALLED FOR A MOTION ON THE PENDING MOTION BY COUNCIL MEMBER LASSITER WITH THE ABOVE- STATED AMENDMENT. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Mayor Weatherly called a five-minute break.

Public Hearing 02 : Brendie Vega

Public Hearing and motion regarding Annexation #480, Wake County Board of Education

MAYOR WEATHERLY CALLED FOR A MOTION TO RECUSE COUNCIL MEMBER LASSITER WHO WORKS FOR THE WAKE COUNTY BOARD OF EDUCATION. COUNCIL MEMBER OLIVE MADE THE MOTION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 4-0 VOTE.

Dianne Khin, Planning Director, stated staff recommended approval of the annexation.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO APPROVE THE ANNEXATION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 4-0 VOTE.

Council Member Lassiter rejoined the proceedings.

OLD BUSINESS

There were no Old Business items for discussion.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01: Mayor Keith Weatherly

Motion to cancel the November 6, 2012 Regular Meeting due to this being Election Day

This is what has typically been done. A special meeting can be called if business needs arise.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO CANCEL THE MEETING; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 02: Mayor Pro Tempore Gene Schulze

Accept a piece of steel from the World Trade Center Tower II in order to create a memorial to those individuals who lost their lives on September 11, 2011

When Mayor Pro Tempore Schulze visited Ground Zero, he saw that the memorial there means a lot to people and thought a memorial would be great for Apex. The steel would be given for free provided it has a suitable monument. The memorial would go in front of the fire station, the total cost not to exceed \$6,000. This money could come from the governing body contingency fund. Discussion centered on possible fundraising for the cost.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ACCEPT THE STEEL AND APPROPRIATE FUNDS NOT TO EXCEED \$6,000 FOR THE MEMORIAL, WITH THE INTENTION OF RAISING THIRD PARTY FUNDS TO DEFRAY THE COST. COUNCIL MEMBER ROWE SECONDED THE MOTION.

Council discussed some type of memorial for the soldiers lost in Iraq and Afghanistan, possibly in the future looking at a veterans' memorial.

THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

The Town Manager described the design of the memorial, suggesting that the soldiers could be recognized on one side. Mark Haraway, Fire Chief, stated that a bell ringing service is held every week for those soldiers who have lost their lives in war and that this will continue. Focus of this memorial should be solely on those who lost their lives in 9-11, anything else being a dishonor to the other events of that day. Mayor Weatherly stated staff will come back with the details of the memorial at a later date.

CLOSED SESSION

There were no closed session items for discussion.

WORK SESSION

There were no work session items for discussion.

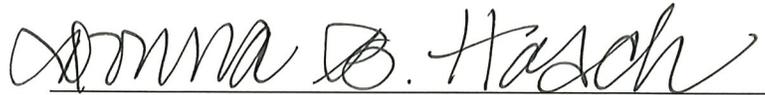
ADJOURNMENT

With there being no more business before Council,

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO ADJOURN;

MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.

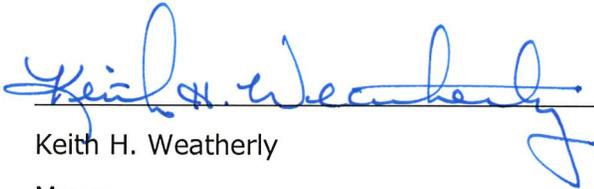
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC

Town Clerk

ATTEST:



Keith H. Weatherly

Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, OCTOBER 16, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 16, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order and welcomed those in attendance. Council Member Lassiter gave the Invocation; Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

1. Approve Minutes of the October 2, 2012 Personnel Committee Meeting
2. Approve the Town of Apex Tax Report dated September 6, 2012
3. Adopt a Resolution Directing the Town Clerk to Investigate Petition Received, accept the Certificate of Sufficiency by the Town Clerk, and adopt a Resolution Setting Date of Public Hearing for November 20, 2012 on the Question of Annexation - Apex Town Council's intent to annex the Jason and Kara Bertoncino property containing 6.970 acres located at 2239 Toad Hollow Trail, Annexation # 482, into the Town's corporate limits
4. Set a Public Hearing for November 20, 2012 for Special Use Permit #12SUP01 for Eagle Rock Concrete located at 500 Pristine Water Drive for the November 20, 2012 Town Council Meeting

5. Adopt via Resolution the 2007 Apex Local Water Supply Plan
6. Authorize the Town Manager to execute the White Goods Grant Program Services Agreement with Wake County
7. Enter into a "Memorandum of Agreement" with the North Carolina Sedimentation Control Commission
8. Approve revisions to the Drug and Alcohol Policy
9. Approve street closures for the Abbington 5K run on October 27, 2012
10. Appoint an advisory committee to serve for the 2012-13 Town of Apex Comprehensive Plan update
11. Adopt via Resolution the Municipal Records Retention and Disposition Schedule dated September 10, 2012

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Pro Tempore Schulze requested Old Business 01, recommendations from the Personnel Committee concerning the allocation of personnel expenses between Wake County and the Town of Apex for the future funding of contract EMS services, be removed from the Agenda as discussion continues with the County. Town Attorney Fordham stated a Closed Session "concerning potential litigation and for the Town Council to consider and give instruction regarding potential judicial actions or administrative procedures related thereto" would not be needed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO REMOVE THE ABOVE TWO ITEMS; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin

Public Hearing and motion regarding Annexation #481, Gaster Family Trust, owner/petitioner, petitioning to annex 7.450 acres, contiguous to the Town's Corporate limits, located off James Street

Council was oriented to the site. Staff recommended approval.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ADOPT THE ANNEXATION ORDINANCE; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 02 : Lauren Simmons, Planner

Public Hearing and motion for various amendments to the Unified Development Ordinance

Eight sections of the UDO were proposed to be amended and details were presented on quasi-judicial hearings and review of long-range plans, special use permits, commercial communication towers, and off-street parking and loading. The Town Attorney presented proposed changes which would clarify several instances of verbiage in the UDO.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Mayor Weatherly recognized audience member Dr. Doug Meckes, former long-time Council Member. Dr. Meckes, who now lives in Washington, D.C., is home in Apex recuperating from a bicycle accident.

Mayor Weatherly recognized Assistant Town Manager Mike Wilson who, last week, was presented the Lewis Smith Award at the Chamber's annual awards dinner. This award recognizes those who give significant service to the Town. Mayor Weatherly stated this award was well-deserved.

NEW BUSINESS

New Business 01 : Marty Mitchell, Director, Facility & Fleet Services

Motion to approve bidding Phase 1 of the Public Works Expansion and Renovation project. Construction documents have been completed, and the estimated construction cost of Phase 1 is \$8,203,076 (including a 5% construction contingency and two possible alternates).

This is a culmination of two years of work to expand and improve the Public Works facility. John Hitch and Robert Carmac from the architectural firm Smith-Sinnett & Associates were on hand for questions. A letter from Finance Director Lee Smiley was presented showing how this project would be funded. The site layout was presented and expected improvements were explained. Also presented was an alternate for the salt dome. Several questions from Council were answered.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE BIDDING PHASE 1 OF THE PROJECT; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 02 : Lee Smiley, Finance Director

Motion to approve a Budget Ordinance Amendment for additional repairs to Fire Station No. 1

Council was presented with the repair needs and several improvements for the Fire Station. This request is for additional funds to complete this project which was started earlier but halted because of discussion of ADA compliance of the bathrooms.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SHCULZE MADE THE MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 03 : Mayor Keith Weatherly

Motion to appoint Mike Marks to fill the unexpired term of Graham Wilson on the Planning Board

Mr. Wilson would have termed out on the Planning Board this year. He resigned his position to become Executive Director of the Apex Chamber of Commerce. Mr. Marks was highly recommended by Mayor Weatherly to fill the vacancy left by Mr. Wilson. Mr. Marks was present for any questions from Council, of which there were none.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SHCULZE MADE THE MOTION TO APPROVE THE APPOINTMENT; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Council Member Olive was excused from Council proceedings at this point.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

Tim Donnelly, Public Works Director

Continued discussion on Economic Development sites

At the September 25, 2012 Council Workshop Meeting, Council asked staff for a cost breakdown and engineering construction needs for three sites that were identified as viable for economic development. Marty Stone, PE, of the Wooten Company presented water and sewer and initial infrastructure cost breakdowns and preliminary water and sewer infrastructure schedules. Considerations for moving forward were presented.

Recommendation from staff to Council was not to rush into any decisions on this issue. Mayor Weatherly made the same recommendation to Council.

ADJOURNMENT

With there being no more business before Council,

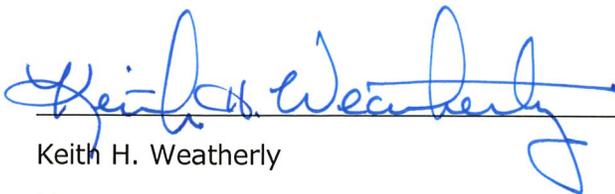
MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN. MAYOR PRO TEMPORE SCHULZEE
MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 4-0 VOTE.



Donna B. Hosch, CMC, NCCMC

Town Clerk

ATTEST:



Keith H. Weatherly

Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, NOVEMBER 20, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 20, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr. Council Member Lance Olive joined the meeting at 7:05 p.m. prior to 'Presentations'.

COMMENCEMENT

Mayor Weatherly called the meeting to order, welcomed those in attendance, and gave the Invocation. A group of WEBLO Scouts presented the colors and led the Pledge of Allegiance. They were also in attendance to learn more about local government.

PRESENTATIONS

Fire Chief Mark Haraway presented a summary of Jeffrey Maynard's history with the Town of Apex. He thanked Council for their approving the position of Assistant Fire Chief, the first for Apex. With his wife Neisha standing with him, Jeffrey Maynard was sworn in by the Town Clerk as Assistant Fire Chief. Mrs. Maynard pinned on the Assistant Chief's badge.

CONSENT AGENDA

1. Approve Minutes of the October 2, 2012 Regular Meeting, the October 16, 2012 Regular Meeting, and the October 18, 2012 Economic Development Committee Meeting
2. Approve the Apex Tax Report dated 10/05/2012

3. Adopt a Resolution Directing the Town Clerk to Investigate Petition Received, accept the Certificate of Sufficiency by the Town Clerk, and adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council’s intent to annex the Wilbert Whitehead et al property containing 1.952 acres located off Evans Road between Tuffeto Trace and Grouse Trail, Annexation #483, into the Town’s corporate limits
4. Adopt a Resolution Directing the Town Clerk to Investigate Petition Received, accept the Certificate of Sufficiency by the Town Clerk, and adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council’s intent to annex the Lufkin Leased Fee, LLC (aka Sheetz) property containing 1.54 acres located at 4000 Lufkin Road, Annexation #484, into the Town’s corporate limits
5. Approve Personnel Committee recommendations for the Police and Finance Departments
6. Declare a Sig P220 .45 caliber handgun as surplus property to present to Chief Lewis upon his retirement
7. Transfer Lot 312 Plots E, F, G, and H in Apex Town Cemetery

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CONSENT AGENDA; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Weatherly requested that the New Business Item regarding a new 19 lot subdivision be moved to the end of New Business in order to go into a brief closed session to consult with the Attorney prior to hearing this item.

COUNCIL MEMBER JENSEN MADE A MOTION THAT THE ITEM BE MOVED AS REQUESTED;
MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Lauren Simmons, Planner

Public Hearing and motion to adopt an Ordinance for the designation of an historic landmark in Apex, the Harward House, located at 215 East Chatham Street near downtown

Gary Roth, representing the Wake County Historic Preservation Commission, was introduced by Ms. Simmons. Mr. Roth gave a brief history of the property and its one non-contributing building. Also detailed was the significance of the property, the Commission recommending the property be designated as an historic landmark. Also on hand were the property owners, Johnny and Sydney Deal, several neighbors, and the contractor who worked on the project.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 02 : Brendie Vega, Principal Planner

Motion to open and continue the Quasi-Judicial Public Hearing for Special Use Permit #12SUP01 for Eagle Rock Concrete located at 500 Pristine Water Drive to the December 18, 2012 Town Council Meeting

Mayor Weatherly declared the Public Hearing open and asked for a motion to continue the Public Hearing until December 18th.

COUNCIL MEMBER OLIVE MADE THE MOTION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 03 : Dianne Khin, Planning Director

Public Hearing and motion to adopt an Ordinance to annex the Jason and Kara Bertoncino property containing 6.970 acres located at 2239 Toad Hollow Trail, Annexation #482, into the Town's corporate limits

Ms. Khin presented a brief description of the annexation.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

Old Business 01 : Dianne Khin, Planning Director

Motion to approve and enter Findings of Fact, Conclusions of Law and Decision for the amendment of Special Use Permit #SUP01

The applicants for the SUP asked that this item be moved to the December 4, 2012 meeting since they were not able to attend on this night. There was no objection from Council.

Old Business 02 : Council Member Rowe

Recommendation from the Personnel Committee regarding the funding of two positions within Apex EMS for FY2013/14

Council Member Rowe, Chairman of the Personnel Committee, stated that Wake County does not intend to fund the positions of Chief and Administrative Assistant for FY2013/2014. It is important that this function remain with the Town.

Council Member Rowe, Committee member, stated the County has previously funded the approximately \$140,000 for these two positions. Remaining in Apex, the Town would have more control over the function and its operation. Discussions will continue with the County to restore funding, but there is some urgency to settling this issue. The current Chief is planning to retire, and employee morale is being affected. The Committee recommended funding.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO FUND THE TWO POSITIONS FOR THE FY2013/2014; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.

Council Member Jensen stated he did not see where there would be a great deal of difference in service if this function were with the County.

COUNCIL MEMBERS ROWE, SCHULZE, LASSITER, AND OLIVE VOTED IN THE AFFIRMATIVE;
COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 4-1 VOTE.

PUBLIC FORUM

Staley Smith of 7611 West Chatham Street spoke on the challenges of proposed sewer utilities in the White Oak Creek Basin, an area which should be serviced by one pump station. The station which is currently proposed is designed to accommodate the developer's two projects which are a small section

of the acreage. This leaves a gap, which means hundreds of acres will be developed piecemeal over time and several smaller stations will need to be built and maintained for years to come. Why not do the right thing the first time? Several members of the audience did not understand how this gap occurred. Mr. Smith asked the developer to reconsider the pump station site and to work with his team to bring about a better solution.

NEW BUSINESS

New Business 01 – Lee Smiley, Finance Director

Motion to approve a Resolution authorizing the Finance Director to sign the Town up to participate in the State of NC Debt Setoff Program

NC established a program several years ago to submit small debts to the Department of Revenue, their maintaining the records. The Town used to use a collection agency that provided fairly good service. Since both the Program and a collection agency can be run simultaneously, it would be worth it to give the Program a try. The only negative impact foreseen would be an accounting error. There is a small fee, but the State collects this from the debtor.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE RESOLUTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 02 – Lee Smiley, Finance Director

Motion to approve a budget ordinance amendment for a Fire Department grant, a franchise tax study, and a contract to add modification of interbasin transfer certificate to the Long Range Water Resources Plan

The three parts of the amendment were detailed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE AMENDMENT; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 03 – Lee Smiley, Finance Director

Review of the 1st Quarter Financial Summary and Apex EMS revenues and expenditures

General Fund revenues for the first three months were reviewed; just about every department is on budget for this time of year. A statewide trend shows utility funds lagging a bit for this point in time. EMS revenues and expenditures are pretty much consistent.

New Business 04 – Council Member Jensen

Clarifying language regarding incentives offered by the Town of Apex in order to diversify and expand the existing tax base

Council Member Jensen stated that the Economic Development Committee met and discussed a policy that would attract new businesses but would not commit the Council to anything. The policy will support the Wake County program and attempt to attract smaller companies as well as the larger companies. Decisions would be on a case-by-case basis and not commit the Town to any decisions.

Graham Wilson, Executive Director and David Cozarelli, President, of the Apex Chamber of Commerce expressed their support for the policy. The Mayor explained this would not be a risk to taxpayers, and there would be no associated cost. Partnering with the County would bring benefits and give the Town flexibility.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO ADOPT THE ECONOMIC DEVELOPMENT STATEMENT; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 05 : Ed Majowski for the Apex Downtown Merchants

Motion to approve street closures from the Apex Downtown Merchants for *Christmas on Salem Street* on November 20, 2012

Town Manager Radford outlined this year's events.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE CLOSURES; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 06 : Sgt. Michael S. Conley/Margo Bills

Motion to approve street closures for the 2012 Apex Christmas Parade on December 1, 2012

Town Manager Radford outlined this year's parade events.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE CLOSURES; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

CLOSED SESSION (1)

MAYOR WEATHERLY CALLED FOR A MOTION TO GO INTO CLOSED SESSION TO OBTAIN LEGAL ADVICE FROM TOWN COUNCIL. COUNCIL MEMBER LASSITER MADE THE MOTION; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR WEATHERLY CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER JENSEN MADE THE MOTION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 07 : Brendie Vega, Principal Planner

Motion to approve a proposed new 19-lot subdivision adjacent to portions of the subdivisions formerly approved as The Glen and Beckwith (Phase 1)

Ms. Vega presented an outline of this new subdivision, stating there were concerns raised at the neighborhood meeting. It is consistent with the Transportation Plan and standards in the UDO. The Planning Board unanimously recommended approval and discussed Council's need to continue consideration of the pump station location within the White Oak Creek Basin. Staff recommended approval.

Staff provided the history of the pump station location. If this subdivision comes in, the Town would want the station to be larger and further down in the Basin. The cost for the Town to build the station would be approximately \$2 million.

Glen Phillips, representative for Toll Brothers, stated there would be a \$1 million difference between what they are permitted to do now vs. moving the station. This price doesn't include the time to permit the new route. The Mayor stated that the Town is working towards a resolution for both sides. Perhaps there needs to be more negotiations with the Town, especially since the Town has a strong motivation to move the station. Mr. Phillips recommended further negotiations with the Town and then coming back to Council at its next meeting.

MAYOR WEATHERLY CALLED FOR A MOTION TO DEFER THIS MATTER UNTIL THE NEXT COUNCIL MEETING. COUNCIL MEMBER JENSEN MADE THE MOTION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

CLOSED SESSION (2)

Closed Session to discuss potential litigation with the Town Attorney and to give direction regarding the same

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO GO INTO CLOSED SESSION; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR WEATHERLY CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER OLIVE MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

WORK SESSION

There were no Work Session items for discussion.

ADJOURNMENT

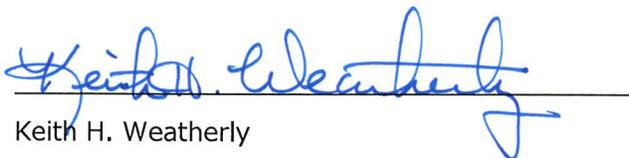
With there being no more business before Council,

MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN. MAYOR PRO TEMPORE SCHULZEE MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



APEX TOWN COUNCIL MEETING

TUESDAY, DECEMBER 04, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 4, 2012, at 7:00 p.m. was held in the Council Chambers of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order, welcomed those in attendance, gave the Invocation, and led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01

Mayor Weatherly introduced Ricky Temple, Public Works Operations, who presented the "Peak City Tappers" who placed second in the NC American Water Works Association Competition in September. Members of the team were Ricky Temple, Alex Lancaster, Ricky Byrd, and Jimmy Cornell, the initiator of the team being John Cannon. Each team in the competition was comprised of four members competing in the stage event and tapping. Teams were judged on fittings, proper angles, tool placement, safety attire, and time. The Peak City Tappers' competition time, this being their first ever State-level competition, was 1 minute 42 seconds. Other teams competing in the event were from Concord, Raleigh, Asheville, Rocky Mount, and Greenwood, SC. Their trophy will be housed at Public Works.

Presentation 02

Mayor Weatherly introduced Captain Blair Myhand, Apex Police Department, who presented the Special Response Team. This team placed first in the sniper event, third in the officer rescue, and third in the team carry, with an overall finish of third place among the eighteen competing teams in the 20th Annual SWAT Competition for NC in November. Members of the team were Captain Blair Myhand, Sergeant Shawn Conley, Sergeant Greg Rhodes, Sergeant Kevin Herring, Corporal Ben Byrne, Corporal Keith Barrow, Officer Brian Opitz, Detective Josh MacMonagle, and Detective Greg Pawluk. The Apex SRT was the vision of Captain Myhand and Sergeant Rhodes.

Apex placing first in the sniper competition was against larger agencies like Gaston County, Wilmington, Cary, and others who have larger budgets, more staffing, and many more years in this role. The Team's performance was validated by the Justice Academy staff, the leadership of the NC Tactical Officers Association, and the other teams against whom they competed. Their trophies will be housed at the Police Department.

Presentation 03

Accompanied by the members of the team, Coaches Art McCann and David Boynton of a 13 U baseball travel team recognized Council for their investment in Apex's baseball fields. The Team felt this investment was a direct result of their success, their winning second place in the NC World Series. The team presented a plaque to Karl Lyon of Parks and Recreation for his efforts in reserving the fields – fields being hard to reserve for a traveling team.

CONSENT AGENDA

1. Motion to approve Minutes of the November 20, 2012 Regular Meeting and the November 20, 2012 Closed Session Minutes (*Closed Session Minutes are recorded separately*)
2. Motion to set a Public Hearing for the December 18, 2012 Town Council Meeting regarding Rezone #12CZ10 Westford PUD to PUD-CZ. The properties in the 100.7 acre rezoning request are located at Jenks and US 64.
3. Motion to set a Public Hearing for the December 18, 2012 Town Council Meeting regarding Rezone #12CZ11, 1.62 acres located at 1632 Center Street from Rural Agricultural Zoning to Office and Institutional Conditional Zoning.
4. Motion to set a Public Hearing for the December 18, 2012 Town Council Meeting regarding Rezoning #12CZ12, from Medium Density Residential (MD) to High Density Multi-Family

Residential - Conditional Zoning (HDMF-CZ). The property in the 5 acre rezoning request is located at 1836 Olive Chapel Road.

5. Motion to adopt 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 the Question of Annexation - Apex Town Council's intent to annex Phyllis Lewis and Walter Powell properties containing 8.445 acres located at 0, 2050, and 2060 Laura Duncan Road, Annexation #485, into the Town's corporate limits.
6. Motion to authorize staff to compile and submit a grant request for up to \$500,000 from the North Carolina Parks and Recreation Trust Fund to aid in development of the Apex Nature Park/Seymour Athletic Fields.
7. Motion to adopt an Ordinance for rules and regulations governing the use of public parks and greenways for organized activities.
8. Motion regarding naming rights policy for Town facilities.
9. Motion to cancel the Tuesday, January 1, 2013 Regular Council Meeting due to this being New Year's day.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ACCEPT THE CONSENT AGENDA; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

Public Hearing and possible motion to adopt an Ordinance to annex the Wilbert Whitehead, et al property containing 1.952 acres located off Evans Road between Tuffeto Trace and Grouse Trail, Annexation #483, into the Town's corporate limits

Ms. Khin presented a brief description of the property, stating that staff recommended approval of the annexation.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 02 : Dianne Khin, Planning Director

Possible motion to adopt an Ordinance to annex the Lufkin Leased Fee, LLC (aka Sheetz) property containing 2.54 acres located at 4000 Lufkin Road, Annexation #484, into the Town's corporate limits

Ms. Khin presented a brief description of the property, stating that staff recommended approval of the annexation.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SHCULZE MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

Old Business 01 : Dianne Khin, Planning Director

Possible motion to approve and enter Findings of Fact, Conclusions of Law and Decision (the "Findings & Decision") for the amendment of Special Use Permit #11SUP01

Ms. Khin read the wording from a section of DECISION, stating that the applicant took issue with item 2.d. Staff recommended the second sentence be amended; because without making it clear what types of amendments would be allowed, it would be up to the Planning staff to determine if any amendments would be allowed. Staff does not want to limit the applicant to number of guests, for example, but adding calendar days after issuance of permit may be unfair to the neighbors. Therefore, adding dates would be above and beyond what should be allowed. Council was asked to clarify its previous decision, with concern being on the ability to add days.

Alan Maness addressed Council stating that the issue of amending the TUP up came up from an unforeseen situation. Tying the TUP to monthly, and having to submit it two weeks prior to the end of the month, would lock them in for six weeks to the end of the month. Doing so will eliminate such things as spot weddings, book club luncheons, and corporate functions. It would not be very often or every month that these types of situations would come up.

April Maness proposed submitting another application amending the original TUP. Town Attorney Fordham stated that the UDO provides that to amend an approval, the applicants would have to go through the same process for TUP approval, which does not involve Council. Ms. Khin stated this can be accomplished in a few days, but Planning prefers submittal to be two weeks prior to an event. There would be no foreseen problems as long as the applicant did not go over the allowed number of days/month. This was satisfactory to the applicants. Neighbors would be notified of an additional event if they requested that information.

Town Attorney Fordham stated if this information is not in the Findings of Fact, then it would not be binding. The additional wording should use "days" for clarity.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE VERSION 2 OF THE FINDINGS OF FACT AND TO ADD A SENTENCE AT THE END OF SUBPARAGRAPH d. ON PAGE 3 OF VERSION 2 THAT STATES APPLICATIONS TO AMEND TEMPORARY USE PERMITS TO ADD CALENDAR DAYS SHALL BE SUBMITTED TO THE PLANNING DEPARTMENT AT LEAST TWO WEEKS PRIOR TO THE PROPOSED ADDITIONAL DAY; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Old Business 02 : Brendie Vega, Principal Planner

Possible motion to approve a proposed new 19-lot subdivision adjacent to portions of the subdivisions formerly approved as *The Glen* and *Beckwith* (Phase 1). The applicant has combined portions of the two subdivisions and moved the location of the proposed Amenity Center making this a new subdivision consisting of 19 lots. The driveways have also been moved from their original locations to line up with the future realignment of Roberts Road. Continued from the Town Council meeting on November 20, 2012.

Town Manager Radford stated discussions are continuing between the property owners and Toll Brothers. Therefore, it was requested that Council revisit this item in be two weeks.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO CONTINUE THIS ITEM FOR TWO WEEKS; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Old Business 03 : Marty Mitchell, Facility & Fleet Services Director

Possible motion to award construction contract to Racanelli Construction South, Inc. of Cary, NC and to approve budget and capital projects ordinance amendments funding construction of Phase 1 of the

Public Works Expansion and Renovation project at \$7,661,349. Previously estimated construction and design costs for Phase 1 were \$8,203,076 resulting in a savings of \$541,727.

Mr. Mitchell stated construction on the building would hopefully begin in January, with a completion date of 13 months, weather permitting.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION
TO AWARD THE CONTRACT; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01 : Matt Kirkpatrick, Colvin Park, LLC

Possible motion to approve the attached consent document and thereby consent to Colvin Park, LLC's assigning its rights and transferring its obligations under the *Alternative Sewer Connection Agreement to Parker & Orleans Homebuilders, Inc.* subject to the terms and conditions stated in the consent document, and authorize the Town Manager to execute the same

Mr. Kirkpatrick stated the named builder wants to be the exclusive builder of the project, which will be better for the infrastructure and will create a more cohesive entity. Colvin Park, LLC will assign the rights to the underlying agreements for the infrastructure to be built, the sewer to be serviced, etc. This action will sure up credit and performance. All signs are that Cary will approve this; legally, there is not any enhanced risk.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO
APPROVE THE CONSENT DOCUMENT; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 02 : Hank Fordham, Town Attorney and Public Works & Utilities Department

Possible motion to adopt a resolution named "Resolution Authorizing An Amendment To The Agreement Between The Towns Of Cary and Apex" entitled "Interlocal Agreement For Provision Of Sewer Services For Colvin Park Subdivision"

This Resolution is the companion document to New Business 01, which would amend the Interlocal Agreement with Cary, allowing Orleans to be substituted in for Colvin Park. It would also provide a

mechanism in the future where the managers can handle amendments without coming back to Council.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE RESOLUTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

ADDITIONAL DISCUSSION REQUESTED BY COUNCIL MEMBER OLIVE

COUNCIL MEMBER OLIVE CALLED FOR A MOTION TO RECONSIDER THE VOTE FROM NOVEMBER 20, 2012 ON NEW BUSINESS 05 - THE INCENTIVE POLICY.

Mayor Weatherly called a short recess while Town Attorney Fordham checked 'Roberts Rules of Order' for an answer to whether or not there would need to be a second in order to continue discussion on this item. Mayor Weatherly called the meeting back to order upon the return of the Town Attorney. Town Attorney Fordham stated Council would need to deal with the motion whether or not it was seconded. The original motion was debatable, so this motion was also debatable.

Council Member Olive stated that after looking at the policy further, he had problems with it as written. The purpose statement doesn't address economic development as much as it does to attempt economic growth. Council Member Olive does not support the Wake County Business Investment Grant Policy as outlined in Guideline 1. Guideline 2. does not provide standards, only categories and types. In the policy, there is opportunity for capricious deals, bribery, and cronyism in giving out taxpayer dollars and choosing one business over another. It is written to attract an interest without any commitment from the Town.

Supported is the use of lower taxes to allow all businesses to have equal opportunity for economic growth, efforts to streamline government processes, the rights of existing smaller businesses to operate free from government favoritism, and a policy that accurately describes both sides of the economic growth and development story.

Council Member Olive was reminded that he voted for the policy, Council Member Olive responding that after vote he re-read what he'd voted on and some words in the policy troubled him in addition to words spoken by Council during the meeting. Council Member Jensen described the process

formulating the policy, which was available to be viewed. It was noted that Apex was the only municipality which did not have information in the County's recruiting materials. Council Member Olive stated, ""It is politically correct in some circles to argue that the granting of tax and other targeted incentives to attract new business will create net benefits to the communities where the facility is located. However there are many studies that demonstrate this premise is false... The foregone tax revenue, combined with the higher public expenditures, means that state and local governments must either provide fewer public services or impose higher taxes on existing industry and residents to maintain balanced budgets."

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE A MOTION TO RECONSIDER
THE VOTE FROM NOVEMBER 20, 2012.

COUNCIL MEMBER OLIVE VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS SCHULZE, ROWE,
JENSEN, AND LASSITER VOTED IN THE NEGATIVE.

THE MOTION FAILED BY A 4-1 VOTE.

Council Member Rowe stated that the Committee would be open for further talks, noting that the language in the policy was approved by the Town Attorney. Council Member Olive stated there has not been such a policy approved in three years. If there is an interest in the language being changed, then he would give this serious consideration.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

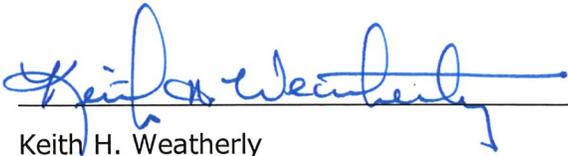
With there being no more business before Council,

MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN. MAYOR PRO TEMPORE SCHULZE
MADE THE MOTION; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



SPECIAL TOWN COUNCIL MEETING

TUESDAY, DECEMBER 18, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

A Special Meeting of the Apex Town Council scheduled for Tuesday, December 18, 2012, at 6:30 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order, Council Member Lassiter gave the Invocation, and Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : Proclamation presented to Jack Lewis

Mayor Weatherly presented retiring Police Chief Jack Lewis with a Proclamation from the Town. Chief Lewis spoke words of appreciation to the Town. Council Members spoke words of appreciation and praise to Chief Lewis.

Presentation 02 : Oath of Office given to John Letteney

Mayor Weatherly introduced incoming Police Chief John Letteney. Accompanied by his wife, Debbie, and children Dave, Steve, Mark, and Peter via Skype, Mayor Weatherly gave the Oath of Office to John Letteney. Mrs. Letteney presented her husband his badge. Chief Letteney gave remarks on being pleased to be a part of the organization. He briefly stated his future aspirations for the Police Department.

MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN. MAYOR PRO TEMPORE SCHULZE
MADE THE MOTION; THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:



Keith H. Weatherly
Mayor



TOWN COUNCIL MEETING

TUESDAY, DECEMBER 18, 2012

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 18, 2012, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order, Council Member Lassiter gave the Invocation, and Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : John Brown, Director, Parks, Recreation, and Cultural Resources

Presentation from Clearscapes, Inc. regarding the possible use of Tunstall House

Mr. Brown gave a brief history of the Town contracting with Clearscapes for possible reuse of Tunstall House. Fred Belledin, Principal of Clearscapes, presented the Initial Feasibility Study for Tunstall House which incorporated comments from staff and stakeholders. The house is in good shape with a bit of insect and water damage – common for a structure of its age. Waiting to determine use of the house may put the structure in danger of demolition. Staff will further discuss this issue at the upcoming Retreat.

Presentation 02 : Lee Smiley, Finance Director

Presentation of the June 30, 2012 Audit Report

Mr. Smiley introduced Keith Joyce and Shelton Ennis of Joyce and Company, preparers of the report. Mr. Joyce presented the opinion letter and management letter from his firm. After giving highlights, Mr. Joyce stated this was a clean audit opinion that the Town won the Certificate of Excellence in financial reporting. Minor suggestions for improvement were presented.

CONSENT AGENDA

1. Approve Minutes of the December 4, 2012 Regular Meeting
2. Approve the Apex Tax Report dated 11/02/2012
3. Set a Public Hearing for the January 15, 2013 Town Council Meeting regarding Rezone #12CZ13, approximately 14+ acres generally located at 3232 US 64 West from Rural Residential to Tech Flex and a 2025 Land Use Plan Amendment from Low Density Residential to Office Employment and Commercial
4. Set a Public Hearing for the January 15, 2013 Town Council Meeting regarding Rezone #12CZ14, 66.48 acres located at 8550 Stephenson Road from Rural Residential Zoning to Medium Density Residential Conditional Zoning
5. Set a Public Hearing for the January 15, 2013 Town Council Meeting regarding various amendments to the Unified Development Ordinance
6. Revisions to the Town Standard Specifications and Details
7. Resolution to Abandon a Portion of the Existing Public Drainage and Utility Easement on Lot 43 in the Walden Creek Subdivision
8. Budget ordinance amendment for replacement of a Fire Department vehicle
9. Appointments to the Parks, Recreation, and Cultural Resources Advisory Commission
10. Resolution accepting a revolving loan offer from the NC Department of Environment and Natural Resources

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO ACCEPT THE CONSENT AGENDA; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

There were no modifications requested by Council.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega, Principal Planner

Public Hearing and possible motion for Rezone #12CZ10 Westford PUD to PUD-CZ

Council Member Rowe disclosed that his organization and Kimley Horne, who is representing the petitioner, share a client; however, there is no contract relationship between the two companies. The Town Attorney determined this not to be a conflict.

Ms. Vega presented an overview of the request, noting concerns of cross access, buffers, and land uses and ponds from the neighborhood meeting. The Planning Board made recommendations for changes which were incorporated by the applicant. The Planning Board, therefore, recommended approval as does staff with noted changes. There was discussion, in particular, about reduction of the buffer along Hwy 64 and RCA requirements. The Town Attorney advised that on page 10 of the PUD Plan for the reference under 5.3 "maximum apartment units: 600", changing the wording to state "maximum multi-family units: 600". The applicant agreed to the change.

Mayor Weatherly declared the Public Hearing open.

Speaking in favor of the rezoning, Sal Musarra with Kimley Horne and Associates gave a presentation on this mixed use development and stated that the buffer along Hwy 64 would adhere to the requirements of a Type A buffer.

Speaking in opposition, Mark Meech stated his property abuts the eastern side of the applicant's property. Mr. Meech gave reasons why the buffer going from 100 to 20 feet is an issue as is the RCA. Staff clarified that proposed setbacks adjacent to the Meech property would be 25 feet, and that the current buffer is 100 feet.

With no one else wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE WITH A 50' BUFFER ALONG THE EASTSIDE AND NO REDUCTION IN THE RCA.

Town Attorney Fordham reminded Council that this was a conditional zoning and that conditions can be imposed only if the applicant consents. Additionally, the motion should include limiting the use in the A3 area to residential only and that a change in language in section 5.3 of the PUD Plan should

state "a maximum of 600 multi-family units". Mr. Musarra stated the applicant is willing to limit the use in the A3 area to residential uses only.

Council Member Jensen stated that in the past seven-foot fences were approved and felt this should also be included in the motion. Mayor Weatherly stated that at some point conditions would need to stop being proposed. With that,

COUNCIL MEMBER JENSEN WITHDREW HIS MOTION.

COUNCIL MEMBER ROWE MADE THE MOTION TO APPROVE WITH THE CONDITIONS IN THE LANGUAGE AS WELL AS RESTRICTING THE USES IN A3 TO RESIDENTIAL; COUNCIL MEMBER LASSITER SECONDED THE MOTION.

COUNCIL MEMBER JENSEN MADE A MOTION TO AMEND THE ORIGINAL MOTION TO NOT ALLOW THE 2% REDUCTION IN THE RCA. COUNCIL MEMBER SCHULZE SECONDED THE MOTION.

COUNCIL MEMBERS SCHULZE AND JENSEN VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS ROWE, LASSITER, AND OLIVE VOTED IN THE NEGATIVE.

THE MOTION FAILED BY A 3-2 VOTE.

MAYOR WEATHERLY CALLED FOR A VOTE ON THE ORIGINAL MOTION.

COUNCIL MEMBERS ROWE, LASSITER, AND OLIVE VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS SCHULZE AND JENSEN VOTED IN THE NEGATIVE.

THE MOTION CARRIED BY A 3-2 VOTE.

Public Hearing 02 : June Cowles, Senior Planner

Public Hearing and possible motion regarding Rezone #12CZ11, 1.62 acres located at 1632 Center Street from Residential Agricultural Zoning to Office and Institutional Conditional Zoning

Ms. Cowles outlined the request. There were storm drainage concerns raised at the neighborhood meeting; staff will work with the applicant on this issue. The Planning Board unanimously recommends approval of the request as does staff.

Mayor Weatherly declared the Public Hearing open.

David Blevins, of Development Engineering was present to answer questions on behalf of the applicant.

With there being no questions, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO APPROVE
THE REQUEST; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 03 : Brendie Vega, Principal Planner

Public Hearing and possible motion regarding Rezoning #12CZ12, from Medium Density Residential (MD) to High Density Multi-Family Residential – Conditional Zoning (HDMF-CZ) and a Land Use Plan Amendment from Medium Density Residential to High Density Residential

Ms. Vega outlined the request. There were no attendees at the neighborhood meeting; however, one neighbor did speak with the applicant and attended the Planning Board meeting. The Planning Board recommends approval.

Mayor Weatherly declared the Public Hearing open.

Stewart Jones, of Jones and Crossen Engineering, stated they propose a 20 foot buffer along the western side of the property and eliminating apartment and condo uses.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE A MOTION TO APPROVE
THE REQUEST; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 04 : Dianne Khin, Planning Director

Public Hearing the Question of Annexation – Apex Town Council’s intent to annex Phyllis Lewis and Walter Powell properties containing 8.445 acres located at 0, 2050, and 2060 Laura Duncan Road, Annexation #485, into the Town’s corporate limits

Ms. Khin oriented Council to the site, stating that staff recommends approval of the request.

Mayor Weatherly declared the Public Hearing open. With no one wishing to speak, Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE A MOTION TO APPROVE
THE ORDINANCE; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

An audio recording of the following two Quasi-Judicial Public Hearings made by the Town Clerk are incorporated into these Minutes by reference. The audio recordings or transcripts of the Hearings should be used as the verbatim records of the questions, testimonies, evidentiary rulings, and discussions that occurred at the Quasi-Judicial Hearings.

Public Hearing 05 – Quasi-Judicial : Brendie Vega, Principal Planner

Quasi-Judicial Public Hearing and possible motion for Special Use Permit #12SUP01 and Major Site Plan for Eagle Rock Concrete located at 500 Pristine Water Drive

Mayor Weatherly explained the process by which this Hearing would be conducted.

Mayor Weatherly declared the Quasi-Judicial Public Hearing open. All those wishing to speak at the Hearing signed in with and were sworn in by the Town Clerk.

CONTACT WITH APPLICANT BY COUNCIL: Mayor Weatherly asked Council if any ex parte communication had occurred between them and the applicant or other affected persons prior to the Hearing. No ex parte communications had taken place.

EVIDENCE FROM STAFF: Brendie Vega, Principal Planner, presented her credentials and employment history with Apex. Ms. Vega outlined the details of the request, with a condition proposed by staff regarding conditions of the Special Use Permit. A neighborhood meeting was held with no objections from the attendees. Staff recommends approval of the SUP and Major Site Plan.

Mayor Weatherly polled Council as to whether or not any members had viewed the site; no viewings had been made.

OPENING STATEMENT BY APPLICANT: Ted Oliver, Attorney with Manning, Fulton, and Skinner, stated he was representing the applicant. All requirements of the SUP and Major Site Plan have been met. In order to extend the water line, easements were granted from affected property owners. Confirmed was that the number of trucks running as stated is true and accurate.

OPENING STATEMENT BY THE OPPOSITION: No one wished to speak in opposition.

CLOSING STATEMENT BY STAFF: Ms. Vega ensured the accuracy of 12 months instead of 6 months as the expiry time.

CLOSING STATEMENT BY APPLICANT: Mr. Oliver stated their reasons for asking for the 12 month time period.

With no one else wishing to speak, Mayor Weatherly declared the Hearing closed.

Mayor Weatherly read the Standards. Council stated all had been met.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE SPECIAL USE PERMIT AND MAJOR SITE PLAN WITH THE CONDITIONS AS STATED BY STAFF;
COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 06 – Quasi-Judicial : June Cowles, Senior Planner

The applicant, Calvary Church, Inc., has requested a Quasi-Judicial Public Hearing for a Major Site Plan located at 1632 Center Street

Mayor Weatherly explained the process by which this Hearing would be conducted.

Mayor Weatherly declared the Quasi-Judicial Public Hearing open. All those wishing to speak at the Hearing signed in with and were sworn in by the Town Clerk.

EVIDENCE FROM STAFF: Ms. Cowles presented her credentials and employment history with Apex. Ms. Cowles outlined the request, stating that at the neighborhood meeting there were questions regarding road widening, trees, church traffic, and the buffer.

Mayor Weatherly stated the same Opening Statement procedure from the previous quasi-judicial hearing would be followed. There were no questions from Council to staff.

CONFLICT OF INTEREST FROM COUNCIL: There were no conflicts of interest from Council.

EVIDENCE FROM APPLICANT: The applicant felt there was sufficient evidence presented for Council to make a decision on this request. There were no questions from Council for the applicant. The applicant gave his closing statement.

REVIEW OF STANDARDS: Mayor Weatherly read the Standards. Council was in agreement that all had been met. Russell Dalton, Transportation Engineer, presented his credentials and stated the TIA Report met standards.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO APPROVE
THE MAJOR SITE PLAN; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

There were no Old Business items for discussion.

PUBLIC FORUM

Mike Montford addressed his concerns regarding wheelchair access in the proposed plan for Tunstall House, stating that a new building would be more efficient and more cost effective. He suggested the House could be renovated for administrative use.

NEW BUSINESS

New Business 01 : Brendie Vega, Principal Planner

Possible motion approving Edgewater – Master Subdivision Plan for the properties located at 0, 2050, and 2080 Laura Duncan Road containing 7.5 acres and 48 lots

Ms. Vega outlined the request. The applicant has addressed the issues of grading, mosquitos, and the buffer which were brought forth at the neighborhood meeting. Planning Board and staff recommend approval of the plan. At Council's request, a pedestrian connection was added to the plan.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE
THE PLAN; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

WORK SESSION

There were no Work Session items for discussion.

CLOSED SESSION

There were no Closed Session items for discussion.

ADJOURNMENT

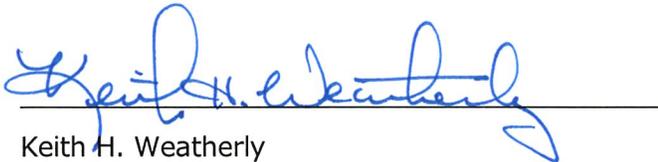
WITH THERE BEING NO FURTHER BUSINESS, MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.
COUNCIL MEMBER JENSEN MADE THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.



Donna B. Hosch, CMC, NCCMC

Town Clerk

ATTEST:



Keith H. Weatherly

Mayor

