

# TOWN OF APEX, NORTH CAROLINA

## Council Meeting Minutes for January 5, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 5, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

**Mayor:**  
Keith H. Weatherly



**Council Members:**  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

### COMMENCEMENT

Mayor Weatherly called the meeting to order, led the Pledge of Allegiance, and extended a welcome to those in attendance. Invocation was given by Council Member Olive.

### PRESENTATION

#### **Presentation No. 01 - US Census 2010**

Christine Mackey, US Census Bureau, presented Road to 2010 Census (attached); noting facts and population estimates, with 9 of 12 Wake County towns among the State's 25 fastest growing; Wake County may surpass all North Carolina counties in population with this census count; a count of everyone living in the United States is mandated by the United States Constitution and helps to apportion Congress (state census data count may help North Carolina gain another congressional seat) and data must be submitted to the President of the United States by December, 2010 and helps with the distribution of over \$400 billion in federal funds to local, state and tribal governments. Census forms will be mailed to each household in March (Census Day April 1, 2010); census takers will be employed to visit homes that do not return questionnaires. 2010 Census banners will be placed in the downtown during February. Planning Director Khin reported information will be placed on the Town website and noted the importance of the population based revenue - Apex estimated population 35,032; \$6.1 million collected in population based revenue last year accounted for 22% of Apex's budget.

#### **Presentation No. 02 - 2010 Peak City International Film Festival: John Demers (Bob Crowley)**

John Demers expressed appreciation to the Town for its support in the successfulness of the 2009 Peak City International Film Festival; plans are underway for November 2010 festival with Jerry Mathers planning a return appearance; are looking for office space and will continue filming Rusty Bucket Kids Club.

End of Presentations



**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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. With no amendment to the Consent Agenda the following action was taken. **Action:** Council Member Gossage made the motion to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of December 15, 2009 Town Council Meeting.
2. Minutes of December 15, 2009 Town Council Closed Session (separate cover).
3. Annexation Petition # 447: Neelkamal Corporation (Around the World Market), owner/petitioner, petitioning to annex 1.108 acres into the Town's corporate limits and located at 2112 E. Williams Street: 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; and, 3) Resolution Setting Date of Public Hearing for January 19, 2010.
4. Set Public Hearing January 19, 2010: Conditional Rezone #09CZ13 and Special Use Permit #09SUP03: (American Tower Corporation) seeking rezone from Rural Residential to Office & Institutional Conditional Zoning; 3. 54 acres located at 1716 Old US # 1 Hwy (for driveway not approved in its original location), PIN # 0731-32-8398.
5. Set Public Hearing January 19, 2010: various UDO Amendments.
6. 2009 Annual Certification of Firemen and 2010 State Certification Roster.
7. CSXT Agreements to allow two waterline crossings to be included in construction of Apex Peakway (N. Salem St. to New Dover Rd.) at a cost of \$9800 in fees due to CSXT and authorize Town Manager to execute same.
8. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in regular session December 7, 2009.

End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Attorney Fordham asked to add an item to Closed Session to receive legal advice regarding a potential litigation matter. **Action:** Council Member Schulze made the motion to amend the agenda as requested. Council Member Gossage made the second to the motion. The Agenda was set as amended.

**PUBLIC HEARINGS**

There were no scheduled Public Hearings.

**OLD BUSINESS**

There were no Old Business items to be considered.

**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. Your comments must be limited to 3 minutes to allow others opportunity to speak.

**No one spoke during Public Forum.**



**NEW BUSINESS**

There were no New Business items to be considered.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice regarding potential eminent domain actions and to consider acquisition of easement interests in real property and to receive legal advice regarding a potential litigation matter.

**Action:** Council Member Schulze made the motion to move into Closed Session at 7:27 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move back into Regular Session at 8:11p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

With Council having moved back into **Regular Session**, the following action was taken:

**Action:** Council Member Jones made the motion to adopt **Resolution No. 10-0105-01** Authorizing Eminent Domain Proceedings Related to the Improvement of the Apex Sewer System by Extending Gravity Sewer Lines: Property Owner: Cecil Bunn Olive and Hollands Crossing Home Owners Assn. Inc. Council Member Jensen made the second to the motion. Motion carried unanimously.

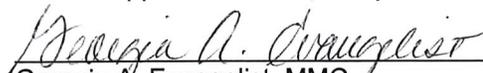
**Action:** Council Member Jones made the motion to approve a Unilateral Offer and Agreement to Pay Condemnation Expenses and Costs between JVI and Town of Apex, North Carolina.

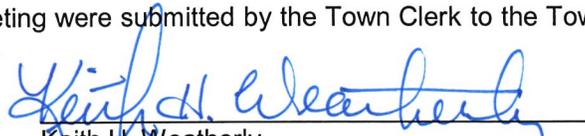
End of Regular Session

**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:13 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Olive made the second. Motion carried unanimously.

The minutes of the January 05, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the January 19, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Town Council Meeting Minutes for January 19, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 19, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



Council Members:  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

### COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance, and extended a welcome to those in attendance.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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; with no amendments, the consent agenda was set. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of January 05, 2010 Town Council meeting.
2. Minutes of January 05, 2010 Town Council Closed Session (separate cover).
3. Minutes of January 07, 2010 Personnel Committee meeting.
4. Minutes of January 14, 2010 Planning Committee meeting.
5. **Resolution No. 2010-0119- \_02\_** Waiver of Appraisal for Acquisition for Town of Apex FY 2009-2010 West Street Improvements Community Development Block Grant (CDBG) Program.
6. **Ordinance No. 2010- 0119- \_01\_** Amend Apex Town Code: Chapter 20 Article III, Removal and Disposition of Abandoned, Junked and Nuisance Motor Vehicles.
7. Authorization to execute Wake County Contract to allow Apex Fire and EMS to provide Emergency Medical Services as part of the Wake County EMS System.
8. **Resolution No. 2010-0119- \_03\_** Abandonment of Portions of Electric Utility Easement areas to reconfigure Utility Corridor.
9. Personnel Committee recommendation: reclassify Lead Pump Maintenance Mechanic, Salary Grade 17 to Pump Maintenance Supervisor, Salary Grade 20.
10. Personnel Committee recommendation: revise Town of Apex Personnel Policies, Article VII, Sections 2, 3 and 4: Holidays.
11. Set Town Council Annual Planning Retreat: Friday, February 26, 2010, Apex Town Hall.
12. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners during their Regular Meeting of January 4, 2010.

End of Consent Agenda



## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action; amendments: 1) Mayor Weatherly asked to discuss town employee health plan. 2) Mayor Weatherly asked to revisit Council Committee and Liaison Appointments. 3) Manager Radford asked to include presentation on tree planting project for Apex Nature Park. **Action:** Council Member Schulze made the motion to add these items to the Regular Meeting Agenda. Council Member Jensen made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

## PRESENTATION

Apex High Stem Club's Mary Silliman asked permission to plant donated trees within Apex Nature Park off Evans Road, and outlining project benefits; asked Town's support and assistance; also, gave update on the floating island project. **Action:** Consensus of Council to grant Stem Club permission to plant donated trees within Apex Nature Park, guided by staff and following approved guidelines, and maintained by the Town.

End of Presentation

## PUBLIC HEARINGS

**Presenter: Mayor Keith Weatherly**

**Public Hearing # 01 – Pre-Budget Public Hearing**

*Review: Customary public hearing in advance of preparation of proposed FY2010-2011 Annual Budget; certified public notice attached*

Public Hearing was held to receive citizen input regarding formulation of Town of Apex, Fiscal Year 2010-2011 Annual Budget. Public hearing opened at 7:12 p.m. West Chatham Street property owner asked to include funds for sidewalks for Chatham Street area. No one else spoke. Public hearing closed at 7:15 p.m. FY2010-11 Budget Public Hearing is scheduled June 1, 2010; adoption of the budget scheduled June 15, 2010.

End of Public Hearing #01

**Presenter: Brendie Vega, Principal Planner**

**Public Hearing # 02 – Rezone # 09CZ13 and Special Use Permit #09SUP03**

*Review: Planning Board met January 11, 2010 and unanimously recommends approval; staff recommends approval; certified public notice attached*

Public hearing regarding Conditional Rezone #09CZ13, Special Use Permit #09SUP03, and Minor Site Plan for proposed telecommunications tower. American Tower Corporation, applicant, seeks to rezone from Rural Residential to Office and Institutional Conditional Zoning – and rezone original approved driveway from O&I – CZ to RR. The subject property is approximately 3.51 acres identified on Wake County Tax Maps as PIN#s 0731-32-8398 partial located at 1716 Old US 1.

Town Clerk administered oaths to: Dianne Khin, Brendie Vega and Mike Redsloff, Excell Communications, Inc. Staff presented the planning report that is attached and incorporated as a part of the minutes, and stating the initial rezone of September 15, 2009 allowed construction of a 199' monopole telecommunications tower at Kelly Road and Old US1; NCDOT did not approve the drive access location because of controlled access to NC540; applicant seeks to amend special use permit and minor site plan and proposes to move drive access location north, utilizing an existing log path; previous rezoned access road would be rezoned rural residential and new access road would be zoned office and institutional. Property owners were notified and public notice given. Plans will be added to the area where the access road is near adjacent property and at the entrance; conditions remain the same as the original rezone. Planning Board met January 11, 2010 and unanimously recommended approval; staff recommended approval.

Public hearing opened at 7:17 p.m. Mike Redsloff, Excell Communications, Inc., Garner, NC, spoke on behalf of applicant, American Tower, who supports the request; there was no new presentation on the tower; NCDOT did not approve the access road location because of the uniqueness to NC540; new access road would utilize an existing path off Old US1 and does not require removal of any trees where the initial location would have required cutting trees; all existing vegetation remains in place; access will have a locked gate. Public hearing closed at 7:20 p.m. **Action:** Council Member Gossage made the motion to approve Conditional Rezone #09CZ13, Special Use Permit #09SUP03 and Minor Site Plan. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing #02



**Presenter: Brendie Vega, Principal Planner**

**Public Hearing # 03 – Unified Development Ordinance Amendments**

*Review: Planning Board met January 11, 2010 and recommends approval with corrections to Measurements Table to clearly state setbacks for Townhomes and Townhomes, detached, and for removal of redundant sentence in Amendment 5; staff recommends approval with Planning Board changes; changes have been made in the staff report; certified public notice attached*

Public hearing and possible motion regarding amendments to the Unified Development Ordinance. Staff presented the planning report that is attached and incorporated as a part of the minutes.

1. Amend Section 7.5.6(B) Street Yard Trees as Mitigation Measure to correct a reference.
2. Amend Section 5 Measurements to require minimum lot widths and minimum side setbacks for single family, detached townhouses and attached townhouses.

Staff recommends single family 50 feet minimum lot width, 15 feet side yard setback in Residential Agricultural and Rural Residential Districts, same as medium density; recommends single family minimum lot width 30 feet, side yard setback 5 feet in remaining districts: high density single family, high density multi-family, mixed office, retail residential, planned development; recommends townhomes detached minimum lot width 26 feet, 3 feet side yard setback; recommends townhomes attached minimum lot width 18 feet, no less than 8 feet between units. Examples of existing homes built on various lot widths were given; problems where there were 6 feet or less between houses were noted (below 6 feet requires rated fire walls and locations of HVAC units does not allow fire departments a clear path between houses); previous amendment was approved that requires for single family 5 feet side yard setback. Example: Creekside detached townhomes minimum lot width 26 feet, 6-8 feet between homes, HOA maintained, and HVAC units set on one side or in rear and does not obstruct between units; restrictions can be placed on site plan or rezone (single family individual lots put HVAC units in various places).

Staff advised the amendment would affect Villages of Apex proposal for single family homes, 24.5 feet minimum lot width, 3 foot side yard setbacks (UDO requirement for detached townhomes, 26 feet minimum lot width with exterior maintenance and landscape by HOA; requires rear access parking and additional on street parking because of density and not required with single family). Staff is concerned with the narrow lots and recommends to the development group Planned Unit Development, minimum 30 feet lot width, 5 feet side setback; this is as small as staff would like to see without HOA exterior maintenance and on street parking (no requirement for single family rear access); detached townhomes are required to be alley loaded with additional parking in front (three feet between drives).

Staff advised, should the amendment be approved pending applications would be affected including Villages of Apex proposal for 80 lots; original approval was 40 lots with alternating 40 and 50 feet lot widths, 24.5 feet wide lots (medium density lots 50 feet width; high density single family lot widths 40 feet); PUD ordinance does not list minimum lot width and staff requests 30 feet (with staff's experience, did not anticipate smaller lots). Staff advised the development group, staff felt what was being proposed was best detached townhomes and should follow the detached townhome ordinance (HOA maintained, on street parking space, and 26 foot minimum lot width); the development group said they did not want detached townhomes, they wanted single family homes.

Staff advised this was an opportunity to amend the ordinance to require wider lot widths and would be applicable to pending applications. Staff did not know what neighboring municipalities require and stated Kits Creek lot widths were about ten feet wider than the proposed 24.5 feet lot widths and homes were six foot wider than the proposed single family homes by Villages of Apex. Noted Creekside detached townhomes are the closest to the proposed; in high density single family district, general lot width is 40 feet and most narrow approved for single family lots.

Discussion followed regarding standards for detached townhomes and single family homes; both are permitted the same; no additional supplemental standards are required for single family homes. Detached townhomes were proposed for this development and with supplemental standards to assure the product would look good, function well and would assure continued maintenance by HOA, and no difficulty with density. Parking: single family homes are required to have two off street parking spaces; detached townhomes are required to have two off street parking spaces and one striped off street parking space per unit (required rear alley with street front parking anticipated for guest parking); standard parking space 9 x 18 feet. Small Town Character Overlay District: detached homes are proposed 26 feet minimum lot width; provision is in place for regular townhomes 20 feet minimum lot width; examples were given. Staff did not have examples for the proposed Villages of Apex and noted they looked like Creekside however much longer in length with garage in back.



3. Amend Table 4.2.2 Use Table to refer to new *Supplemental Standards for Condominium and Multi-Family or apartment* and to renumber subsequent standards in the table.
4. A new Section 4.4.1(A) *Condominium* and new Section 4.4.1(G) *Multi-Family or Apartment* are inserted to add supplemental standards, and all subsections in 4.4.1 are renumbered.

Proposed amendments 3 and 4 add supplemental standards to A) Condominium G) Multi-Family or Apartment:

- 1) 100 or more units shall be required to have a trash compactor in lieu of dumpsters (to avoid noise, uses up parking, smell and attracting animals, less land space; noted Village Summit has 5 dumpsters).
- 2) one or more dumpsters or a trash compactor must provide a recycling area (meets compliance for recycling by the state) and a cardboard dumpster; both shall be screened with similar materials to the dumpster or compactor enclosure.
- 3) The overall enclosure design must comply with standards found in Town's *Design and Development Manual*.

5. Amend Section 8.2.8 (B)(1) *Screening Methods – Dumpsters* is amended to include recycling and to allow for composite materials to be used on gates; examples given; when practical, plants would be added, and design must comply with standards found in town's design and development manual.

Planning Board met January 11, 2010 and unanimously recommended approval with corrections to the UDO Measurements Table to clearly state setbacks for Townhomes and Townhomes detached; also recommend removal of a redundant sentence in Amendment 5; staff recommended approval with Planning Board's corrections and were made in the staff report.

Public hearing opened at 7:45 p.m. Mark Gramling, Apex First Development, stated we live in changed times and must be innovative forward thinking and adaptive with current market conditions; doesn't agree with restrictive blanket conditions with houses, lots, and setbacks and should be looked at on conditional basis and individual circumstances of the development and not conditioned that would dictate everything; detached townhomes and maintenance is because of commonality of the structure, designed as one unit and controls the maintenance; another issue is insurance for attached structures. Maintenance for detached townhomes is by a person's choice, and doesn't have commonality and is a single family home; each owner could change or fix as they choose. As far as property setbacks, they are working on language to allow cross access easements for maintenance for individual houses or townhomes where you have narrow setbacks; even where HVAC units would be every other house and without full restrictions from a fire standpoint; there are ways to deal with this without blanket ordinance, without applying objectives with innovativeness to it. The development could be affected by this if passed, if deemed retroactive; the PUD now has no restrictions.

He advised the builder who proposes the units for Villages of Apex, is builder/developer for Kits Creek; it is not designed after Kits Creek, however similar in that it is a rear loaded project, award winning high profile project, Charleston style crafted homes, comparable narrow homes on similar lots. Villages of Apex initial approval was 40 lots, and proposes lots be split, 40 more lots for total 80 lots, with minimum 24.5 feet lot width, all rear loaded and never intended to be front loaded; lots are 114 foot deep, with a 15 foot paved alley, with 40 foot easement and driveway apron in the easement portion, allowing parking on the easement (vehicles park on property, one for guests in front yard, one in garage). Staff advised this was not in the initial approval, roads were built and infrastructure in place with staff working on parking and roads; may have been different if known, with cut-outs between the curb and sidewalk. Gramling noted the roads, curbs and sidewalks were all in place and built to town standards and no different than the rest of the neighborhood.

Mayor Weatherly advised it may be in the best interest for Council to take legal advice from Attorney Fordham prior to deliberation. **Action:** Council Member Schulze made the motion to move into Closed Session to receive legal advice from the Town Attorney at 7:55 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move back into Regular Session at 8:17 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

With Council having moved back into Regular Session varying comments were made on advantages and disadvantages of trash compactor in lieu of dumpsters for Condominium, Multi-Family or Apartment: dumpsters are spread throughout, compactor maybe further distance to get too, less parking with more dumpsters, property owners should be allowed option, compactor simplifies collection process, safer when moving through lots in higher dense development with less dumpsters, compactor would be more attractive in a more dense area, more/less noise; less possible damage to asphalt; easier to maneuver truck through crowded parking, time of pick-ups, health, safer in more populated areas with less dumpsters placed assuring well lit areas. Staff supports the amendment thinking the compactor was a better solution than multiple dumpsters; some comments were more appropriate during site plan process; there are no requirements for recycling at every dumpster.



**Action:** Council Member Schulze made the motion for continuation of the public hearing regarding amendment 2: Section 5 *Measurements* to require minimum lot widths and minimum side setbacks for single family, detached townhouses and attached townhouses to the February 2, 2010 Council meeting. Council Member Jones made the second to the motion. Motion carried unanimously.

**Action:** Council Member Schulze made the motion to approve amendments as submitted 1, 3, 4, 5, with exception to amendment 4, Sec. 4.4.1 Residential Uses, delete: A) Condominium: 1) All condominium developments containing 100 or more units shall be required to have a trash compactor in lieu of dumpsters, and G) Multi-Family or Apartment 1) All multi-family or apartment developments containing 100 or more units shall be required to have a trash compactor in lieu of dumpsters. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

**Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 04 – Annexation Petition # 447**

*Review: Petitioner requests annexation to connect to Town water and sewer; certified public notice attached*

Public Hearing: Annexation Petition # 447: Neelkamal Corporation (Around the World Market), owner/petitioner, petitioning to annex 1.108 acres into the Town's corporate limits, and located at 2112 E. Williams Street. Staff oriented to the site with the annexation necessary to obtain water and sewer to the site and for proposed Around the World Market; site plan has been approved; construction plan pending with annexation. Public hearing opened at 8:32 p.m. No one addressed the request for annexation. Public hearing closed.

**Action:** Council Member Gossage made the motion to approve annexation petition # 447 by adopting an ordinance to extend the corporate limits of the town by the 1.108 acres. Council member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

End of Public Hearings

## OLD BUSINESS

**Presenter: Town Manager Bruce Radford**  
**Old Business # 01 – Sale of Hwy 64 Property**

*Review: Upset bid process was conducted; no upset bids were received; completion of sale is conditioned upon agreement to and execution of addendum to contract of sale which restricts use of property by future owners to ingress and egress only.*

Possible motion to approve Resolution Declaring LRC Development, LLC as highest and winning bid and authorizing completion of sale of the Hwy 64 property to LRC Development, subject to LRC's Agreement to and execution of the attached Addendum to Contract of Sale.

Town Manager Bruce Radford reported the upset bid process for proposed sale of .46 acres of property owned by the Town and located on Hwy 64 was conducted and no upset bids received. Council had requested an amendment to the contract of sale which would restrict use of the property by future owners to ingress and egress only. Manager recommended completion of the sale to LRC Development, and conditioned to LRC's agreement to and execution of an addendum to the contract of sale. Discussion evolved around the uniqueness of the property, neighboring property development plans and uses and types of development, local sales and amounts received, acquiring new appraisal for the site, value of this piece of property to the neighboring property, not wanting the property to sit indefinitely, with the Manager noting the seller has a contract on the adjoining property and felt this was in the best interest of the Town to move forward with the sale and with LRC agreeing with the addendum, for \$200,000.

**Action:** Council Member Jones made the motion to adopt **Resolution No. 2010-0119-04** authorizing the sale of the property on Hwy 64 to LRC Development Co., LLC, for \$200,000, and conditioned on the willingness to accept and agree with the addendum on the contract of sale. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Old Business # 01



Old Business  
continued

**Presenter: Council Member Schulze, Chair of Personnel Committee**  
**Old Business # 02 – Revision to Town of Apex Personnel Policy**

*Review: Personnel Committee met January 7, 2010 and recommends revisions to the policy.*

Personnel Committee recommends revision to Town of Apex Personnel Policy, Article V. Section 7: Acceptance of Gifts and Favors. Council Member Schulze reported on the Committee's discussion regarding acceptance of gifts and favors during the January 7, 2010 Personnel Committee meeting, and recommended revisions to the policy as follows, and recommending staff provide guidance to employees, while allowing employees to accept trinkets and token gifts, with gifts of value being reported and recorded:

**Article V. Section 7. Acceptance or Granting of Gifts and Favors**

No employee of the Town shall accept any gift, favor, or thing of value which could appear to influence such employee in the discharge of the employee's duties, or generate the appearance of impropriety. Acceptance of any item regardless of perceived value, with the exception of token gifts and trinkets, must be reported to the department head. No preferential treatment or improper favor, service or thing of value may be conveyed or granted in the discharge of duties.

**Action:** Council Member Schulze made the motion to approve the revisions to the policy as stated. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Old Business # 02

**Presenter: Council Member Schulze**  
**Old Business # 03 – Planning Committee Recommendation**

*Review: Planning Committee met January 14, 2010 and gave favorable recommendation to providing a transparency in government program*

Presentation by staff and possible motion regarding Planning Committee's recommendation to provide additional information on Town's website.

Council Member Schulze reported the Planning Committee's discussion and direction to staff to develop a transparency in government program, allowing easier website accessibility to view government information. The Town's Information Technology Director and Webmaster formulated web page content in several critical areas of interest, and demonstrated the format and content and noted items are ready to be launched on the website, and noted additional information or suggested changes will be added, and may include a financial ledger, approved Council meeting minutes, public notices expanded; staff will be able to measure the success of the web-page; all items are public record and have been previously available by contacting staff. Added suggestion: a single fixed web-cam to view Council meetings, estimated cost \$8,000, discussion regarding increase quality and archives followed and could be discussed during the retreat.

**Action:** Consensus of the Council was to move forward with the formulated public information webpage, and authorized staff to proceed with update to the website.

End of Old Business # 03

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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

*No one spoke during public forum.*



**NEW BUSINESS**

**Presenter: Town Manager Bruce Radford**  
**New Business # 01- Request for Parade**

*Review: Dave Nyce will be present to present request, along with Chief of Police or his designee to express support for the parade.*

Possible motion to grant request from Apex Masonic Lodge # 584 (Dave Nyce) to host a parade in Apex, June 12, 2010, 10:00 a.m. as part of their 100<sup>th</sup> anniversary celebration. Nyce ask Council to grant permission for the Masonic Lodge to host a Shriners parade in Apex, June 12, 2010, 10:00 a.m., beginning at AV Baucom School and moving down Salem Street, with hot dog lunch as part of the 100<sup>th</sup> anniversary celebration; all activities will be coordinated through Police Chief Lewis and comply with necessary requirements; Police Chief Lewis was present to express support for the parade.

**Action:** Council Member Gossage made the motion to allow the parade. Council Member Schulze made the second to the motion. Motion carried unanimously.

**End of New Business # 01**

**Presenter: Mayor Keith Weatherly**  
**New Business # 02 – Adaptive Reuse Advisory Committee**

*Review: Mayor Weatherly will recommend appointments and note dates of scheduled meetings; Committee will bring recommendation back to Council.*

Mayor Weatherly will recommend for Council's consideration, appointments to the Adaptive Reuse Advisory Committee and ask for a volunteer from Council to serve on the Committee.

Mayor Weatherly recommended the following persons to serve on the Adaptive Reuse Advisory Committee and with Council Member Jensen volunteering to serve as the Council representative with a series of meetings held on: January 26, February 9, and February 23, 2010 at 4:00 p.m. in the Apex Town Hall; Committee will formulate a recommendation to bring forward to Council in March.

Planning Board: Sheryl Bynum

Planning Board, Real Estate Professional: Tom Colhoun

Historic District property owner, Attorney: Don Grimes

Historic District property owner, Business owner: Marshall Barnes

Business owner, President of Downtown Business Association: Mike Andreas

Historic District property owner, Real Estate Professional: Heather O'Sullivan

Historic District property owner, Historical Society: Kathy Taylor

**Action:** Council Member Jones made the motion to approve the recommended appointments, with Council Member Jensen as the appointee from Council. Council Member Olive made the second to the motion. Motion carried unanimously.

**End of New Business # 02**

**Presenter: Town Manager Bruce Radford**  
**New Business # 03- Set Work Session**

*Review: Economic Development Committee met and recommends a Work Session to allow more time to discuss economic development.*

Possible motion to set a Work Session for Town Council to discuss Economic Development.

**Action:** Consensus of Council was to schedule a Work Session of the Council to discuss Economic Development, Tuesday, January 26, 2010 at 7:00 p.m., Town Hall; public notice will be given.

**End of New Business # 03**



New Business  
continued

**Presenter: Mayor Keith Weatherly**

**New Business # 04 – Add-on: Employee Health Plan**

Mayor Weatherly had recently found Town of Apex employee health plan covered "elective abortions", and understood it standard in most contracts, however, asked Council consider removing "elective abortions" from employee health plan, and not when it relates to health related issues. Human Resources Director Green stated this was correct; noted codes would indicate when abortion would be health related. Town is self funded, with Blue Cross and Blue Shield as administrator over the insurance coverage; BCBS advised the revision could be made to the Town's contract to state the insurance coverage will no longer fund elective abortions and can have the coverage revision by February 1, 2010. With a brief discussion the following action was taken.

**Action:** Council Member Schulze made the motion to approve the omission of elective abortions from the town employee health plan. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 04

**Presenter: Mayor Keith Weatherly**

**New Business # 05 – Add-on: Council Committee Appointments**

Mayor Weatherly stated the Town Council Appointments to committees and liaisons will be reappointed from the original appointments of December 1, 2009, as follows:

**COMMITTEES**

**Finance Committee:** Council Member Jones, Chair, with Council Member Jensen

**Planning Committee:** Council Member Schulze, Chair, with Council Member Olive

**Personnel Committee:** Council Member Gossage, Chair, with Council Member Olive

**Economic Development Committee:** Council Member Jensen, Chair, with Council Member Jones

**LIAISONS**

**Apex Chamber of Commerce:** Council Member Jones

**Apex Fire Advisory Board:** Council Member Schulze

**Apex Parks, Recreation and Cultural Resources Advisory Commission:** Council Member Jones

**Triangle J Council of Governments:** Council Member Jensen, Alternate Council Member Olive

**Transportation Advisory Commission:** Mayor Weatherly, Alternate: Council Member Gossage

End of New Business

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session at 9:15 p.m. to discuss a personnel matter.

**Action:** Council Member Jones made the motion to move into Closed Session. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately.

**Action:** Council Member Gossage made the motion to move out of Closed Session Council Member Jones made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:25 p.m.

**Action:** Council Member Jones made the motion to adjourn. Council Member Olive made the second. Motion carried unanimously.

The minutes of the January 19, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the February 2, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for February 02, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 02, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



Council Members:  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Schulze gave the Invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

## PRESENTATION

Marine Corps League Detachment 733 presented a plaque to Apex Fire Department in recognition of their efforts demonstrated for "Toys for Tots 2009" campaign.

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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 Jones made the motion to approve the consent agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes of January 19, 2010 Town Council meeting.
2. Minutes of January 19, 2010 Town Council 1<sup>st</sup> Closed Session (separate cover).
3. Minutes of January 19, 2010 Town Council 2<sup>nd</sup> Closed Session (separate cover).
4. Annexation Petition # 448, William H. and Norma M. Keyes, owner/petitioner, petitioning to annex 1.135 acres into the Town's corporate limits and located at 1014 Olive Chapel Road, Apex, and includes public right of way; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for February 16, 2010.
5. Statement of Town Council and Ordinance for Rezone #09CZ12, Stephen and Renata Williams, Petitioner; .77 acres from Medium Density to Mixed Office Residential and Retail-Conditional Zoning and located on 215 Templeton Street behind the Halle Cultural Arts Center.
6. Findings of Fact and Conclusions of Law regarding Special Use Permit #09SUP03, Kelly Road Tower, Statement of Council and Ordinance for Rezone Case #09CZ13, American Tower Corporation, petitioner for property located at 1716 Old US1 Highway; new drive location.
7. Set public hearing for Conditional Zoning #10CZ01, rezone from B1-Neighborhood Business to PC-CZ, Planned Commercial Conditional Zoning, Lowes Food Stores, Inc. applicant; .66 acres located within Olive Chapel Village Shopping Center at Apex Peakway and NC55.

End of Consent Agenda



## REGULAR MEETING AGENDA

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

### PUBLIC HEARINGS

**Presenter: Dianne Khin, Director of Planning**

**Public Hearing # 01 – Continued from January 19, 2010 Council Meeting**

**Review:** Council during their January 19, 2010 meeting voted for continuation of the public hearing regarding Unified Development Ordinance proposed amendment 2: Section 5 *Measurements* to require minimum lot widths and minimum side setbacks for single family, detached townhouses and attached townhouses to the February 2, 2010 Council meeting; public hearing remained open.

Mayor Weatherly continued the January 19, 2010 public hearing to consider UDO amendment Section 5 Measurements to require minimum lot widths and minimum side setbacks for single family, detached townhouses and attached townhouses. Director of Planning presented the Technical Review Committee's recommended conditions of approval for pending application Villages of Apex Charleston lots should Council choose to grandfather those lots.

**PUBLIC WORKS (Sanitary Sewer, Water, Electric)**

**Sanitary Sewer:** For each lot, a new 4-inch sewer clean out must be installed directly to the Town maintained 8-inch sewer main or manhole (Town Standard Specifications and Standard Details - Section 7.01(G)). According to Barry Herzberg with NC Division of Water Quality, current proposed sewer design for two 4-inch services tied together to a single "Town" maintained 4-inch sewer line is not allowed per 15A NCAC 02T .0303(1)(2). By State 2T rules, the minimum size "public sewer" line is 8 inches. The minimum "private sewer" line is 6 inches. **Water:** All individual lots shall have water meters and must be connected to Town water main per Town specifications. Existing water meter connections and meters will not be allowed to cross private property to gain usage. **Electric:** All electric services and reconnections shall be performed or installed to new lots. All costs associated with electric installations shall be paid to the Town prior to receiving plat signatures.

**ENGINEERING, PLANNING, POLICE and FIRE**

Provide additional marked guest parking spaces in the amount of approximately one space per unit, which could be as low as 0.8 spaces per unit. On street spaces using the existing streets or spaces served by the alleys would not be counted due to the type of streets that were built and the current residential product being proposed.

Options for doing this are: (1) provide a private guest parking lot for each of the four main areas, two on Shoofly Path and two on Branch Line Lane, by removing enough residential lots mid-block; (2) widen the street frontage along Shoofly Path and Branch Line Lane to add marked parallel spaces abutting the existing sidewalk (niche spaces); (3) remove future residential lots across the street from the proposed units mid-block to provide either 90-degree private spaces along the street front or private guest parking lots; and (4) add private parking spaces in the median island on Ambergate Station.

All private parking will need to be HOA-maintained and managed. Combinations of (1) through (4) would be acceptable pending staff review. Parking should be spread out so that it meets the need for safe and convenient guest parking for all proposed units. In the future, parking may be limited to one side of the public street(s) if accessibility issues occur. Staff provided clarity for parking in public right of way and with curbing between public and private maintenance.

**PLANNING, ENGINEERING, POLICE, and PUBLIC WORKS**

Provide mail kiosks only; no individual mailboxes or grouped mailboxes shall be allowed due to narrow street frontage and on-street parking. Mail kiosks shall not be located within public rights-of-way, but rather shall be placed in easements on private property abutting public streets.

**PLANNING**

Maintenance of exterior elements will be the responsibility of Home Owners Association (in keeping with current requirement of detached townhomes on 26 feet wide lot and proposed Villages of Apex single family home on 24.5 feet wide lot and staff believes exterior maintenance should be similar conditioned).



**Apex Town Council Meeting Minutes  
February 02, 2010  
Public Hearing # 01 continued**

Mayor Weatherly stated staff did not anticipate lots of this narrow width when preparing the UDO, and now has opportunity to effectively prohibit them; staff gave Council options to consider, not obligated to take any option, conditions thought workable and if Council chose could consider grandfather pending application, Villages of Apex Charleston Lots.

Public hearing was held open from previous meeting and at 7:10 p.m. the following addressed the proposed amendment:

Peter Crossen, Jones and Crossen, Engineer for Apex 1<sup>st</sup>, asked exemption from proposed conditions stating when the project was brought forth it met all UDO conditions; high, medium and low density single family already have minimum lot widths; PUD/TND differ in zoning allowing development creativity; 24.5 feet lots are not proposed for detached townhomes but single family homes and marketed same as other 50 feet lot single family homes. Requested site plan be allowed to go forward under UDO requirements submitted under and agreed to comply with conditions for required public works sewer, water, electric and mail kiosks.

Laney Caldwell, Experience One Homes, proposes Charleston product and noted: space between houses for proposed is greater than original approved homes in Villages of Apex; approved PUD side set back is 3 feet and proposed has 6 feet between, 6 inches more than existing homes; 50 feet lots typically have front drives with 27 feet for parking in front of home and proposed has 24/25 feet and differ only a couple of feet and couldn't park any more cars at existing homes than proposed; proposed has four parking spaces per home, rear loaded drives, and single family homes have front drives, and require two parking spaces.

Proposed homes meet all existing UDO requirements and hoped would meet approval and not consternation, once seen would be pleased with outcome; PUD talks about creating special districts, maximum density and still meet other requirements and proposed is a viable way to do this. Noted: New Urbanism concept, Country wide, encourages plans for high density and better control of urban sprawl, explaining with expanded city services no one is willing to pay taxes to put streets in prior to development; they are trying to duplicate things seen in the past, older houses a little than a foot apart done in the turn of the century, a concept that has worked well across the country; land is expensive and with more land more services are needed and thinks getting back to density is the original concept of the Downtown Overlay District.

Chief of Police Jack Lewis addressed accessibility for police and emergency personnel, explaining where cars are parked oppose each other vehicles can't get by. Noted areas where drives are blocked, and with drive pull offs allow cars to pass and lost with rear loaded properties. Ex: Narrow Marimonte streets and with additional parking, cars now park on sidewalks, block access and can't get through.

Lot widths do not affect Police, however vehicles coming/going cause issues and believes should not create potential problems; once streets become public anyone has a right to park; issue is adequate parking, where property lots are narrow with one car garage, two cars are stacked then people rotate cars, opposed to parking in the alley or the street, is not a practical and becomes problematic. Police do not enforce HOA covenants and ability for HOA to restrict such does not work; HOA can penalize but Town does not deal with that but is responsible for answering calls and spends lots of time dealing with these problems. He's not opposed to the number of folks being put on the property, but concern is safety, and roads have to be accessible for emergency vehicles and safe passage allowing somewhere for folks to park. Concessions: parking lots and niches allow on street parking, and vehicles can pass safer. In the beginning there's no problem as properties will not be filled and nor when everyone's at work; over time homeowner's change and if landscape doesn't work, problems will occur on weekends, nights and afternoons. Fire and Police agree regarding accessibility, with fire apparatus having more acute issues; the original layout proposed larger lots and there has to be change in parking to accommodate doubling people and vehicles in this defined area. As long as street width is ok and not so many vehicles, there's ability to get emergency vehicles through there; planned communities are designed to have parking on both sides of the street and works, there just has to be enough of it. Ex: Dogwood Ridge restricts no parking due to traffic issues caused by density; he's fine with more people however what works in other places where there's mass transportation and other things, Apex doesn't have and may not work here, however allows people to walk and have other access; generally people like to drive cars and park in front of their door opposed to walking from parking lots or elsewhere. He is responsible to inform Council when he sees problems coming.



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Apex Town Council Meeting Minutes  
February 02, 2010  
Public Hearing # 01 continued

Fire Chief Mark Haraway restated minimum lot widths and minimum side setbacks were agreed upon between Planning and Fire; generally some issue creates the need to recreate policies whether overlooked or didn't figure on and this is one of those, originally looked at one thing and now looking at more density. Previous approvals of some subdivisions do not allow fire apparatus to get through certain streets where folks do not park in their two car driveway, even when told to do so find it more convenient to park in front of the house and then blocks access for ambulance or fire truck, and thus fail to get emergency vehicles as close as they can to get folks into an ambulance or to put fire out; the further out the vehicle from the residence the harder it is to get to them and provide safety and services for the citizens, and thus the reason for proposed conditions. If something is not put into place this problem will continue to exist and should be addressed while there is an opportunity. Has spoken with the Fire Marshal and Traffic Engineer and offer four options, and even if Council opts to grandfather this project, this still needs to be done as it's a more dense development, will have more cars trying to park in the area and fire apparatus and emergency equipment can't get through.

Peter Crossen stated streets were designed in accordance to Town standards, 50 foot wide, right of ways, on grid, and there are plenty of access points to get in and around this part of the subdivision and is not the typical subdivision with cul-de-sac streets; by reducing lot width in this development, they increased density, but does not see this as an issue apart from any other subdivision within town, as it only takes two cars on any street to cause problems and feels they are being singled out because of increased density, and questioned this. Asked Council consider what they are trying to do, with change in housing market they were creative and thinking outside the box, and they are seeing this in business, and feels the development being proposed for Charleston lots will be a good product.

Mike Howington, Villages of Apex, stated this was a good location for increased density, and a downtown project; originally plan approval was for 685 units in the north and are nowhere near that; they are not trying to jam a bunch in there and also voluntarily brought apartments down by 80 units; noted this a small pod in the middle of the whole development and asks for 40 lots; proposed houses are farther apart and more clearance between them than what was originally approved; has models on 40 foot wide lots with 34 foot houses, one car garage with two parking places and is sufficient; proposed homes can have 4 cars on them, granted may shift cars when guests come; lots are 120 foot long and can put as many cars with these houses and same configuration with what's being done on 40 foot lots; houses are farther apart, can park the same, and a smaller pod; as far as access for fire or police, that could go for any town street if you park two cars on both sides; in this project if a street is blocked there are many other ways to get around, and everything done has been to better the project; not only are they working with the market, but are beautiful homes and a perfect place for it. They market these homes as \$200,000 to \$800,000 community and this is the smaller pod that will be \$200,000 to \$250,000, and are protecting the high end houses, and the area builders have invested in. They are not asking to go over 685 units, not even asking close to that even with increased density. He is confused over all of the reservations as this is a single family pod that surrounds a townhome pod, a perfect place for it, and if it were built for anywhere it was built for here in this downtown location and is a beautiful project. The architect has used all architectural requirements, change in product – no one can look the same in six or seven houses and have followed all guidelines of the current UDO. He thinks they need to look at it for what it is, a 40 lot small pod, and another characteristic of a bigger and nicer product.

Khin expanded on staff's concern with a rear loaded product where service vehicles or guests will not go to the back and believe should be front marked guest parking spaces, same as detached townhomes on 26 foot wide lots are required to be alley loaded, with one guest parking space per unit in front, and can be on the street. Villages of Apex does not want to consider the proposed detached townhomes but single family homes, and don't feel they are mitigating additional impacts by having narrow lots. Staff explained detached townhomes have set criteria to mitigate impacts, where single family homes were never envisioned to have less than 40 feet wide lots and the way all staff had thought the proposed were when the plan was turned in; didn't catch that the lots were more narrow and wasn't in the original rezoning, and to limit to 40 foot lot width for single family. Because the UDO gives flexibility, Khin stated there should have been a minimum lot width in the rezoning document, so all knew what they were getting; their plan showed 40 and 50 foot wide lots on this section and was what they thought was what they were getting and turned out legally should have been in the rezoning and were reviewing at the same time, but didn't catch that.



Question arose if the site plan and zoning request were turned in at same time and zoning didn't call for 40 foot lots, and site plan did, was it an applied agreement they would do the same thing. Attorney Fordham advised it was not an applied agreement; you do not have an agreement with zoning but might be considered part of the project, depending on the time it was put in and expectations it created; with the Town, the transportation impact analysis was based on the assumption it would be for the approved subdivision plan submitted, and answering the question as it might be related to vested rights. Khin continued the requirement for detached townhomes is one marked guest parking space per unit and proposed has street parking, but no requirement marked or designated guest parking or pull out of the right of way to provide more parking; noted the median could be carved out for parking spaces; thinks it comes down to the fact the roads have been built and doesn't want to tear up roads to put in parking to bring in the curb line; felt they would not be having this discussion if this were proposed originally, comments would be included,

Discussion evolved around standard 27 feet curb to curb road widths, front loaded drives, and parking on both sides; staff proposes marked spaces, noting proposed not marked but could niche in the strip of grass and bring curb line up to and against sidewalk and one would get out of their car on the sidewalk and not in grass; you get an extra six feet added on to 27 feet and if you do it on both sides of the street, you get an extra twelve feet for parking (in this case utilities are in alley and only utilities are for street lights). Staff noted 27 feet is standard with front loaded drives and expect people to park in street; noted cars parked side by side makes streets impassable. Ex: Scotts Green 40 lots, 27 feet wide streets, rear loaded, and park two cars on the street; with 24.5 feet width lot, in front of each house could only park one car, and should the house across the street have a guest and there's no way to stagger the parked cars. Laney Caldwell noted Kits Creek homes are similar to the proposed, narrow product with similar density, alley loaded, 27 feet streets, with restricted parking on one side of street in some areas, and has not experienced problems; he's not opposed to limiting parking on one side of the street if it would alleviate concerns.

Mayor Weatherly closed the hearing at 7:50 p.m., however opened it for Mike Howington who stated parking was important and would have to take up curb for water and sewer laterals, and could do this, would widen streets in front of these lots, if they can do it the way that has been said. Caldwell added if they take the lot depth away they can't put houses in place. Staff noted it is in the right of way in front of the lots and will work with them on parking, which was their preference from the beginning and one of the options offered, or any or a combination of those staff would be fine with it. Khin noted this hearing was for the UDO amendment and the subdivision plan will be coming to Council at the next meeting.

Discussion evolved around changes in lot widths and side yard setbacks; with question, should the ordinance be amended, would it be applicable to future plans or those pending; were these issues that should be discussed in subdivision review. Attorney Fordham advised if they were considering whether to grandfather with certain conditions, it was appropriate to consider the specific plan and what conditions might be necessary, hearing 1) not to grandfather 2) to grandfather without conditions, or 3) to grandfather with conditions that are related to any issues arising from the change. Khin stated they could wait until next meeting when making this decision. Attorney Fordham advised Council may want to move into Closed Session to receive legal advice prior to deliberation. **Action:** Council Member Jensen made the motion to move into Closed Session at 7:55 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move into Regular session at 8:05 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly stated the public hearing was continued to consider a UDO amendment; options were: 1) approve UDO amendment as is to apply to all projects, pending or otherwise, 2) approve UDO amendment with grandfathering anybody without conditions, or 3) to approve UDO amendment grandfathering pending projects in with the conditions as so stated, and wanting to assure these conditions were clearly enunciated so the petitioner knows what they are and asked Director of Planning to restate the conditions with representatives responding with their willingness to accept the conditions that the majority of Council would approve, otherwise the motion would be not to grandfather.

With the public hearing open, Khin proceeded to restate the conditions and with Mike Howington, Mark Gramling, Pete Crossen, and Laney Caldwell answering to recommended conditions of approval for pending application Villages of Apex Charleston lots should Council choose to grandfather those lots:



**PUBLIC WORKS:** Sanitary Sewer, Water and Electric: Howington responded yes he was in agreement with the conditions proposed for these. **ENGINEERING, PLANNING, POLICE and FIRE:** Parking: Gramling couldn't respond to parking without looking at drainage, however agreed to work with staff to come up with something that works to get to the 0.8 spaces per unit. **HOA maintenance:** Gramling responded nay to HOA exterior maintenance; stated single family homeowners would like to take care of their own units, avoiding HOA dues; noted covenants require penalty if not maintained; noted the importance of calling the homes single family vs. detached. Staff had wanted consistent maintenance due to density. Gramling was willing to address this with his attorney; also addressing language regarding cross access easements to provide efficient access for maintenance. Caldwell called this uncharacteristic to require individual maintenance on a group of single family homes; stated if covenants and restrictions are severe enough the HOA would take care of the maintenance and send the homeowner a bill; to micro-manage 80 out of 1300 homes was out of character.

Mayor Weatherly closed the public hearing at 8:20 p.m. and referred the matter to Council. Council discussed their concerns regarding maintenance, and all agreed for the need to have the cross access easement.

**Action:** Council Member Jones made the motion to adopt the UDO amendment, and to grandfather subdivision Villages of Apex, the application applied for and pending, with the conditions stated and agreed to, minus HOA maintenance of the home, but with the cross access for maintenance of the exterior of the homes to be worked out satisfactorily with all. Motion carried unanimously.

End of Public Hearing # 01

**OLD BUSINESS**

**Presenter: Mayor Keith Weatherly**  
**Old Business # 01 – Chamber Building Lease**

Mayor Weatherly and Council Member Jones met with Chamber representatives to discuss building lease agreement for use of the Depot building on Salem Street; Chamber had continually rendered services to the community and Town had given contributions towards those services. Chamber Board of Directors voted on a firm offer of \$1,000 per month with a 5 year lease; thought it was in the best interest of the town to continue care for the property, building and grounds. Council Member Schulze was disgruntled with the sale of the property on Upchurch Street to the Town (\$274,000). Discussion evolved around the sale, current terms of the lease agreement, counter offer and fair market value for buildings in the condition of the depot and their locations, annual maintenance costs (\$600), reduction of annual subsidy for other things, and release of economic development position to the Town.

**Action:** Council Member Jones made the motion to accept the Chamber's offer for \$1000 month with a five year lease that would amend their current lease terms. Council Member Jensen made the second to the motion, however, felt the lease should be for three years, with Council Member Jones agreed, and restating the motion to accept the Chamber's offer and amend the lease for \$1000 for three years. Discussion followed regarding building renovations made by the Chamber, action taken by Council on the previous land sale, continued Chamber services to the businesses, recognition of fair market value, preference for Town upkeep of the property, and preference on whether to give more time or accept the offer. Motion carried with a vote of 4 in favor and 1 opposed, with Council Member Schulze voting no.

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**

**Presenter: Lee Smiley, Director of Finance**

**New Business # 01- Finance Summary**

Director of Finance gave a review of the 2 nd. Quarter FY09-10 Financial Summary with significant variances noted. He also gave a semi-annual report of Deposits and Investments that the Town is required to file with the Local Government Commission. Report was well received.

End of New Business

**CLOSED SESSION**

There were no closed session items to be discussed.

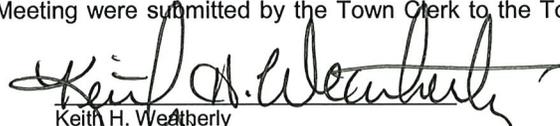
**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:55 p.m.

**Action:** Council Member Gossage made the motion to adjourn. Council Member Jensen made the second. Motion carried unanimously.

The minutes of the February 02, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the February 16, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for February 16, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 16, 2010, 7:00 p.m. Was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



Council Members:  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

## RECOGNITION & PRESENTATION

### **Item # 01- Recognition and Presentation to Certified Senior Planner**

Director of Planning recognized Town of Apex Certified Senior Planner June Cowles for her achievement of meeting education requirements of American Institute of Certified Planners. Mayor Weatherly presented her with the AICP Certificate.

End of Presentation

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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. Attorney Fordham asked Council to substitute a revised ordinance for CA-4 Sec. 12-21 of the Code.

**Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Jones made the second. Motion carried unanimously.

1. Minutes of February 2, 2010 Town Council meeting.
2. Minutes of February 2, 2010 Town Council Closed Session (separate cover).
3. Minutes of January 12, 2010 Economic Development Committee.
4. Amend Section 12-21 of Apex Town Code of Ordinances (**Ordinance No. 10-0216 - 02**) to allow Town to provide water and sewer service to properties outside the Town's corporate limits in circumstances where a Town infrastructure project or condemnation eliminates the existing access to water or sewer service and creates the need for municipal service; also annexation of property.

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 Agenda was set.

### PUBLIC HEARINGS

**Presenter:** Principal Planner Brendie Vega

**Public Hearing # 01 – Conditional Zoning #10CZ01**

**Review:** Planning Board met February 8, 2010 and continued hearing to March 8, 2010 to give applicant time to work on their site layout as it relates to the proposed rezone; request public hearing be continued to March 16, 2010 Council meeting.

Public hearing and possible motion regarding Conditional Zoning #10CZ01; rezone from B1-Neighborhood Business to PC-CZ Planned Commercial Conditional Zoning; Lowes Food Stores, Inc. applicant; .66 acres located within Olive Chapel Village Shopping Center at Apex Peakway and NC55. **Petitioner offered a letter of withdrawal of the rezone request for Lowes Fuel Center and will replace it with another request for rezone at a different location in Olive Chapel Village Shopping Center; rezone will be readvertised for a future hearing.**

**End of Public Hearing # 01**

**Presenter:** Director of Planning Dianne Khin

**Public Hearing # 02 – Annexation Petition # 448**

**Review:** Owner requests annexation to connect to Town water/sewer to existing home.

Public hearing and possible motion to adopt an ordinance regarding Annexation Petition # 448, William H. and Norma M. Keyes, owner/petitioner, petitioning to annex 1.135 acres into the Town's corporate limits and located at 1014 Olive Chapel Road, Apex, and includes public right of way. Director of Planning presented petition for annexation orienting to the site, stating applicant was requesting water and sewer to their existing home. Public hearing was opened at 7:10 p.m. and with no one speaking, the hearing was closed, with the following action taken.

**Action:** Council Member Gossage made the motion to approve the petition request. Council Member Jensen made the second. Motion carried unanimously.

**End of Public Hearings**

### OLD BUSINESS

**Presenter:** Council Member Bill Jensen

**Old Business # 01 – Employee Health Plan**

**Presenter:** Council Member Bill Jensen

**Old Business # 01 – Employee Health Plan**

Discussion and reconsideration of Employee Health Plan amendment regarding elective abortion.

Mayor Weatherly noted action taken by Council January 19, 2010 was being brought back by request of Council Member Jensen. Council Member Jensen expressed concern with speed in which this item was passed, limited information received, monetary impact on tax payers, as well as morale decision. Mayor Weatherly opened the floor to receive public comment.

Asked Council reconsider their decision:  
 Dolly Sickles, HIV Education & Prevention  
 Melissa Reed, VP Planned Health  
 Sarah Preston, American Civil Liberties  
 Union of NC  
 Paul Meade, Apex Resident  
 Jill Diaz, Apex Resident

Spoke in support of Council's decision:  
 Dan Hills, Apex Resident  
 Tom Herner, Apex Resident  
 Man – Apex Resident  
 Lynn Smith, Apex Resident  
 Steve Banbara, Wake County Resident

Apex Residents request to see Town's insurance coverage: Rita Dozer and Judy Elzinger



Mayor Weatherly noted that at the time of the original discussion he had given Council an opportunity to delay action for 2 weeks, if desired, to give Council more time to consider the action. Council Member Jensen recognized there was not support of the Council to change their decision from January 19. He questioned the legality of Council's decision, and made the following motion.

**Action:** Council Member Jensen made the motion for Town Council to request Attorney General Roy Cooper to give a definitive legal interpretation of decisions made by the Council and what the Town's rights are with respect to this issue provide or not, elective abortions. The motion failed for a lack of a second. Council Member Schulze stood firm in his decision and expanded on reasons for his vote. Council Member Jensen stood firm with his concerns and expanded on those. Mayor Weatherly stood firm with his decision to bring this item to Council, clarifying it was not about legality but a fundamental public policy issue and clearly not an appropriate use of tax payers money, and commended Council, unanimous in their decision, feeling Apex was behind in prohibition of funding elective abortions, and offensive to place costs on life of an unborn child or to abort a child. Mayor Weatherly noted Council Member Jensen had voted with Council in the affirmative to take this action. Council Member Gossage pledged that citizens deserved opportunity to address this issue and would handle decisions regarding future issues with edges, not in the same meeting it was presented, and stood firm in his decision and proud of the decision made by Council.

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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*  
*No one spoke during public forum.*

**NEW BUSINESS**

Presenter: Senior Planner June Cowles

**New Business # 01- Villages of Apex Charleston Lots and Master Subdivision Plan**

**Review:** Planning Board met February 8, 2010 and unanimously recommends approval with conditions; applicant has agreed to all conditions; staff recommends approval with conditions.

Senior Planner Cowles presented Villages of Apex Charleston Lots, Master Subdivision Plan within 93.25 acres and located within Villages of Apex North Subdivision. Staff report is incorporated as a part of the minutes. Original Trackside North Plan was approved May 2007, combining townhomes, apartments, and single family lots for a total of 638 residential units. Master Subdivision Plan was recommended for approval February 9, 2010 by the Planning Board. Applicant Jones and Clossen proposes to increase single family lots in an area of the Trackside North from 40 lots to 80 lots, and includes a lot width reduction from the approved 40 foot and 50 foot wide single family lots to 24.5 foot wide lots. Total proposed units 528.

Council approved an ordinance February 2, 2010 to amend Section 5 Measurements to require minimum lot widths and minimum side setbacks for single family, detached townhouses, and attached townhouse, all pending subdivision applications are exempt from the ordinance with nine conditions outlined in the report and with an amendment to condition six regarding the maintenance and repair easements shall be shown on final plats of the subdivisions and provided in restrictive subdivision covenants; the applicant for Villages of Apex Lots have agreed to all conditions. Planning Board addressed parking from the first proposed plan and recommended approval. Applicant has submitted a new parking plan, not seen by Planning Board, however is within the bounds of the parking options proposed by staff. The plan is consistent with the Town Transportation Plan and Villages of Apex/Trackside North Traffic Impact Report and recommended conditions approved by Council. Staff recommends approval.

**Action:** Council Member Olive made the motion to approve Villages of Apex Charleston Lots, Master Subdivision Plan with the proposed conditions and the new parking plan. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business



**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to discuss potential litigation.

**Action:** Council Member Jones made the motion to move into Closed Session at 7:50 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session items are recorded separately. **Action:** Council Member Schulze made the motion to move back into Regular Session at 8:05 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

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

**Action:** Council Member Jones made the motion to authorize the Town Manager and Town Attorney to proceed with documents and for necessary improvements to extend Evening Star Drive to Kelly Road using funds in Escrow from Metropolitan Development and entering into an Agreement to secure the necessary funds to complete the connection. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of Regular Session**

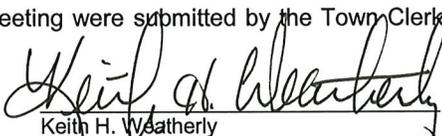
**ADJOURNMENT**

Mayor Weatherly called for a motion to adjourn Regular Session and move to the Conference Room to hold the work session. **Action:** Council Member Schulze made the motion to adjourn. Council Member Olive made the second to the motion. Motion carried unanimously.

Mayor Weatherly announced Council would move to the Conference Room to hold the work session to discuss a proposed Economic Development Incentive Policy.

The minutes of the February 16, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the March 2, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Town Council Meeting Minutes for February 16, 2010 Work Session

Mayor Weatherly opened the Worksession at 8:10 p.m. to discuss Apex's position on a written economic development incentive policy or whether to consider investment interests on a case by case basis. Council Members Gossage, Jensen, Jones, Olive and Schulze were present. Public also attended the Worksession.

Ken Atkins, Executive Director, Wake County Economic Development stated Apex position in this competitive economic environment and that an incentive policy plays a necessary role in being competitive when bring in businesses and may determine the outcome; addressed efforts and services county was willing to undertake on behalf of Apex. Noted six out of twelve Wake County municipalities have formal incentive policies – other six handle incentives on case-by-case basis. Wake County Business Investment Grant Policy objective is to support economic development, encourage new investments that would create jobs and provide healthy balanced diverse tax base. Businesses are eligible for grants subject to performance criteria and meeting job thresholds of 50; investment thresholds: \$50 million for existing business and \$100 million for new business; matching grants are a significant advantage and attractive to companies.

Kite answered questions regarding legality of offering incentive (is legal); promoting the town by offering assets of infrastructure and lower tax base vs. cash asset (strong case could be made assets are greater and offset cash value; cash incentives help offset upfront costs); rationale of county's decision to set cash thresholds (to make a significant impact); competitive bidding wars (none); payouts/returns, and need for diverse tax base. Question arose regarding success of those who offer incentives vs. those who don't. Atkins reported on Cary and Garner's activities, adding it would be what makes Apex better, and would look into it and provide information to Manager (municipalities with formal incentive policies are listed in Wake County Corporate Relocation Incentives and Services guide).

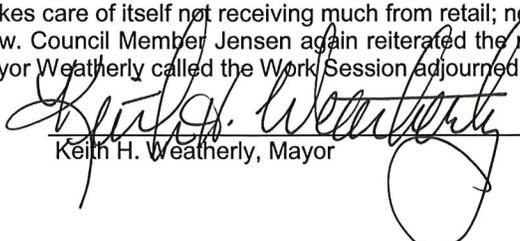
Atkins explained the lengthy process if no formal incentive policy was in place with the town manager the normal municipal contact; advised best decision to bring in investments would be to have a formal written incentive policy, voted on by the elected officials vs. considering investments on a case by case basis, and was a useful tool as time is important when it comes being competitive. Brenda Steen, Apex Chamber of Commerce and Tom Colhoun, Colhoun Real Estate, both spoke in support of having a written incentive policy to promote Apex not on just its own aspects, and were representatives in the first of the economic development meetings.

Mayor Weatherly asked Council for their input. Council Member Schulze agreed information was imperative however opposes incentives and didn't see need for a written policy, but promoting Apex's infrastructure and lower taxes. Council Member Jensen supports a written incentive policy to balance residential/commercial tax base; asked to see competitive statistics and if there were not a written policy, then create an informal policy or guidelines to help with direction. Council Member Olive noted statistics of value; saw this an opportunity to attract business to Apex selling its aspects without incentives; not opposed to incentives if it were the right thing, but didn't think money was necessary to get folks to come; more in favor of wait and look at the development pattern and see what was learned; without a track record was not comfortable with a formal policy. Council Member Gossage was not comfortable establishing a written policy; supports promotion of Apex's infrastructure and lower tax rate. Council Member Jones saw an advantage to market town's tax rate and other things, welcome to come but not set criteria; could talk about developing guidelines. Mayor Weatherly would not say no, prefer to entertain these things and if there were a serious prospect, determine that as incentives were lots of things. Had thought the intent of the materials packet was to be used as a marketing tool when investors were looking at sites and hoped not to go with a formal policy and was to see what's in it for Apex before we get further in or not.

Mayor Weatherly heard consensus of Council, to not have a formal written incentives policy, but certain formula or guidelines that could be used. Council Member Jensen encouraged creating an incentive formula for Economic Development Committee use, as opportunities could come quickly. Manager Radford noted previous discussion to create informal guidelines and would work with the Economic Development Committee on promotion packet that would be used for recruitment, building the Town's website, and assisted by ElectriCities. Atkins stated setting parameters would be helpful for the Manager to use as answers have to be provided quickly and in some cases passed on to many consultants at once. Mayor Weatherly was in agreement that could be done. Atkins reported on current competition in Durham and Wake County and would also encourage development to locate in existing space, as it too adds to tax base and will forward statistics information to the Manager.

Colhoun noted areas zoned for commercial/industrial base business and were without sewer; expressed urgency to move forward with an incentive policy, providing sewer to those areas, and not just sale on quality of life as others do that too; expressed retail would come, asking the focus be placed on industrial/commercial. Tom Hendrickson stated Veridea would provide and set framework for workforce, offer unique retail/office space for economic development prospects, a next generation RTP. Council Member Olive expressed retail takes care of itself not receiving much from retail; need "productivity centers and not consumerism", residential spaces will grow. Council Member Jensen again reiterated the need for at least informal guidelines to be used when making decisions. Mayor Weatherly called the Work Session adjourned at 9:25 p.m.

  
Georgia A. Evangelist, MMC, Town Clerk

  
Keith H. Weatherly, Mayor

## TOWN OF APEX, NORTH CAROLINA

### Minutes and General Account of the Town Council's 2010 Annual Retreat

The Town Council of Apex, North Carolina held its 2010 Annual Retreat on Friday, February 26, 2010, 8:00 a.m. in the Apex Town Hall and Town Campus, Training Center 3A, 73 Hunter Street. Mayor Keith Weatherly presided over the Retreat. Mayor Weatherly extended a welcome to Council and staff. Others attending were Apex Herald's Shawn Daily and Facilitator Steve Straus. Manager Radford presented the retreat agenda to set priorities and strategies to formulate this year's budget and for CIP planning, keeping in mind economic constraints.

Director of Planning and Director of Construction Management presented population/growth forecast and building/construction forecasts for residential and commercial projects; population projections were based on 3.46% growth rate over a 5 year average and 2000 Census; population adjustment will be made with 2010 Census; Residential and Non-residential projects were noted; Apex Tax Base percentages are based on Wake County data and shows 78% residential and 22% non-residential; transportation projects were noted (CIP Page 32) current and proposed; increased activity is predicted in residential permits with slightly less in non-residential permits (shifts in lending could shift figures); Wake County 2009 municipal building permits comparisons shows Apex total permits 104; projected 2010 permits total 109.

Director of Public Works reported on \$340 million Regional Waste Water Reclamation Facility (Cary/Apex); noted target milestone dates (current wastewater capacity ran out for Apex 3 years ago; growth would not have happened without ability to pump to Raleigh); key dates: USACE publishes final decision on EIS or impact on proposed project associated with site 14; project bid 2010 will save taxpayers money (costs rise with delay); facility construction brings economic stimulus to Apex/New Hill; Partners will build sewage collection/water distribution systems for connection by residents with no impact fees and will pay in-town rates; projected award of contract October 2010; projected operational date November 2013; associated infrastructure alignments were noted (maps). Discussion followed: Partners Cary and Apex (Morrisville sewer handled by Cary); Holly Springs must commit to use of the outfall; if Holly Springs backs out, it makes Partners Apex and Cary whole; support permits issued 2010 to take advantage of construction costs; permit to discharge in Cape Fear 2011; problems with charging into Harris Lake and Jordan Lake (nutrient build up; required Interbasin transfer certificates); easements/maintenance/plantings (required), noise controls in place, and will share greenways.

Director of Finance reported \$9 million in general fund; projected fund balance - financial polices Apex 10%; to go to 15% drops general fund) and reserve funds (capacity and acreage fees for project), Standard & Poors key ratios in rating analysis (Apex AAA); review of outstanding bond and non-bond debt. Water/Sewer financing plan designed to support Long-range Capital Improvement Plan lacked revenue growth which affected plan's ability to undertake proposed water/sewer capital projects - relief could be seen in WRF construction prices. Discussed water/sewer rate increases with growth (rate increase over every other year 7%); there are CIP items Town could not afford; \$35 million bond sales WRF planned 2012/2013; growth has slowed: tax payers may not be same as water/sewer rates hit high users. WTF expansion: decision to participate, may push project further out on plan; optional use of Apex excess capacity until we could use water jointly.

Steve Straus stated purpose of goal setting; staff stated priorities/operational needs with Council setting priorities.

#### PARKS AND RECREATION: CIP page 31

No designated funds for: \_\_\_ Parks: Scotts Ridge \_\_\_ Seagroves \_\_\_ Salem Pond \_\_\_ Hunter Street.  
Projects associated with 2004 bonds: \_\_\_ Nature park \_\_\_ Greenways projects \_\_\_; review projects revealed bonds sales could move projects upward, however would add to debt service and a barrier in moving forward \_\_\_ Update 2001 Master Plan; future planning; Planning staff agrees for the need for the update.

#### FINANCE

Fund Balance for non-recurring projects: Manager asked to consider spending fund balance to take care of non-recurring expenses to satisfy demands of the citizens: ex. sidewalks, greenways; use of fund balance will be considered on a case by case basis.

#### FIRE

\_\_\_ West Side Station 6: report on current service levels; Olive Chapel and Evans Road; CIP 2012-13  
 Station 3 Land: 3.75 A to expand Station 3 on Hunter as design does not meet demand, also for EMS to replace old facility NC55 (could sale land in future); must keep Station 1 downtown; Wake County surplus land (previous plans for County has failed); Manager first offer denied; will pursue second negotiation, has first rights in place; current lease \$1 annual long term lease 99 years.  
 EMS Ambulance/Vehicle Replacement Cycle: on-going as part of franchise agreement.

PUBLIC WORKS: CIP pages 33, 34, 35

(Given) Wastewater Facility; operational 2013; see Public Works presentation above.

Capital Reserve Roads: NCDOT maintenance not working, strategy to get money, apply money and maintenance plan for town streets; discussed state distribution of monies; preference to not use monies for sidewalks for road projects; discuss transfer of ownership of roads vs. transfer of maintenance – resolution put on record, equity formula long been skewed - region monies; road maintenance is a priority may have to have tax increase; Manager reminded former request for 2 cent tax increase to maintain town streets and did not happen; an ongoing priority that worsens, all about the money.

Public Works/Utilities Center: design doesn't meet growth demand; necessary to maintain ongoing benefits, training, pay, programs, equipment for employee morale not wanting a revolving door; noted Apex accolades.

HUMAN RESOURCES

Training: successful in recruitment, training, retaining employees; 93% employees plan to stay with Apex; most move or go for school.

Competitive pay and benefits package: Mayor agreed retention, get good trained people, it is penny wise and pound foolish to do anything other than reward employees to keep them happy and motivated to doing the job and hopes to do so with benefits and pay package, and merit pay.

PLANNING: CIP page 32

Sidewalks: need on-going walk-ability program.

UDO: 2000; form citizen committee; look at form based code.

Transit: noted Cary C-Tran; potential to partner with Cary to connect to Apex (to Beaver Creek) a benefit, noted transit an equity issue; Planning noted calls come from elderly and those with mobility issues; looking into the future; Mayor wanted data to judge demand and use if provided; noted it a public assistance program; discussed TTA and other forms of transit that may be available, ex. Wake Forest; first preference a regional deal vs. taking on newer projects; TRACS Wake County Bus service good for the area-money well spent.

Work Force Housing: policy type issue; noted average worker must live outside Apex due to costs and inability to find a nicer newer place in town to rent; can't afford homes in Apex; HR noted most town employees do not live in Apex.

CONSTRUCTION MANAGEMENT

Peakway Gaps: funding to close gaps, estimated \$5 million.

Online Services: E Suites - ability to schedule inspections/payments; many municipalities are at this point.

FACILITIES AND FLEET: CIP page 30

Public Works Expansion/Renovation; in design process; donate house on corner to Habitat for Humanity.

Feasibility Study Senior Center Tunstall House: consider enhancements to facilities plan update; expected value to senior programs; structure feasibility; request of Mrs. Tunstall; accessible to campus for use by other programs; included in Facilities and Fleet budget.

Pre-design Plan Town Campus Annex; included in Facilities and Fleet budget.

Feasibility Study Depot building; included in Facilities and Fleet budget.

Feasibility Study Fire Station I downtown: planning benefit to consider depot with fire station.

INFORMATION TECHNOLOGY

Transparency: check registry - can download excel spread sheet at no cost and searchable.

Video Tape Council meetings: quotes \$4400, 5000, 18,000; video on demand vs video streaming; provide archives and way to view meetings; use of audio no added investment; minutes; revisit next year.

Electronic Agendas: cost savings; provide laptops 2010-11 budget

E-Suites: software and hardware; citizen and contractor view information; online pay.

Phone System Cisco \$281,000 + for all municipal buildings (replace 9 year old Nortel System); have dedicated lines; infrastructure in place for fiber.

POLICE

Vehicle Replacement Cycle.

Traffic congestion/safety: road and sidewalks (maintenance); continued growth and change.

Parking Planning: provide expected services.

On-going professionalism: visible entity: training, equipment, communications, national accredited.

### CLERK'S OFFICE

X  Paperless Agenda's: Electronic: no objection to do as soon as possible; tied into budget process with IT; cost reduction – phase one: could email agenda in PDF; planning receipt of electronic documents could be placed on CD for distribution.

Code of Ethics Training and Code: state required for elected officials by January 1, 2011; video stream training.

### MANAGER'S OFFICE

X  Public Information Officer: demand; noted other communities have dedicated persons for this position; keep feasibility analysis of communications with public on the list; economic development move in-house and need dedicated efforts; person in house vs. contract services; options, titles, consultants; consensus was that it was not a priority; was not looking at the position; Manager supports the position of PIO.

### LEGAL

(given) Email public records; use Town email account; separate personal emails from town emails.

### COUNCIL INITIATIVES and prioritization

Weatherly:  1  Complete WWTF: planning for Veridea.

Jones:  2  Public Works Expansion priority; Town may not be able to afford \$5.5 million; keep on CIP.

#### Combined 3: roads maintenance, street resurfacing and sidewalk planning were considered together

Olive:  3  Roads: street resurface plan; prioritize Town or NCDOT Roads; Schulze and Jensen agree: maintenance resolve/look at alternatives, and approach NCDOT expecting results; express Apex should not continue to fund NCDOT road maintenance; explore viable advance pay method; potential tax increase; growth worsens road maintenance and resurfacing situations; Manager continually explores all options.

Jensen:  3  Sidewalks/Walkability planning: identify areas; pro-rate or pre-pay and charge back to developers - general fee-in-lieu; noted mechanism for right of way thru land that could include lien on property that would be carried with the property.

Weatherly:  3  Roads and sidewalks plan with funding estimates; feasibility study to identify most needed repair and prioritize maintenance schedule; use one time CAMPO dues \$45,000; Powell Bill funds: expressed not use these monies for sidewalks but for roads; road maintenance on going.

Olive:  4  Electronic Agendas: requires provision of laptops (could use home computers); reduce paper, notebooks and staff time; indicates public statement that Council is aggressive and forward thinking; build in IT support; use CD's vs. email due to volume of files; use electronic documentation to complete same.

Olive:  5  Peakway Completion and Financing Plan: almost complete; finished project would benefit town and public; award forthcoming on council agenda.

Staff:  6  P&R Update Master Plan; update for future planning and funding CIP projects.

Staff:  7  Training : serious funding constraints restricted travel out of state, now there's pressure to lax that restriction; mandatory for certain positions; departments make decisions on who travels and where; value of professional training; Personnel Committee may review training policies; alternative training options were discussed and noted all alternatives offered are currently being done.

Staff:  8  CIP 5 year Improvements Plan: greater priorities; enhance mapping year to year, facilities, data consolidated roads plan; as economic conditions change update planning.

Staff:  9  EMS Vehicle Replacement: lump with Police Vehicles/fleet replacements/fire trucks; identify and prioritize; EMS Ambulance replacement is part of funding agreement; EMS operations normally break even; county's funding is unknown; discuss equal treatment for people's ability to pay.

Staff:  10  Phone System: can't get parts, can't replace voice mail; need to change out Nortel system.

Weatherly: \_ 11 \_ Public Information Officer: most other local municipalities have a PIO; responsibilities discussed; could help with economic development; would disseminate public information and necessary communications; job description would be designed; keep on list for feasibility analysis; not a priority for all council members.

Schulze: \_ 12 \_ Economic Development: Jensen: certify 2 sites; goal to establish economic incentive policy; could impact; formulate results that builds tax base; Straus felt this was not the right forum for this; Town is currently moving forward with Economic Development.

Staff: \_ 13 \_ Vehicle Replacement Cycle; discussed in depth and will be lumped in with fleets etc.

Staff: \_ 14 \_ Recurring and Non-recurring costs and Land: Manager will proceed to investigate land opportunity.

Staff: \_ 15 \_ Compensation and benefits package: consensus by Council to maintain level of compensation and benefits necessary to maintain employees and provide services; not cut positions.

Not included in rank:

Schulze: Cost Reduction Study: no big impact has come from rewards program; should be on-going part of doing business; constant review for reducing costs.

Jensen: Hold Town to same standards as developers: stormwater, manage permeable surfaces (internal could be associated with budgetary funding).

Finance Director reported water/sewer expenditures have financing plan to cover these; Public Works facility is shared by all funds; 7% rate increase spread over every other year may not cover expenses and may need more; all additional costs added to debt puts pressure on rates; best hope WWTF estimates may provide some additional funds that could be used for the facility; Peak Way project bid came under estimate and may save money there; may want to revisit impact fees; may be able to slide water plant expansion further out on plan; water use is off from what was anticipated; did not recommend change in capacity fees at this time.

Manager Radford will work to formulate a balanced budget based on needs and money; affordable or not would prioritize taking Council's direction and considering their expectations; certain things could be paid for with fund balance and not just deal with recurring expenses. Mayor was willing to use fund balance for land purchase; asked to do everything short of lay-offs and not raise taxes in formulation of the budget; if there wasn't reduced spending may have to look at increased taxes, preferably not; maybe longer term on CIP priorities; with no new money wants to maintain, with no ambitious new programs, and assuming no tax increase; thinking fund balance was rainy day funds. Discussion evolved around pay and benefits and importance of employee's to the Town, noting increase in state retirement contributions and anticipation of increase in health premiums. Goal: present a balanced budget considering use of fund balance on a case by case basis, and no tax increase, still providing highest level of services.

Wrap up/Went Well

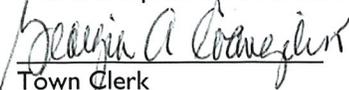
Good to hear Council opinions  
Staff – Council open discussion  
Talked about more things  
Agenda was well planned  
Stayed on Task  
Food  
Hearing Department Head priorities  
Helpful to have priorities on Board  
Informal working relationships and dialogue between Council & staff  
Hear staff's views as well as Council's views

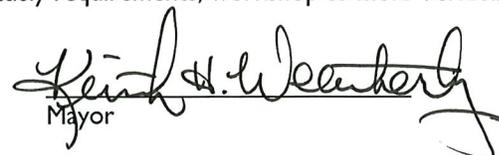
Could be Improved

Background on budget before discussing priorities  
Better define priority setting; define strengths and weaknesses

Suggestions: Look further into future long term strategic planning for Apex; ETJ long range plan; consider open town meetings during planning process; look at overall picture while working out inconsistencies in planning and facilities, and tying things together for best results and clarifying outcome.

Future planning vision for Apex may require work session; 2025 Land Use Plan and UDO may require change to accomplish vision; legal aspect: have to zone in accordance with the comprehensive plan and too often of a change would not be considered a comprehensive plan. Transit options: what Town should accomplish with growth, fit the character of community, consider town operations, satisfy requirements; workshop to mold Veridea may help with vision process. Retreat adjourned at 5 p.m.

  
Town Clerk

  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for March 2, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 2, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Jones, Olive and Schulze were present.  
Council Member Gossage was absent.

Mayor:  
Keith H. Weatherly



Council Members:  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Jones. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

## RECOGNITIONS AND PRESENTATIONS

Recognition: Fire Chief Mark Haraway

### **Recognition # 01 – Apex Fire Personnel**

Recognition of Captain Rebecca Fisher for receiving the local 2010 Veterans of Foreign Wars Firefighter of the Year Award and First Runner Up at the State level.

Recognition: Captain Jacques Gilbert

### **Recognition # 02 - Apex Police Personnel**

Recognition of Police Officer Chris Myers for receiving the 2009 Veterans of Foreign Wars Law Enforcement Officer of the Year Award for the State of North Carolina.

Recognition and Presentation: Fire Chief Mark Haraway

### **Recognition # 03 - Apex Fire Explorer Post**

Recognition of Apex Explorer Post 263 for their efforts at Winterfest 2010 February 6 in Gatlinburg Tennessee.

End of Recognitions and Presentations

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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 Jones made the motion to approve the consent agenda as presented. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes of February 16, 2010 Town Council meeting.
2. Minutes of February 16, 2010 Town Council Closed Session (separate cover).
3. Minutes of February 16, 2010 Town Council Worksession.
4. Set Public Hearing March 16, 2010 for Rezone Case #10CZ02 Aquiline Apex LLC; to rezone from Planned Unit Development to Planned Commercial Conditional Zoning, 48.062 acres located at 1528 E. Williams Street.
5. Set Public Hearing March 16, 2010 for Rezone Case #10CZ04 Lowes Food Stores, Inc.; to rezone from Neighborhood Business Conditional Use to Planned Commercial Conditional Zoning, .656 acres, located at 5400 Apex Peakway.
6. Set Public Hearing March 16, 2010 for various amendments to the Unified Development Ordinance.
7. Adopt **Resolution No. 2010-0302-05** Declaring Surplus Property to be Awarded to Retiring Police Personnel and authorize Town Manager to proceed with procedures as defined in the General Statute.
8. Budget Ordinance Amendment No. 5 for NC League of Municipalities grant and economic development incentives for downtown.
9. Street Closures for 2010 Peak Fest Street Festival, Saturday, May 1, 2010 and Old Fashioned 4<sup>th</sup> of July Celebration, Saturday, July 3, 2010.

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 to the Regular Meeting Agenda. The Regular Meeting Agenda was set as presented.

## PUBLIC HEARINGS

Presenter: Town Manager Bruce Radford

### **Public Hearing # 01 – Internet Cafés**

Public hearing for the purpose of considering whether to enact a temporary moratorium on the establishment or expansion of internet sweepstakes cafes or cyber gaming cafes; possible motion regarding same.

Manager Radford introduced the item for public hearing with the Town having received a request to place an internet sweepstakes café in town. B1 zoning allows for such activity, however, the area of interest is not zoned for this type activity and staff requests Council consider an ordinance providing for a sixty day moratorium on the establishment of internet cafes or other terminology of such establishments, to allow a study of the issue and make recommendations regarding such establishments.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Rick Earnhardt, applicant, stated he has stores in Raleigh and would like to open a store in Apex and felt it a good business for the town; stores may be known under different names in other towns - his business is Business Center; the store would sell prepaid internet time and includes playing online games where one could get paid cash money for their winnings, assuring Council this activity was not gambling and was not illegal; users must be 18 years or older; he expanded on how one could access the computers for various needs and services and provided to folks who do not have access to computers elsewhere, or may allow ability to access internet documents from other sources, services other than just connecting to online games. He noted the company also participates and helps in community projects. He answered various



questions associated with the store operations: prepackaged food and sodas, business hours depending on traffic, parking, and noted no alcohol is allowed. Mayor Weatherly expressed he would like opportunity to talk with Cary and other municipalities that have such establishments to see how it's working and wanting to protect the town and local businesses. Council also would like to see where such establishments if allowed should be located and more about such establishments, prior to making a decision; it was noted there are dial up locations with internet access in other places and what this type establishment would have more attractive over others. Discussion followed regarding buying time to reveal cash winnings.

Public hearing was closed at 7:35 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jones made the motion to adopt the Ordinance providing for a sixty day moratorium on the establishment of internet cafes and other terminology that may be known, and to determine if it should be adopted as part of the Unified Development Ordinance, to allow or disallow. Manager Radford asked Council amend paragraph three to include "Business Center for cyber sweepstakes," as other terminology for internet cafés. Council Member Jones added to his motion, the adoption as stated, with the amendment to paragraph three "Business Center for cyber sweepstakes." Council Member Schulze made the second to the motion. Motion carried unanimously with a 4 and 0 vote; Council Member Gossage was absent.

End of Public Hearings

## OLD BUSINESS

Presenter: Bruce Radford, Town Manager

### **Old Business # 01 – Budget Ordinance Amendment and Capital Projects Ordinance Amendment**

Possible motion to approve Budget Ordinance Amendment and Capital Projects Ordinance Amendment for construction contract for Apex Peakway and bridge.

Manager Bruce Radford presented the Budget Ordinance Amendment and Capital Projects Ordinance Amendment that transfers general fund balance money to Transportation Reserve Fund to finance construction costs of the Apex Peakway and bridge in excess of bond money available, as well as amending the street project fund for this construction project, with some appropriation of payments in lieu moneys; recommended adoption of Budget Ordinance Amendment No. 6 and Capital Projects Ordinance Amendment as presented.

**Action:** Council Member Schulze made the motion to approve the Budget Ordinance Amendment and Capital Projects Ordinance Amendment as presented. Council Member Jensen made the second to the motion. Motion carried unanimously with a 4 and 0 vote; Council Member Gossage was absent.

End of Old Business # 01

Presenter: Kent Jackson, Director of Construction Management

### **Old Business # 02 - Apex Peakway North Project**

Award Construction Contract to Barnhill Contracting Company for a total bid of \$4,096,577.03 for Apex Peakway North Project, from North Salem Street to New Dover Road.

Kent Jackson, Director of Construction Management recommended award of construction contract for the Apex Peakway North Project from North Salem Street to New Dover Road to Barnhill Contracting Company, lowest responsible bidder, for a total bid of \$4,096,577.03, and under Wilbur Smith Associates, Inc. Engineer's estimate of \$5,365,043.; 15 bids were submitted and opened February 11, 2010; all environmental permits have been approved; plan is to open segment within a 15 month period. Council Member Olive asked to give consideration to opening the segment from New Dover over to Laura Duncan prior to other segment completion over to North Salem to allow better flow over to school. Jackson will discuss this with contractor. Council Member Jensen made a request to hold the Town to the same stormwater control management standards as Apex 1<sup>st</sup> Development had committed to noting the Williams Creek impaired stream issues and asked staff to investigate use of Vineyard Station retention pond to off-set flow of stormwater for the Peak Way, reducing flow into Shepherds Vineyard.



Jackson noted the design was complete having met state and permitting agency standards; noted challenges with timing and possible permitting for re-design, with the contractor ready to proceed; he is aware of the impaired creek; noted elevation of the Peak Way for structures is lower than the existing pond. Further design would increase structure costs by an estimated \$10,000. Jackson noted buffers would require re-submittals and was a tight area to expand and time was the factor. Council Member Jones was not in favor of the re-design as far as erosion control, noting more problematic with temporary vs. permanent structures, having to resubmit if there were size changes of the devices, and additional design costs; could add as change-order with contingency available cover costs. Tom Haynie, Shepherds Vineyard HOA offered Town may want to consider acquiring .38 acres from the HOA, or possibly could be given to the Town in exchange for stormwater management for the community, with the HOA having spent \$40,000 to rebuild stream banks; Town's engineer has data on the stormwater situations. Jackson noted Council could award the contract and could begin work on the sections, while staff looks into the request; noted Laura Duncan to North Salem more complex and delay could impact the entire project, not allowing for an earlier segment opening. Mayor referred the matter to Council.

**Action:** Council Member Jones made the motion to award the construction contract to Barnhill Contracting Company for a total bid of \$4,096,577.03 for Apex Peakway North Project, from North Salem Street to New Dover Road and allow staff to consider proposed design changes and costs.

Council Member Jensen wanted to bring the town's standards up and was willing to consider an alternative to mitigate the impact in another area that would produce the same quality control measures and if not would not vote for this. It was noted: land, capability, and topography would have to be considered to make this work and if the .38 acres would make a difference. Jackson will bring his findings back to Council April 20, 2010; noted UDO exempts town from certain standards and will continue to work with planning to clarify stormwater standards for town projects.

Council Member Jones restated his motion:

**Action:** Recommend award of construction contract to Barnhill Contracting Company for a total bid of \$4,096,577.03 for Apex Peakway North Project, from North Salem Street to New Dover Road and direct staff to bring information to April 20, 2010 meeting to discuss alternatives for providing for increased stormwater, temporary and permanent alternatives for mitigation elsewhere. Council Member Jensen made the second to the motion. Motion carried unanimously. Vote on the motion was 4 and 0 with Council Member Gossage absent.

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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*  
*There were no public comments.*

## NEW BUSINESS

Presenter: Town Manager Bruce Radford

### New Business # 01 – 2010 Legislative Agenda

Consideration of the Legislative Agenda for the Town of Apex for the short session of the North Carolina General Assembly.



Apex Town Council  
Meeting Minutes March 2, 2010  
New Business # 01 continued

Manager Radford noted prior to legislative session, Council, in past, has formulated a legislative agenda for lawmakers to consider. He stated the 2009 legislative goals, with enactment only on the third item.

1. The Apex Town Council will seek local legislation that would change the manner in which Wake County Board of Education members are elected. The Council supports a membership structure where a majority or all of the BOE members would be elected on an at-large basis to staggered terms in November of even-numbered years.
2. The Apex Town Council supports legislation that would eliminate or increase the present cap on the number of Charter Schools authorized for the State of North Carolina.
3. The Town of Apex requests to be added to Session Law 1993, Chapter 291 enabling the use of wheel locks on illegally parked motor vehicles.

Mayor Weatherly wished to have the first two remain on the 2010 legislative agenda, with discussion regarding the board of education membership and their election process, and cap on Charter Schools. Wake County Mayors have considered supporting each of the other Wake County town agendas in hopes to get passage. One item of interest by Cary was a change in law regarding public record's request; Cary had a request to provide data base, and citizens were upset over their email address disclosures. Attorney Fordham commented on the public record disclosures noting town has data bases with strong similarities and Council may want to consider this to protect customer information. Consensus of Council was to place exclusion of email distribution lists or email data base from being disclosed as a public record third on the list. Council Member Jensen wished to consider a tax incentive program where companies would pay people to live closer to work noting various reasons for the incentive; gave example Veridea. Possible tax penalties were discussed if adequate housing could not be purchased, however the item did not receive consensus of Council to be placed on the list. Council Member Olive supports a combined local municipality agenda that may be more affective if all towns are signed on to it.

**Action:** Council Member Schulze made the motion to retain the first two on the list as stated, and add the third item exclusion of email distribution lists or email data base from being disclosed as a public record. Council Member Jones made the second to the motion. Mayor stated there's still time to consider other goals prior to submittal for the legislative session. Motion carried with a 3-1 vote; Council Member Jensen voted no; Council Member Gossage was absent.

End of New Business

**CLOSED SESSION**

There were no Closed Session items to be discussed.

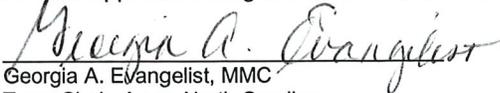
**WORK SESSION**

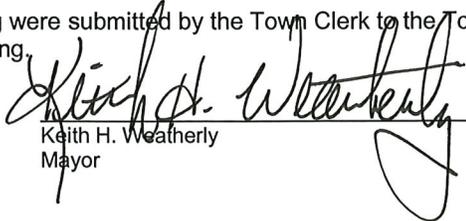
No Work Session was scheduled.

**ADJOURNMENT**

Mayor Weatherly called for a motion to adjourn at 8:20 p.m. **Action:** Council Member Jensen made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the March 2, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the March 16, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor



## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

### **Public Hearing # 01 – Conditional Zoning Case #10CZ02**

Review: Planning Board met March 8, 2010 and unanimously recommends approval with conditions offered by applicant and recommended by staff; staff recommends approval with conditions noted by applicant.

Public Hearing and possible motion for Conditional Zoning Case #10CZ02 Aquiline Apex LLC; to rezone from Planned Unit Development to Planned Commercial Conditional Zoning, 48.062 acres located at 1528 E. Williams Street.

Staff presented the planning report which is incorporated as a part of the minutes. Applicant is currently under Trinity PUD which requires shared infrastructure for entire PUD. When Veridea was assembled for rezone request, this parcel was left out and not developable under the Trinity PUD if the remainder properties of the Trinity PUD are rezoned. Permitted uses were noted. Restrictions and Conditions are proposed by the applicant. Rezone request is consistent with the Town's UDO and 2025 Land Use Plan. Planning Board met recommends approval; staff recommends approval with conditions offered by applicant.

Public hearing was opened at 7:32 p.m.

Jason Bertoncino, Withers and Ravenel representing Aquiline spoke in support of the rezone request, as they are unable to develop under current regulations as it reverted back to Planned Commercial zoning with added conditions placed on the property.

No one spoke in opposition. Public hearing was closed at 7:35 p.m. Matter referred to Council.

**Action:** Council Member Schulze made the motion to approve conditional zoning #10CZ02 with conditions offered by applicant. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Presenter: Brendie Vega, Principal Planner

### **Public Hearing # 02 – Conditional Zoning Case #10CZ04**

Review: Planning Board met March 8 and recommended denial of the proposed rezone with a vote of 4-3; denial related to poor access and circulation that would negatively impact adjacent properties; staff recommends approval with conditions noted by applicant.

Public Hearing and possible motion for Conditional Zoning Case #10CZ04 Lowes Food Stores, Inc.; to rezone from Neighborhood Business to Planned Commercial Conditional Zoning, .656 acres, located at 5400 Apex Peakway within the Olive Chapel Village Shopping Center.

Staff presented the planning report which is incorporated as a part of the minutes. Applicant requests rezone of a portion of Olive Chapel Village shopping center to accommodate a subdivision for a fuel center for Lowes Foods. Proposed permitted use: Gas and Fuel, Retail (proposed fuel center with multiple fuel dispensers, underground storage tanks and kiosk building). Architecture will be compatible with shopping center. Rezone is consistent with 2025 Land Use Plan. Staff recommends approval with conditions.



Planning Board first denied the proposed as it didn't meet the UDO; new request was submitted. Planning Board voted 4-3 for denial based on legislative considerations 7, 8 & 9, page 3 of the planning report; poor access and circulation would not be safe and would negatively impact adjacent properties. A new layout of the conceptual site plan was shown however not considered with the rezone request. Staff recommends approval with conditions noted by applicant. Discussion evolved around: access from Peakway which is not allowed; loss of shopping center parking spaces; utilization of existing access points with no new access points proposed; circulation within shopping center. Legal opinion offered relative to the site layout was that if it were not a part of the zoning request, should give consideration to specific use of the property, or all potential uses if it meets legislative criteria. Staff advised it was specific gas only.

Public hearing was opened at 7:45 p.m.

Lowes Foods representative from Winston Salem spoke in support of the request for the new fuel center at the selected site; careful not to damage customer relations, while offering single shop experiences. Fuel center is not a convenient store but kiosk. Community meetings were held with no opposition; all tenants in the shopping center support the proposed plan; truck path navigation plan shows trucks will have adequate circulation for fueling; fuel center will also have vapor recycling; hours of operation 6 a.m. to 12 midnight with fuel delivery any time requested. Questions evolved around reconfiguration of parking sites for safety (noted traffic patterns safe); loss of parking spots; potential to move employee parking further out for safety.

Lowes Foods store manager of Apex spoke in support of the request; had not heard any negative comments; customers like the idea of one stop shopping; noted semi-trucks use the entrance behind the stores exiting to the front and onto the Peakway seven days a week. Fuel center would benefit customers, and offer fuel savings.

Tom Wallace, Property Manager, reported all shopping center tenants are in favor of the fuel center as it would help with stability, brings new customers on site; there will be interior design signage; he is a resident of Gastonia and uses Lowes fuel center; fuel center offers competitive prices. Noted drive easements have been acquired by outer parcels and must remain open.

Council Member Jensen asked if there were plans to have hybrid plug-ins at this location. Lowes representative responded if market demands; do envision alternative fuels.

No one spoke in opposition; public hearing closed at 8:00 p.m.; matter was referred to Council.

**Action:** Council Member Gossage made the motion to approve conditional zoning #10CZ04 with conditions noted by applicant. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02



**Note: Public Hearings # 03-A, # 03-B and # 03-C are proposed amendments to the Unified Development Ordinance separate consideration will be given to each section.**

Presenter: Lauren Simmons, Planner

**Public Hearing # 03-A – UDO Amendments: Adaptive Reuse**

Review: Adaptive Reuse Advisory Committee during various meetings formulated a recommendation to amend various sections of the UDO regarding Adaptive Reuse; Planning Board met March 8, 2010 and unanimously recommend approval of the proposed amendments as presented; staff recommends approval; certified public notice attached.

Public Hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance, Adaptive Reuse and recommended by the Adaptive Reuse Advisory Committee.

Staff reported the Adaptive Reuse Committee had met to discuss the Town's adaptive reuse ordinance and recommends application of the proposed amendments to residential structures being converted to businesses in the Apex National Register Historic District. Staff reviewed the proposed and noted landscape, lighting, and signage requirements were discussed. Committee further discussed whether or not noncontributing structures within the National Register District should be included since some of them might be contributing if a revision of the survey was done today; however determined standards should only apply to contributing structures; recommends funds be budgeted for expansion/resurvey of the Apex National Register Historic District because the area was first surveyed 15 or more years ago and many of the noncontributing structures would now be potential contributing structures if surveyed today under the 50 year rule that the NC State Historic Preservation Office uses to classify most historic structures. Estimate: \$8000. Planning Board unanimously recommends approval of the amendments. Staff recommends approval. Questions were asked and clarity given to interior renovations conforming to the Secretary of Interior Standards for rehabilitation and the NC Rehabilitation Code with staff noting major renovations are discouraged and minor renovations are encouraged; does allow for some flexibility to accommodate interior needs. Staff noted Capital Area Preservation is third party when considering renovations.

Public hearing was opened at 8:15 p.m.

Don Grimes, Committee Member, expressed appreciation to all involved and spoke in support of the proposed. Noted Planning Board were unanimous in their decision for approval; only applies to homes contributing in the historic district; only applies if a residence changes to business; greatest potential render ineligible to be on the national register; standards applied are practical and reasonable, economically and financially. Urge Council to take the next measure to protect existing structures in the historic district, protecting neighbors that have not converted their properties to commercial uses; recommended approval.

No one spoke in opposition; public hearing was closed at 8:20 p.m. Council Member Jensen was pleased with the process and looks forward to the first use of the proposed and made the following motion.

**Action:** Council Member Jensen recommended approval of the proposed amendments and the funds to resurvey. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 03-A**



Presenter: Michael Deaton, Environmental Programs

**Public Hearing # 03-B – UDO Amendments: Watershed Protection Overlay Districts**

Review: Public Works Environmental Programs recommends amendments to the UDO regarding Watershed Protection Overlay Districts; Planning Board met March 8, 2010 and unanimously recommends approval; staff recommends approval; certified public notice attached.

Public Hearing for various amendments to the Unified Development Ordinance recommended by the Environmental Programs and related to Watershed Protection Overlay Districts.

Staff presented proposed amendments to the Watershed Protection Overlay Districts to allow for compliance with State and Local legislation governing watersheds (Jordan Lake buffer rules); Town has been delegated authority to oversee the rules; clarity was given to the mechanisms for variances; alternative variance procedure was added for development outside state jurisdiction; and design flexibility was included that will result in no net loss of water quality benefit from buffer impacts. Model ordinance will be presented to the state for review. Planning Board and staff recommends approval of proposed UDO amendments. Questions were answered regarding the grandfather provisions; changes of use and applied buffer rules. Staff recommends additional language in Section 6.1.6.A General. Low Density Development Option: Technical Review Committee or Town Council, with legal offering, additional language: as applicable.

Public hearing opened at 8:30 p.m. No one spoke to the amendments. Public hearing was closed and matter referred to Council.

**Action:** Council Member Jensen recommended approval of the proposed amendments with the additional language as stated. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03-B

Presenter: Brendie Vega, Principal Planner

**Public Hearing # 03-C – UDO Amendments**

Review: Planning Board met March 8, 2010 and unanimously recommends approval; staff recommends various amendments to the UDO; certified public notice attached.

Public Hearing for various amendments to the Unified Development Ordinance recommended by the Planning Department.

Staff presented amendments: Section 7.5 Required improvements to amend phasing of required non-residential improvements; Section 4.4.4(C) Supplemental standards, entertainment outdoor to accommodate standards for athletic fields. Planning Board recommends approval; staff recommends approval.

Public hearing was opened at 8:40 p.m. No one addressed the proposed amendments. Public hearing was closed and matter referred to Council.

**Action:** Council Member Gossage made the motion to approve the proposed amendments. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing #03-C

End of Public Hearings



## OLD BUSINESS

**Presenter: Mayor Keith Weatherly**  
**Old Business # 01 – 2010 Legislative Agenda**

**Review:** Council at their March 2, 2010 meeting began preparation of a list of Legislative Agenda items to be considered by the NC General Assembly during their short session; additional items will be considered by Council to add to the list.

Consideration of the Town of Apex Legislative Agenda for the short session of the North Carolina General Assembly; possible motion to add additional item(s).

Manager Radford offered for Council's consideration an additional item for the proposed legislative agenda that would oppose the transfer of state roads from state maintenance to municipal maintenance; noted the NC League of Municipalities efforts and the Mayor's Coalition in last session that had blocked these efforts by the State.

Mayor Weatherly presented a collective legislative agenda from the Wake County Mayor's urging support from all towns. After a brief review and short discussion of those items, Council choose to leave the legislative agenda open to discuss any further potential legislation they would desire the General Assembly to consider during their short session.

**End of Old Business #01**

**Presenter: Town Manager Bruce Radford**  
**Old Business # 02 – Set Date for Council Work Session**

Possible motion to set date for a Council Work Session to discuss the proposed Veridea project.

**Action:** Council Member Schulze made the motion to set a Worksession of the Council to discuss Veridea project, Wednesday, April 7, 6:30 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

**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.**

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

*Public Forum was opened earlier in the meeting.*

*No one else addressed Council.*

## NEW BUSINESS

There were no New Business items to be considered.

## WORK SESSION

No Work Session of the Council was scheduled.



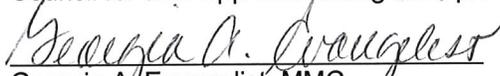
### CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 9:00 p.m. to discuss eminent domain matters and receive legal advice on them. **Action:** Council Member Jones made the motion to move into Closed Session. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Schulze made the motion to move from Closed Session back into Regular Session at 9:20 p.m. Council Member Olive made the second to the motion. Motion carried unanimously.

### ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 9:22 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the March 16, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the April 6, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for April 6, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 6, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council Members:  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Schulze gave the Invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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.**

**Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of March 16, 2010 Town Council meeting.
2. Minutes of March 16, 2010 Town Council Closed Session (separate cover).
3. Minutes of March 02, 2010 Economic Development Committee meeting.
4. Minutes of March 19, 2010 Economic Development Committee meeting.
5. Minutes of March 25, 2010 Ethics Training Webinar.
6. **Resolution No. 10-0406- 06** Declaring Apex Town Council's Intent to Annex Town-Owned Property; Annexation #449: 0.525 acres: (Apex Peakway public right-of-way), located off Tingen Road; Public Hearing April 20, 2010.
7. List of official depositories for Town of Apex required by North Carolina law.
8. Release letter of credit for Time Warner Cable.
9. Budget Ordinance Amendment No. 7 and Capital Project Ordinance Amendment to fund continued design work at regional wastewater treatment plant and extension of Evening Star Drive.
10. Contract with Joyce and Company to perform audit for fiscal year ending June 30, 2010: \$47,200.
11. Statement of Apex Town Council and Ordinance for Rezone #10CZ02 Aquiline Apex, petitioner, for property located at 1528 E. Williams Street.
12. Statement of Apex Town Council and Ordinance for Rezone #10CZ04, Lowe's Food Stores, petitioner, for property located at 5400 Apex Peakway.



13. Set public hearing April 20, 2010: Estates at Bella Casa Rezone #10CZ03; 11.096 acres for the property located at 2650 Evans Road.
14. Set public hearing April 20, 2010: Land Use Plan amendment and Rezone #10CZ05; 0.275 acres located at 924 Center Street.
15. Set public hearing April 20, 2010 for various amendments to the Unified Development Ordinance.
16. **Ordinance No. 10-0406-04** Amend Chapter 4 Section 4.2 of Apex Town Code concerning animals (clarification).
17. Authorize Town Manager to execute General Release Agreement for Infrastructure Maintenance Bond (No. 5022191); Portrait Homes, Old Mill Village, LLC.
18. **Resolution No. 10-0406-07** accepting the offer of dedication of public right-of-way for the extension of Evening Star Drive to Kelly Road and the widening of Kelly Road as well as certain easements all near Creekside Commons.

End of Consent Agenda

## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

There were no scheduled Public Hearings.

## OLD BUSINESS

Presenter: Mayor Keith Weatherly

**Old Business # 01 – 2010 Legislative Agenda**

Review: Council on March 2, 2010 began preparation of a Legislative agenda to be considered by NC General Assembly during their short session; additional items were considered on March 16, 2010; Council will consider any additional items.

Consideration of the Town of Apex Legislative Agenda for the short session of the North Carolina General Assembly; possible motion to add additional item(s).

Mayor Weatherly presented for consideration and approval, the 2010 Town of Apex Legislative Agenda, items 1-4. Council Member Jensen presented two items giving explanation for each however, he chose to pull them (attached). Mayor Weatherly presented the Wake County Mayor's collective list, with the Association having asked the endorsement by all local governing boards. Council voted on each item separately with minimal discussion of each item.

**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda. Council Member Schulze made the second to the motion. Vote was 4 in favor and 1 opposed. Council Member Jensen voted no. Motion carried unanimously.

1. The Apex Town Council will seek legislation that would change the manner in which Wake County Board of Education members are elected. The Council supports a membership structure where a majority or all of the BOE members would be elected on an at-large basis to staggered terms in November of even-numbered years.



**Action:** Council Member Schulze made the motion to approve this item for inclusion in the legislative agenda. Council Member Jensen made the second to the motion. Motion carried unanimously.

2. The Apex Town Council supports legislation that would eliminate or increase the present cap on the number of Charter Schools authorized for the State of North Carolina.

**Action:** Council Member Gossage made the motion to approve this item for inclusion in the legislative agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

3. The Apex Town Council will seek legislation that would exclude email distribution lists or email data base from being disclosed as a public record.

**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

4. The Apex Town Council will seek legislation that would oppose the transfer of state roads from state maintenance to municipal maintenance.

**Action:** Council Member Olive made the motion to approve this item for inclusion in the legislative agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

5. The Apex Town Council will seek legislation to keep local revenues intact through the upcoming budget session.

**Apex doesn't force annexation; there was no motion:**

6. The Apex Town Council will seek legislation to retain municipal authority for annexation by supporting the League of Municipalities position.

**Action:** Council Member Jensen made the motion to approve this item for inclusion in the legislative agenda, Council Member Jones made the second to the motion. Vote on the motion was 4 in favor and 1 opposed. Council Member Gossage voted no. Motion carried unanimously.

7. The Apex Town Council will seek legislation to allow municipalities to reduce time frame from 1 year to 6 months for minimum housing enforcement; this pertains to structures.

**Action:** Council Member Schulze made the motion to approve this item for inclusion in the legislative agenda, Council Member Jensen made the second to the motion. Vote on the motion was 4 in favor and 1 opposed. Council Member Gossage voted no. Motion carried unanimously.

8. The Apex Town Council will seek legislation to give municipalities authority to use debt to pay down past retirement obligations.



**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda, Council Member Gossage made the second to the motion. Motion carried unanimously.

9. The Apex Town Council will support legislation to give all municipalities authority to use electronic notice of official meetings; Apex currently has this legislative authority.

**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda, Council Member Olive made the second to the motion. Motion carried unanimously.

10. The Apex Town Council will seek legislation to allow municipalities to use the design-build concept for public capital projects.

Legislative agenda will be sent to Senator Stevens Co-Chairman of the Wake Delegation.

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.**

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Stuart Jones, Jones and Cnossen Engineers, 221 N. Salem Street addressed Council in regards to the downtown: 1) opportunity for Town to acquire 1/4 acre of space in the downtown; did not get a response from his earlier proposal and could be used for additional open space or a park (restroom and perhaps a skate park); 2) Meckes Building has had vandalism (kids); asked police for more street patrol. Manager Radford will discuss with Police Chief Lewis, suggestion for more street patrol.

End of Public Forum

## NEW BUSINESS

Presenter: Manager Bruce Radford

### **New Business # 01 – Wake County Board of Elections**

Discussion and possible motion regarding Wake County Board of Election's request to use the Apex Community Center for 2010 Election Early Voting space.

Council gave consideration to Wake County Board of Elections request to use Apex Community Center Summit and Pinnacle Rooms to accommodate early voting in November 2010 Election, dates specified were October 11 – November 4, 2010, 24 hours per day on these dates; space requirements have increased significantly since last early voting at Apex Community Center; game room provided last election does not provide adequate space as WCBOE expects a high turnout this fall. Use of the facility would entail shutting down rooms for security reasons and scheduled activities would be cancelled or shortened and would impact approximately 500 people, majority being Apex residents and would impact the generated revenue, an estimated \$20,000 if programs are cancelled.



Apex Town Council  
Meeting Minutes for April 6, 2010  
New Business continued

Cheri Poucher, Wake County Board of Elections, explained space needs and provided a handout outlining necessary requirements for an early voting space in Apex and needs for so much space, also, due to changes in law require additional staff, each with specific responsibilities to run the elections efficiently, noting WCBOE capability to determine the amount of staff and equipment necessary to assist voters and process votes; (Council and staff asked questions and made comments, directed towards the specific needs of computers, equipment, 30 staff members, number of voting booths, and possibility to either use alternative site, or scale back needs and use the game room for an early voting space). Poucher gave explanation to all needs and noted WCBOE was turned down by Apex in 2008 with over 16,000 plus voters having to go to Cary mall to vote, and would not be used for the 2010 election; noted with the 31,193 voters, 16,282 voters came to vote in Cary and lived in the Apex area (Apex zip codes); noted voter turnout in past general elections and WCBOE's inability to split the largest precincts in the county, noted Precinct 20-02 as one of the largest; WCBOE looks at precincts as a whole of Wake County voters with Precinct 20-02 having 8,142 voters and imperative to have an early voting place in Apex to ease congestion of high voter turnout (highest growth area) at these polling places (staff noted: the folks living in this precinct live outside Apex corporate limits and do not pay taxes to Apex); Poucher noted Apex has been the only municipality to turn WCBOE down, having requested the use of the Community Center, and noted the reason not to use alternate space was because of increased costs (staff noted: Apex offered an alternative site and would pay the rent, however WCBOE turned the alternate space down); Poucher noted they do not compensate municipalities for use of the facilities and were looking for use of community centers only and looking at square footage of the rooms to handle larger volume voters, due to continuity of sites and must plan ahead for November.

Mayor Weatherly turned to the Town's Attorney asking Council move into Closed Session at 7:45 p.m. to elaborate on what the law says in this regard. **Action:** Council Member Gossage made the motion to move into Closed Session. Council Member Jones made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 7:55 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Poucher stated WCBOE request was hard and fast and not room for negotiation, having to plan ahead for May and November 2010 elections; WCBOE is trying to find space that is publicly financed due to economic conditions are looking at community centers.

Mayor Weatherly wanted the record to reflect Apex has worked with WCBOE for early voting sites to serve Apex citizens which they expect; game room was deemed not sufficient in the presidential election, noting the Town had provided additional electrical connections and made space in the game room to accommodate WCBOE in a prior election; Apex worked to find alternative site and WCBOE deemed it inappropriate. Council agreed the community center was used to its fullest, and understood the position of WCBOE as it was an appropriate space to use, however would place a hardship on the Town, and chose to research options, having searched alternative space in the past, expressed willingness to continue to work with WCBOE to find an alternative space as it would inconvenience and disrupt tax payer citizens from using the community center, with some booked far in advance and in Council's opinion was asking way too much to ask the citizens of Apex to give this space up for such an extended period, and clearly would bring a financial hardship on the Town and burden its citizens. Recognizing the economic conditions and WCBOE's purpose to serve all of Wake County, Mayor Weatherly recommended Council send notice to the WCBOE that Apex would not approve their request, but express willingness to work to find an alternative space. Poucher would take the decision back to the WCBOE and go from there.

**Action:** Council Member Gossage made the motion to not approve the use of the three rooms at the Community Center knowing Council would have a period of time to work with WCBOE and see if they could find a suitable alternate location, with Mayor Weatherly asking if he would add to the motion, to direct staff to draft a letter to WCBOE, with Council's intent to work in good faith to do so; with Council Member Gossage adding that is exactly correct. Council Member Jones made the second to the motion. Motion carried unanimously.



**New Business # 02 – Appointments to Midtown 55 Advisory Committee**

Mayor Weatherly recommended for Council's consideration, appointments to the Midtown 55 Advisory Committee and ask for a volunteer from Council to serve on the Committee. Council Member Gossage volunteered to fill the Council volunteer position.

**Action:** Council Member Jones made the motion to approve the appointments to the Midtown 55 Advisory Committee, with Council Member Gossage serving in the volunteer position on the Committee. Council Member Olive made the second to the motion. Motion carried unanimously.

End of New Business

**CLOSED SESSION**

There were no Closed Session items to be discussed.

**WORK SESSION**

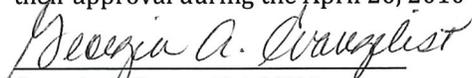
No Work Session was scheduled at this meeting.

Mayor Weatherly announced a joint Worksession of the Town Council and Planning Board to discuss proposed Veridea project would be held Wednesday, April 7, 2010 at 6:30 p.m., third floor training center of the Apex Town Hall.

**ADJOURNMENT**

Mayor Weatherly called for a motion to adjourn at 8:40 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the April 6, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the April 20, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Worksession of the Apex Town Council and Apex Planning Board April 7, 2010

The Apex Town Council and the Apex Planning Board held a Joint Worksession regarding the proposed Veridea project on Wednesday, April 7, 2010 at 6:30 p.m. in the Apex Town Hall, 3<sup>rd</sup> Floor Training Room. Those present are listed as follows:

**Council:**

Keith Weatherly, Mayor  
Bryan Gossage  
Bill Jensen  
Mike Jones  
Lance Olive  
Eugene Schulze

**Planning Board:**

Graham Wilson, Chair  
Tommy Morgan  
Sheryl Bynum  
Tom Colhoun, ETJ  
Lisa Carley  
Terry Rowe  
David Hooks  
Margo Bills

**Apex Staff:**

Bruce Radford, Town Manager  
Mike Wilson, Assistant Town Manager  
Dianne Khin, Planning Director  
Brendie Vega, Principal Planner  
Hank Fordham, Town Attorney  
Georgia Evangelist, Town Clerk

**Others:**

Brenda Steen, Apex Chamber of Commerce  
Shawn Daily, Apex Herald  
Jordan Cooke, Cary News  
Staley Smith, Smith and Smith

**Veridea Team:**

Tom Hendrickson, Lookout Ventures, Inc.  
John Martin, Lookout Ventures, Inc.  
Alan Maness, BBM & Associates  
Mike Davis, PR  
Lacy Reeves, Smith Anderson et al  
Charlotte Mitchell, Blanchard, Miller, Lewis & Styers  
Bill Ross, Environmental Consultant

Mayor Weatherly began the work session at 6:30 p.m.

Tom Hendrickson, Lookout Ventures, Inc., Attorney Lacey Reeves, Apex Planning Director Dianne Khin and Principal Planner Brendie Vega, and Apex Attorney Hank Fordham reported on activity that had taken place regarding the Veridea project since the October 12, 2009 Worksession, and specific to issues that are outstanding in both legal and planning areas, resolutions to the Veridea Sustainable Development Plan [SD Plan], and UDO Amendments. Outlook Ventures seeks to rezone 1,011 acres to Sustainable Development Conditional Zoning, generally bound by NC55, US1 and Future NC540 - #09CZ07; a Sustainable Mixed Use Community. Attachments include: Planning Staff Report and Chart, Legal Staff Report and Chart, and Applicant's Submittal: UDO Amendments, Sustainable Development Plan, Veridea Table Revisions Memo, and Tables.

Planning Staff Brendie Vega and Dianne Khin presented the planning report and chart that outlined Veridea outstanding staff issues, whether staff agreed or disagreed, and allowed verbal point by point discussion on each item; all attachments are incorporated as a part of the minutes.

Town Attorney Hank Fordham presented the legal report and chart that outlined Veridea outstanding legal issues, whether staff agreed or disagreed, and allowed for verbal point by point discussion on each item, as it relates to the Zoning/Regulatory Issues, and Infrastructure; all attachments are incorporated as a part of the minutes.

Tom Hendrickson, Outlook Ventures responded to each issue related to the Sustainable Mixed-Use Community, assisted by Attorney Lacey Reeves, for both planning and legal issues, referencing the SD Plan Modifications to Tables and when/where issues would be addressed, with some issues only being resolved as market conditions allow and as opportunities arise; a full presentation of the Veridea project will be revealed that would put the project in greater context; Veridea Modifications to Sustainable Development Plan and Modifications to Tables are attached and incorporated as a part of the minutes.

Council and Planning Board participated in discussion of various items seeking more clarity, some in more detail than others, as future planning continues to formulate.

Planning Issues discussed in more detail: planning to assure balance and compliancy for an appropriate mix in residential and commercial use within the development requiring long range planning; defaulting to the Unified Development Ordinance if the Sustainable Development Plan does not specify certain regulations; private alley situations vs. public streets; Pattern Book for each site plan section under review; worked with Parks and Recreation Commission to meet RCA requirements, and seeks a clear definition regarding parkland dedication and partial credits for private parks.

Legal Issues discussed in more detail: flexibility regarding reallocation among non-residential uses; square foot minimums for various types of development; flexibility to respond to market conditions as it relates to the concept map; sustainable zone minimums and whether the mix of uses is in public's interest; removal of Town's power to change town standards (UDO, Standard Specifications, and 2025 Land Use Plan) after approval of the proposed SD plan unless the controlling person consents, and grandfathering of certain changes in the SD Plan once approved opposed to being included in a developer agreement; provision in SD Plan for Council and Planning Board to review site plans or subdivision plans (thresholds and Pattern Books); provision of an Environmental Enhancement Plan as an additional standard.

Veridea proposes a new conditional zoning district and zoning regulations, and has significant impact on the Town's Unified Development Ordinance and with specific regulations and some issues being resolved and included in the Sustainable Development Plan that would cover the project in future years to come; some issues that have been raised are still pending, and with some issues being considered for resolve within a proposed binding 20-year Developer Agreement between the responsible persons for the Veridea project and the Town of Apex.

Discussion of the Veridea project will move forward with town departmental staff continuing to work with Lookout Ventures in a co-operative effort to resolve all concerns as it relates to this project, noting infrastructure issues, waste water treatment and roads are critical components of this project and a provision within the binding Sustainable Development Plan. Staff issues should be resolved prior to the site plan review by the Planning Board, and with their recommendation to Town Council for their consideration prior to any action taken.

With discussion concluding at 8:45 p.m., final comments were noted: staff will move to the next set of issues, Construction Management and Public Works, with additional work sessions to follow. Lookout Ventures and town staff are committed to working together in a joint effort, and in an orderly process to move this project forward to the Planning Board to formulate a recommendation and to obtain the Town Council's approval of the Veridea project. Lookout Ventures was in agreement to thresholds in the Sustainable Development Plan as long as they were general and not specific. Lookout Ventures searches for a lawful way the Sustainable Development Plan can be part of the Conditional Zoning and would allow this plan to modify text changes in the future over time without binding hands in the future.

Minutes of the Worksession were submitted by the Town Clerk to the Apex Town Council for approval during the April 20, 2010 meeting.

  
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Georgia A. Evangelist, MMC  
Town Clerk

  
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Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for April 20, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 20, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council Members:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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; with no amendments to be made to the consent agenda, the following action was taken: **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of April 6, 2010 Town Council meeting.
2. Minutes of April 6, 2010 Town Council Closed Session (separate cover).
3. Minutes of April 7, 2010 Town Council and Planning Board Worksession Veridea Project.
4. Annexation Petition # 450: LHP Development, LLC. owner/petitioner; Petitioning to annex 11.096 acres into the Town's corporate limits and located at 2650 Evans Road;  
1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; and  
3) Resolution Setting Date of Public Hearing for May 4, 2010.
5. Budget Ordinance Amendment No. 8: Collection of surety bond, stormwater improvements Old Mill Village.
6. Accept settlement offer from Selective Insurance Company of America in the amount of \$27,500 to correct storm drain alignment in Waterford East Subdivision and authorize Town Manager to execute attached Final Release and Assignment.
7. Order to close several streets in Scott's Mills, The Green and Magnolia communities for approximately 1.5 hours on Saturday, May 15, 2010 beginning at 7:30 a.m. to accommodate the 3rd. Annual St. Mary Magdalene Monarchs in Motion 5K Race/Walk.
8. Wake County Tax Report approved and accepted by the Wake County Board of Commissioners in their regular session of April 5, 2010.

End of Consent Agenda



## REGULAR MEETING AGENDA

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

### PUBLIC HEARINGS

Presenter: Principal Planner Brendie Vega

#### **Public Hearing # 01 – Major Site Plan: Providence Green**

**Review:** Planning Board held their public hearing April 12, 2010 and with the public hearing closed, voted 7-1 to continue consideration of major site plan for Providence Green to the May 10, 2010 Planning Board meeting; staff will ask Council to continue this hearing to Council meeting of May 18, 2010; no staff report is prepared; Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-AB50958A-BA91-3EFF-DB9A85C30A2A7A1A.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB50958A-BA91-3EFF-DB9A85C30A2A7A1A.pdf)

Quasi-Judicial Public Hearing regarding major site plan for Providence Green, Scotts Woods, LLC, applicant, proposes 81,275 square foot building containing 72 multi-family residential units for the property located at 1400 Providence Green Lane containing 153 acres.

Staff recommended the Quasi-Judicial Public Hearing and Major Site Plan for Providence Green be continued to the May 18, 2010 Council Meeting; Planning Board continued same to their May 10, 2010 meeting to allow time to revisit the site. Planning Board requests Town Attorney attend their May 10, 2010 meeting to answer questions regarding vested rights. Note by Clerk: (Persons who address the Planning Board and Town Council during the quasi-judicial public hearing must be administered an oath to state true facts only, and relevant to the major site plan). Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jensen made the motion to continue the Quasi-Judicial Public Hearing and Major Site Plan for Providence Green to the Council meeting of May 18, 2010. Council Member Jones made the second to the motion. Motion carried unanimously.

Quasi-Judicial Public Hearing # 01 continued to May 18, 2010 Council Meeting

Presenter: Senior Planner June Cowles

#### **Public Hearing # 02 – Conditional Zoning Case #10CZ03: Estates of Bella Casa Master Subdivision Plan**

**Review:** Planning Board met April 12, 2010; Vote: Unanimous approval. Staff recommends approval with conditions noted by applicant. Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-AB4F4F5E-A6FA-C819-6F16C13FF9247CBD.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB4F4F5E-A6FA-C819-6F16C13FF9247CBD.pdf)

Public Hearing and possible motion regarding Estates at Bella Casa Master Subdivision Plan and Rezone #10CZ03; rezone from Rural Residential district to Medium Density Conditional Zoning district; property located at 2650 Evans Road containing 11.096 acres.

Staff presented the Planning report which is incorporated as a part of the minutes; oriented to the site and noted current zoning, requested zoning and adjacent zoning and land uses. Applicant proposes rezone and master subdivision plan for 23 single family lots and one storm water pond. Applicant proposes to permit all allowable uses in the medium density residential district except: nursing or convalescent facility, church, communication tower, camouflage stealth, and recycling collection station. Applicant proposes the following conditions:

1. The property will not provide direct public street access to the Town of Apex property.
2. The property will provide at least two means of public street access
3. The maximum density for the development is 3.0 units per acre.
4. All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding.
5. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles.
6. Covered porches are required on the front façade of each single family residential structure facing the public right-of-way.
7. All residential units shall require a crawl space or a minimum of two (2) steps or 14 inches to the front door.
8. Front-loaded garages shall recess 12 inches from the front face/façade of the house.



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Public Hearing # 02 continued**

2025 Land Use Plan identifies site as Medium Density Residential; rezone is consistent. Adverse impacts on neighboring properties: increased traffic, light, and noise; impacts will be mitigated by road improvements, utility and infrastructure improvements, conservation and provision of buffers and natural areas, and current lighting standards of the UDO. Applicant conducted a neighborhood meeting February 24, 2010; as reported, no one attended. Resource Conservation Area is not required for the subdivision as density is less than 2.0 units per acre. Collector streets have a 10 foot wide Type D buffer included in the subdivision plan. Parks, Recreation, and Cultural Resources Advisory Commission reviewed Estates at Bella Sera and recommended payment of fees- in-lieu. Proposed subdivision includes one stub road to the west and two roads connecting to existing roads to the east and south. Subdivision Plan is consistent with Apex Transportation Plan that includes collector streets. Applicant is providing a 10 foot wide multi-use sidewalk along Evans Road. Proposed Estates at Bella Sera Subdivision Plan is compliant with standards provided in the UDO. Planning Board reviewed and unanimously approved Estates at Bella Casa rezone and master subdivision plan April 12, 2010. Staff recommends approval with the conditions noted by applicant.

Public hearing opened at 7:12 p.m. Stuart Jones, Jones and Cnossen Engineering, PLLC spoke in support of the request; the property will not provide direct public street access to Town of Apex property, however a 10 foot wide multi-use sidewalk along Evans Road will be provided. Proposed Estates of Bella Casa will share recreation facilities, name, lot styles, building types of existing Bella Casa; one-half acre estate lots back to town's park property and consistent with the Land Use Plan; medium density development allows flexibility with market conditions (almost low density development). No one spoke in opposition and the public hearing closed at 7:16 p.m. Director of Planning stated the plan is consistent with the Town's plans: Town has no plans for direct access from this property to the Town Park, and agrees with the provision for the 10 foot wide multi-use sidewalk along Evans Road. Public hearing closed at 7:16 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve Rezoning #10CZ03 and Estates at Bella Casa Master Subdivision Plan as recommended. Council Member Schulze made the second to the motion. Motion carried unanimously.

**End of Public Hearing #02**

**Presenter: Senior Planner June Cowles**

**Public Hearing # 03 – Conditional Zoning Case #10CZ05 and Land Use Plan Amendment**

**Review:** Planning Board met April 12, 2010; **Vote:** Unanimous approval. Staff recommends approval with conditions noted by applicant. **Public Notice:**

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-AB4FC54A-C284-7449-F032B2CC36BFC78E.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB4FC54A-C284-7449-F032B2CC36BFC78E.pdf)

Public Hearing and possible motion regarding Land Use Plan Amendment and Rezone #10CZ05; to amend the current 2025 Land Use Classification from High and Medium Density Residential to Office Employment, and rezone from Residential Agricultural district to Office & Institutional Conditional Zoning district, property located at 924 Center Street containing 0.275 acres.

Staff presented the Planning report which is incorporated as a part of the minutes; oriented to the site and noted current zoning, requested zoning and adjacent zoning and land uses. Applicant requests a Land Use Plan amendment from Medium and High Density Residential to Office Employment and a rezone of 0.275 acres from Residential Agricultural (RA) to Office and Institutional Conditional Zoning (O&I-CZ). The objective of the Land Use amendment and rezone is to rezone the property from residential to office use as the existing building has been remodeled and offered for rent to residential customers but has not been rented. Adjacent industrial site, increased traffic volumes along Center Street and physical proximity to Center Street inhibits the site to be utilized as a residential site. Due to the adjacent industrial site, applicant believes site could be attractive as an office location.



**Apex Town Council  
Meeting Minutes for April 20, 2010  
Public Hearing # 03 continued**

The applicant has proposed to permit the following uses in the Office and Institutional – Conditional Zoning to be allowed:

1. Office, Business or Professional
2. Medical Office
3. Real Estate Sales Office
4. Studio for Art

Applicant conducted a neighborhood meeting March 23, 2010; one neighbor asked questions in regard to traffic and parking. Planning Board met April 12, 2010 and reviewed and unanimously approved the rezone and Land Use Plan amendment. Staff recommends approval with conditions noted by applicant.

Public hearing opened at 7:20 p.m. Stuart Jones, Jones and Clossen Engineering, PLLC spoke in support of the request; noted residential renovation included residential parking; approved rezone will require parking change to include turn-around; noted minimal traffic with the 800 s.f. space, and has an interested party; neighbor across the street had no issues with the proposed. No one spoke in opposition. The public hearing was closed at 7:20 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve Rezone #10CZ05 and Land Use Plan Amendment as presented with conditions stated. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Public Hearing #03**

**Presenter: Principal Planner Brendie Vega**

**Public Hearing # 04 – UDO Amendments (Various Sections)**

**Review:** Planning Board met April 12, 2010; Vote: Unanimous approval. Staff recommends approval. Public Notice: [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-CE1D4DCC-E24C-1EB8-1B81ADA1DD64EEA2.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-CE1D4DCC-E24C-1EB8-1B81ADA1DD64EEA2.pdf)

Public Hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance: Sec. 7.3 Park, Recreation and Open Space Sites; Sec. 7.5 Required Improvements; Sec. 2.3.4 Planned Development Districts to amend Phasing of PD Plans; Sec. 8.7 Signs to add Home Occupation signs.

Staff presented the Planning report regarding various amendments to the Unified Development Ordinance which is incorporated as a part of the minutes. Amendment to Section 7.3.4, 7.5.9, and 7.5.16 add Performance Guarantees to Parks, Recreation, and Open Space Sites; Section 7.5.14 Defects Guarantee did not go to the Planning Board, adds greenways; Section 2.3.4 Planned Development Districts clarifies phasing of development; Section 8.7 permits signs for Home Occupations (home occupations are permitted in all residential districts). Planning Board met April 12, 2010 and unanimously recommended approval of the proposed Unified Development Ordinance amendments. Staff recommends approval of the UDO Amendments.

Public hearing opened at 7:29 p.m. No one addressed the proposed amendments. Public hearing closed at 7:29 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve Unified Development Ordinance amendments to various sections. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Public Hearing #04**



Presenter: Principal Planner Brendie Vega

**Public Hearing # 05 - UDO Amendments: Electronic Gaming Operations**

**Review:** Planning Board met April 12, 2010; **Vote:** Unanimous approval. **Staff recommends approval. Public Notice:**  
[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-CE1D4DCC-E24C-1EB8-1B81ADA1DD64EEA2.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-CE1D4DCC-E24C-1EB8-1B81ADA1DD64EEA2.pdf)

Public Hearing and possible motion regarding amendments to the Unified Development Ordinance for Electronic Gaming Operations (also referred to as internet cafes, internet sweepstakes, business centers, electronic gaming machines/operations, video sweepstakes and cybercafés, or by whatever other terminology such establishment might be known).

Staff presented the Planning report which is incorporated as a part of the minutes. Amendment to Section 4.2.2 Use Table adds Electronic Gaming Operations, Light Industrial, Adult Use; new Section 4.3.5(A)(3) Use Classifications: Electronic Gaming Operations defines Commercial Use type; new Section 4.4.5(A)(3) Supplemental Standards; Electronic Gaming Operations provides required supplemental standards (falls under a variety of names as an adult use in the Light Industrial District. Note: owner has option to lease space or not, requires a special use permit and allows town ability to revoke if violated; suggested: church be replaced with place of worship.

Director of Planning reported secondary impacts related with internet sweepstakes businesses. Research report: Public Law UNC School of Government Professors Rich Ducker and Christopher McLaughlin: zoning can influence location and how such are installed; some ordinances treat such uses as legal, but less than desirable uses, as secondary impacts have been linked and associated with impacts similar to night clubs and adult establishments and casinos. Report related crime incidences: robbery and kidnapping. Report on activity from a Durham business: witness saw individuals believed to have been consuming alcohol, in/out of establishment to vehicles; next day, sidewalks were cleared of food items, bottles, and cigarettes.

Public hearing opened at 7:40 p.m.

Annette Champion, Attorney, Daughtry, Woodard, Lawrence, and Stallings, Smithfield, N.C. spoke for owners/operators of phone time sweepstakes machines, located in Apex: Sparks, Rudino's and MoJoes, who's machine operations would be prohibited should the ordinance be adopted in its proposed form, and who currently operate by Order for Preliminary Injunction: findings (Exhibit A); allows four machines at any of the locations; in existence for several months. Current Apex moratorium ordinance applies to development of internet sweepstakes cafes, not the case for these businesses; they and their employees rely on income from these machines located in gaming entertainment locations where food is served, have jute boxes, pool tables, and other electronic games. Request: these games pursuant to the injunction be excluded or those games at their current locations be grandfathered in as they were already in operation and relied upon by the businesses and their employees.

Attorney Fordham advised the injunction was preliminary and not a final decision; doesn't relate to the town's zoning ordinance; doesn't describe in detail what the state planned to do; stops enforcement action believed treated as a criminal or illegal activity and not what's before Council; what is before Council is whether or not to adopt the zoning ordinance that would impose location requirements in a specific zoning district in which the activity could occur. The injunction doesn't directly apply to Apex; Apex was not a named party to it; main point, it does not deal with zoning. Attorney Champion responded their point: because of the injunction each operator is only allowed four machines at their location and have that; it does limit them and may prevent some concerns of the Town.

Council Member Gossage asked regardless of the injunction would the proposed ordinance preclude existing businesses to continue operation of their machines. Attorney Fordham responded: the way the ordinance is drafted it would cover them and prevent them from continued operation; advised if the party had a pre-existing vested right to continue and lawfully had undertaken an activity and did it at a time no permit was required, by its terms, the ordinance would apply to them; but if they spent money in reliance on starting a lawful operation then it probably couldn't be applied to them, but thinks it would be a fact by fact determination; doesn't know all facts about how a particular use started; there's some indication from preliminary investigation that the existing examples of this type of use would have required a site plan or some type of



Apex Town Council  
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Public Hearing # 05 continued

approval so it may not have been, from a zoning standpoint, in lawful operation; the proposed ordinance prohibits all this type activity. He advised when considering whether someone is to be grandfathered: 1) Council could grandfather folks in the ordinance, 2) if the person has an independent legal right to continue something, even if Council chooses not to, occasionally a person has that right. Council Member Gossage asked if that's up for dispute. Attorney Fordham response: this hasn't been fully investigated and doesn't know. Council Member Gossage asked isn't that somewhat the attorney's point? Attorney Fordham response: he didn't hear her say they have a legal right to continue; she asked you to either grandfather them or exclude them. Council Member Gossage meant if they have a legal right to operate in the first place, not to continue. Attorney Fordham responded she didn't address whether they followed all their zoning requirements to start.

Director of Planning Dianne Khin stated no applications were received for any certificates of zoning compliance for machines found throughout town businesses and should have received a zoning compliance certificate. Staff didn't know these businesses had the machines and the businesses didn't know they needed a zoning compliance certificate; they would have stated they would be utilizing a game room and devices, which is the closest terminology in the Town's zoning ordinance. The one establishment that applied was asking permission for 40 machines. Director of Planning stated if Council does wish to grandfather the convenience stores, restaurants and bars that already have them, she would not rely on a vested right, as it would be much more difficult for them to prove; if Council wants to grandfather them, it should be in the ordinance. Council Member Gossage expressed concern they would grandfather something that hasn't already been approved. Khin response: we haven't already approved it. Attorney Fordham response: he didn't know enough about the use in those particular circumstances and what the requirements were to know if they had to apply for some type permission from the Town to start these. Mayor that would be determined, with Khin responding yes, it would be too late if that's what you are going to rely on.

Attorney Fordham advised, if Council's preference is to grandfather, it would be more straight forward to include this in the ordinance; if preference is not to grandfather, then it wouldn't be addressed in the ordinance and would be determined on a case by case basis whether it were a lawful use at the time the ordinance went into effect.

Danny Allen, Allen Amusements, owns phone time machines in Sparks; these type games and sweepstake machines are part of his gaming operation; hasn't had to have an ordinance anywhere he has gone; did not know Apex rules. Sparks is a nice restaurant and he could spend/borrow up to \$30,000 on machines and put them in; sweepstakes machines cost \$3,000 and brings in twice as much money as bowling and golf machines; customers can play long periods of time for \$5 - \$10, order food and buy drinks; an important part of their business; wasn't sure they were talking about his games; has them in four counties and doesn't have problems; thought Town was talking internet café's, which he doesn't run; with injunction, he can only place four sweepstake machines in any given location. Has not had problems in Town as far as drinking, crime, comings/goings; customers go in a nice restaurant and enjoy their time there. Offered any help related to phone time sweepstakes games; was not sure about being told he needed a permit; doesn't get a permit for pool tables, golf, bowling, jute boxes as this is part of his normal games; doesn't see a problem and doesn't think Town has had a problem at any of their locations as far as criminal activity or trash in the streets or parking lots. Council Member Gossage was not saying he should have; question was whether or not something like that should have taken place and doesn't have the answer. Allen would like to keep these games as they are an important part of his business and sure Sparks owner would like to keep them also.

Kyle Stimbrig, Sparks Owner, reported no criminal activity and no street trash; has manager on staff with phone minutes sold through manager and nothing not regulated and a key part of his business; struggles to make ends meet and as far as his partnership with Allen, hopes there's a light at the end of the tunnel; hopes Council makes the right decision on these type games, as his livelihood is on the line; asked Council think about what these people know and have said and keep the games; people eat his food, patronize his business, play games; those people who play his games are professional people and he'd hate to see them go to some other city to play; you can walk 100 feet to the grocery store and play games and the state owns that game; hopes with what's been said, Council can make the right decision best for Apex and asked they leave what the town has, and stop what's wanting to come in; internet cafes is not what he wants; he's nowhere close to one; He doesn't want more games to come to his area, but wants folks to come and play his games and eat his food; at internet cafes they just play games, they don't have food. He likes his patrons.



Apex Town Council  
Meeting Minutes for April 20, 2010  
Public Hearing # 05 continued

**Action:** Council Member Gossage made a motion to go into Closed Session for legal advice from the Town Attorney. Mayor Weatherly stated the public hearing should continue.

Earl Crawford, Owner of Play for Fun, Glenville, N.C., sells telephone time where folks buy to call anywhere in the United States and in all his stores; he promotes their use through sweepstakes programs; four machines allowed per retail location. Joe Curtin Zoning Compliance came into Racing Mart, Salem Street and told those folks to unplug their machines or they would shut them down. Crawford met with Town Attorney and shared Judge's ruling to allow four machines in each retail establishment and also says sweepstakes program is allowed to promote sale of telephone time. He's the small person going against ATT and Verizon phone cards, found in almost any place. Sweepstakes machines do not accept money, tokens or cards, unlike Vegas or Atlantic City, or true casino like Cherokee. A person can walk into a convenient store and buy \$20 in phone time and can walk away and does not have to play the sweepstakes, an added bonus to help sell phone time. Some buy phone time, play machines and win prizes, money, sometimes not winning. His point was their system should not be incorporated within internet cafes with 20, 30, 40 terminals; has to be a retail establishment per the judge's order and only four machines. Convenient Store is an established business with a license, no different than McDonalds sweepstakes program, Coca-Cola sweepstakes promoter where you have to buy Coke, pull the tab off the cup and you may win a hamburger, a coke, or \$1000; or Publisher's Clearing House. Their program for phone time is absolutely no different; it's your choice to play sweepstakes machine or just buy phone time and walk out the door and go use phone time. Asked Council consider separating the sweepstakes program where only 4 machines are allowed from the internet café ordinance.

Public hearing was closed at 7:55 p.m. Mayor Weatherly asked the motion be restated.

**Action:** Council Member Gossage restated his motion to go into Closed Session at 7:55 p.m. to take legal advice from the Town Attorney. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes are recorded separately. **Action:** Council Member Jones made the motion to move back into Regular Session at 8:25 p.m. Council Member Olive made the second to the motion. Motion carried unanimously. With Council having moved back in regular session, discussion continued.

Council Member Jensen expressed concern with auxiliary use for restaurants; was in favor of the ordinance as written and should allow auxiliary use up to a number of machines and when it doesn't impact anyone in the area. Wanted to alter the proposed ordinance to allow auxiliary use in places of business such as restaurants, up to a certain number, maybe grandfather up to four and allow two in other places that wants to.

Mayor Weatherly in response, was in hopes Council wouldn't amend the ordinance to allow for the proliferation of gaming devices; they were talking about grandfathering those in current existence, if they were lawfully established and would be a finite number; but to allow accessory use, to allow every retail establishment in Town, every convenience store, tanning booth, gas station, to have up to four .... asking if that was what he was talking about.

Council Member Jensen responded no and would clarify; we have to be careful between a zoning ordinance and legislating morality; his job was to ensure areas around any of these establishments are not affected by the establishments itself. With respect to McDonalds, noted it quite different than this, as you mainly buy food there; gambling in his opinion is an individual's decision, when gambling affects someone around the establishment within the neighborhood, then that's when Council gets involved. He's happy to pass the ordinance as is, but at very least grandfather in machines that are there in the establishments, that are lawfully operating. Example: Sparks, no problems have been noted there. Council Member Schulze agreed with need to be operating lawfully.



Council Member Jones reported he visits Sparks regularly, noted good food and didn't know there were sweepstakes machines and not something they market when you walk in; apparently is important to their operation. He's not seen any behavior or circumstances that would cause him to be alarmed or to be worried about the shopping center. To start, Council were talking about internet cafes, described at the last hearing, as many as 40 machines, a much different situation than an accessory use. He would support grandfathering in the lawfully existing businesses, with limits put in place by the preliminary injunction of four machines, at each address location or each business.

Council Member Jensen asked if we allow this to go beyond those that are being grandfathered in, could it be done by license, limiting up to ten; noted four machines apparently hasn't caused problems; allowing internet café's apparently in other places have caused problems; if we have a number of establishments with two or four machines, in his mind would discourage internet café's because competition is there for folks to get someplace else. He's not against gambling if they wish; asking if the Town could require a license for the machines or limit number of machines in each establishment; state limits lotto machines which Apex doesn't have at every gas station; to not exceed ten locations within the jurisdiction.

Attorney Fordham response: he didn't think you could pick the number of locations, no. If there were secondary impacts from locations that have four of these units as an accessory use, if there are secondary impacts that are negative then you could have disbursement requirements similar to what you have with present ordinance; the present ordinance has a disbursement requirement that would limit the number.

Mayor Weatherly asked if anyone would want to make a motion.

Council Member Olive wanted Council to consider sections of the ordinance separately and felt there was common understanding for the definition; keep language as written including accessory use, because of those set in other cities/towns, business center, and in smaller print sweepstakes, however, they are teaming with people who play sweepstakes, not printing, faxing, not copying, not wanting to be on the side of burden of proof; the primary use is not what's advertised on the outside, but rather what's happening on the inside.

**Action:** Council Member Olive made the motion to approve Section 1 of the ordinance for gaming operations as written, from the revised version of the ordinance. Mayor Weatherly questioned adoption of sections separately. Attorney Fordham response: it was not unlawful to adopt sections separately; best to discuss each section separately and have them as one ordinance when you make the motion for adoption. Mayor Weatherly thought he wanted to have separate discussion and when comfortable with the entire ordinance, then vote. Council Member Olive response: if it's problematic to have a definition, if the definition were to go in without having a valid use later and is problematic, he doesn't see why that would be a problem to define something, not necessarily meaning you must have a use for it later nor does it. Attorney Fordham response: definition would relate to the impact the definition has on uses, and if you don't have it together you would have a definition that would be separated from its legal significance in terms of regulating behavior or land use. Council Member Jones was not comfortable voting on it separately, a section at a time.

**Action:** Council Member Olive withdrew his motion. Council Member Jones stated his issue was Council needs to decide on grandfathering of the entire ordinance. Mayor Weatherly suggested a consensus on each section, before moving forward.

Section 1. No concerns were expressed.

Section 2. Council Member Schulze questioned screening from outside; noted Manager Radford visited an establishment where windows were painted black; he didn't want to see that and asked could the ordinance restrict doing that; this really applies to internet cafes.



Section 3(e) Council Member Schulze asked why we care what they see or don't; restaurants have back rooms. Principal Planner Vega response: easy for police security and is an esthetic issue. Mayor Weatherly noted this could be an amendment when a motion is offered on the ordinance. Mayor Weatherly called for a motion, if Council chose to make one. With the absence of a motion, discussion continued. Council Member Schulze was hearing a consensus of Council to allow grandfathering for existing businesses that are in operation today, lawfully; if there's an existing business today, operating that's not lawful, then they are not grandfathered. Attorney Fordham response: there could be a phrase if Council so choose that says, this ordinance shall not apply to a use that would otherwise be regulated by this ordinance if the use were lawfully in existence at the time of the enactment of this ordinance. Mayor Weatherly clarified it would restrict the number of machines currently in existence. Attorney Fordham response: it would only apply to a machine that was in use at the time you enact it, and lawfully in use.

**Action:** Council Member Jones moved to adopt the ordinance with the grandfathering clause presented by the Town Attorney, asking he repeat the wording. Attorney Fordham restated: this ordinance shall not apply to a use that would otherwise be regulated by this ordinance if the use were lawfully in existence at the time of the enactment of this ordinance. Council Member Jones stated that would be his motion.

Council Member Jensen thought it nebulous whether they comply or don't; thinks they should grandfather them in; problem is if they haven't met the letter of the law to run these devices, and it's not affecting anybody; doesn't think they should force a place like Sparks or any of the places that have the machines, only if they are affecting their neighbors, society basically. Mayor Weatherly's response: that's like saying anybody that does anything outside the current ordinance and is not in compliance, and if they are not bothering anybody and nobody complains, we should wink and nod. Council Member Jensen responded your response was correct and withdrew the idea. Council Member Jones expressed concern with zoning compliance, their lawful existence; must assure they are in lawful zoning compliance or seek permission to do otherwise. Mayor Weatherly asked for a second to the motion before continuing discussion.

**Action:** Council Member Schulze made the second to the motion. Council Member Jensen asked if an establishment has one of these machines, how that fits into the ordinance (game rooms and devices); if this were set aside and they happened to apply for a permit or whatever they have to do for a zoning change, then they would be out of compliance and would be gone if not properly zoned; can they come back - in compliance or made to be in compliance would be what he would like to see in the ordinance. He would like to give these folks opportunity to be in compliance under the rest of the ordinance, if they happen not to be today. He sees people that had no idea they needed to come to get a permit; that is on their shoulders, but this is a situation that is questionable. Attorney Fordham asked Council for a brief closed session.

**Action:** Council Member Jensen asked for a motion to move into closed session at 8:50 p.m. to receive legal advice from the Town Attorney. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of closed session are recorded separately. **Action:** Council Member Gossage made the motion to move back into regular session at 9:00 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly stated there was a motion and a second on the floor.

Attorney Fordham restated the wording for the motion: to adopt the revised ordinance with the addition of an additional subsection inserted in place of the language in Section 4 and substitute the following, "This ordinance shall be effective upon enactment on this 20<sup>th</sup> day of April 2010, except that this ordinance shall not apply to a use that would otherwise be regulated by this ordinance if the use was lawfully in existence at the time of the enactment of this ordinance."

Mayor Weatherly asked if there were any discussion. Council Member Jensen stated new gaming rooms needed to be legal with respect to the ordinance; he thinks what's being done with grandfathering is well taken; he down line would carefully want to see additional units to allow people to do what they want to do, as long as they don't hurt anyone else; he will vote for the ordinance as is; felt these folks need to understand this doesn't solve their problem and they need to get legal with respect to the rest of the ordinance.



Council Member Jones fully anticipates this will not be the last of the discussion that's before them; but Council does need to take some action tonight. Council Member Jensen thinks what's being done with gaming rooms is the correct way; he wants to allow people as many options as can; as we get more people in tighter spaces, freedoms go down; and you don't want to take away any more freedoms than we have too. Council Member Schulze was willing to pass on the concern for the windows as it sounds they will revisit this in discussion of the language for internet cafes, so that doesn't happen.

**Action:** Council Member Jones asked to amend his motion, under Section 1: 4.3.5 A) 3) to conduct games of chance, as it was a duplication. Mayor Weatherly noted this was a technical amendment, not needing a motion. Council Member Jones withdrew his motion.

Council Member Olive made the following statement: Electronic Forms of sweepstakes are specifically designed to appeal to people who enjoy the thrill of gambling; he does not equate it to the same as tearing off a sticker from a McDonald's cup; they are very different. These electronic forms of gambling are designed to appear to be slot machines or other types of a thrilling type of gambling devices, where you pay your money, you play and hope to get a win, or big payback. Some people may take it or leave it, I understand that; there are people who are enslaved to this, perhaps to the detriment of their own bank accounts, and perhaps their family and their health. He wanted to vote for the definition because he thinks the definition is a good one, but he doesn't see any zoning in Apex where he believes this is a good choice, and he is not in favor of this amendment; this ordinance change.

Council Member Jensen asked clarity on the grandfathering. Council Member Olive was not in favor of any of it; doesn't see any zoning in Apex where he thinks this is a good use. Mayor Weatherly asked what we are allowed to outright prohibit under state law. Attorney Fordham response: he had rather answer that in closed session. Mayor Weatherly asked if there were further discussion. Council Member Gossage added the goal of this ordinance was to prohibit this use or limit this use almost exclusively throughout Apex.

Council Member Olive response: that's right, but in order to do that you add the capability of the special use requirement for light industrial; you could make the argument that light industrial is not a good place for that type of activity; you could talk to people who own space in light industrial areas and they would be perhaps opposed to this being next door to them; and perhaps there might be a zoning where this is appropriate, but he doesn't see where Apex has that type of zoning. He would be in favor of restricting this but doesn't see how to do this without voting against this.

Council Member Jensen understood state law is that you have to allow a place for these gaming rooms to be, and we do have the opportunity to allow.... Council Member Olive interjecting he didn't hear that statement earlier, with Mayor Weatherly adding legal counsel would prefer not to answer this in regular session, but as far as adult establishments, we have a zoning classification in Apex, that would allow for topless bars, because we are prohibited in his recollection when that ordinance was adopted, they were not allowed to outright prohibit them, we had to allow for them in some zoning classification, so they restricted them as much as they could, but we are not allowed... he thinks they would share that if they could outlaw them outright, they would, but were not allowed to do so. Council Member Olive voiced that he understood that.

Mayor Weatherly asked if there were further discussion on the motion. With none, he called for the vote on the motion. 4 voting in favor and 1 voting no; Council Member Olive cast the no vote. Motion carries with the amendment; the ordinance was approved. Motion carried.

End of Public Hearing #05



Presenter: Director of Planning Dianne Khin

**Public Hearing # 06 – Annexation Petition # 449**

**Review:** Public hearing notice was posted in subject area; public notice advertised on Town of Apex website; staff recommends approval of annexation and adoption of ordinance to incorporate the 0.525 acres. Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-D83445F8-BA80-3825-08CF1DE3EBD93327.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-D83445F8-BA80-3825-08CF1DE3EBD93327.pdf)

Public Hearing and possible motion regarding Annexation # 449: Intent to Annex Town-Owned Property known as the Apex Peakway public right-of-way, located off Tingen Road, containing 0.525 acres.

Staff stated the request to annex and the location of the public right of way, the section completed by the WalMart development, to become a part of the town's roads to receive Powell Bill monies for maintenance.

Public hearing was opened at 9:11 p.m. With no one addressing this annexation request, the Public hearing was closed at 9:11 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve Annexation # 449. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing #06

Presenter: Environmental Services Stormwater and Utility Engineer Jessica Bolin, PE, and John Cratch Water Reclamation Facility Manager

**Public Hearing # 07 – Water Shortage Response Plan**

**Review:** Apex has been required by the State of NC to have a Water Shortage Response Plan in place (2001); rule changes also require an update to the Apex Water Conservation Ordinance; staff recommends adoption of the Water Shortage Response Plan and the amendments to the Town's Water Conservation Ordinance. Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-87495E2E-DDC7-F598-0193A35F42B03AD1.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-87495E2E-DDC7-F598-0193A35F42B03AD1.pdf)

Public Hearing and possible motion to adopt an updated Water Shortage Response Plan and the amendments to the Town's Water Conservation Ordinance.

Bolin presented the Water Shortage Response Plan amendments to the rules that governs water use during droughts and water emergencies, and the proposed amendments to the Town's Water Conservation Ordinance. State has given preliminary approval to the plan and full approval requires formal adoption of the plan by Council. State rule changes require update to the Apex Water Conservation Ordinance; key changes were noted. With adoption of the plan amendments and associated water conservation ordinance amendments, the Town will be in compliance with all state regulations and requirements related to water conservation and will be consistent with the measures of other local municipalities.

Public hearing was opened at 9:15 p.m. With no one addressing this matter, the Public hearing was closed at 9:15 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to adopt the Resolution for approval of the Water Shortage Response Plan. Council Member Jensen made the second to the motion. Motion carried unanimously.

**Action:** Council Member Jones made the motion to adopt the amendments to the Town's Water Conservation Ordinance. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing #07

End of Public Hearings



**OLD BUSINESS**

There were no Old Business items to discuss.

**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.  
 Your comments must be limited to 3 minutes to allow others opportunity to speak.  
 No one spoke during public forum.

**NEW BUSINESS**

Presenter: Mike Couch, Electric Utilities Manager

**New Business # 01- Utility Relocation Agreement**

Review: Construction of NC-540 near Apex requires relocation of existing Apex electric utilities.

Possible motion to approve Utility Relocation Agreement among the North Carolina Turnpike Authority, NCDOT, and Town of Apex. and approve contracts with Lee Electric Construction, Inc. and ML Hydrocut, Inc. and for the Town Manager to sign the same on behalf of the Town.

Staff presented the above referenced Utility Relocation Agreement and the contracts associated to the relocation of the existing Apex electric utilities associated with the construction of NC-540. The agreement allows the Town to be reimbursed for costs associated with the relocation projects for the first portion of NC-540 built in the Apex area. Future agreements will cover sections of NC-540 that involves additional electric utility relocation. The town will be reimbursed for all non-betterment costs, including design, construction, materials, rights-of-way, and clearing. Lee Electric will perform relocation work on electric lines and ML Hydrocut will provide right-of-way clearing services in wooded areas where the lines will be moved. Areas with significant relocation affected by the Utility Relocation Agreement: Roberts Road, Jenks Road, Green Level Church Road and US64. Estimated reimbursement: \$468,000. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the Utility Relocation Agreement as recommended and the associated contracts with Lee Electric and ML Hydrocut, and authorizing the Town Manager to execute same. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business

**CLOSED SESSION**

There were no Closed Session items to be discussed.

**WORK SESSION**

No Work Session was scheduled.

**ADJOURNMENT**

Mayor Weatherly called for a motion to adjourn at 9:18 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the April 20, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the May 4, 2010 meeting.

Georgia A. Evangelist, MMC  
 Town Clerk, Apex, North Carolina

Keith H. Weatherly  
 Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for May 4, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 4, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Jones. Pledge of Allegiance led by Scout Troop 316. Welcome extended to Scout Troops 316 and 131 and Apex High School students. Mayor Weatherly recognized the Town Clerk, Georgia Evangelist, and extended appreciation to her for having served the Town of Apex for 30 years, a renowned Master Municipal Clerk, having achieved this title through the International Clerk's Association.

## PROCLAMATIONS

1) Lyme Disease Awareness, 2) National Physical Activity Plan, 3) National Day of Prayer, and 4) National Military Month.

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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. Town Attorney requested an item be added to the consent agenda, item 8 (see below). **Action:** Council Member Schulze made the motion to approve the consent agenda with the addition of item 8. Council Member Gossage made the second to the motion. Motion carried unanimously to approve the consent agenda as amended.

1. Minutes of April 20, 2010 Town Council meeting.
2. Minutes of April 20, 2010 Town Council Closed Session.
3. Council Statement and Ordinance: Rezone #10CZ03, Jones & Cnossen Engineering, PLLC, petitioners, property located at 2650 Evans Road; Estates at Bella Casa Master Subdivision Plan and Rezone #10CZ03; rezone from Rural Residential district to Medium Density Conditional Zoning district.
4. Council Statement and Ordinance: Rezone #10CZ05, Jones and Cnossen Engineering, PLLC, petitioners, Property located at 924 Center Street: amend 2025 Land Use Classification from High and Medium Density Residential to Office Employment, and rezone from Residential Agricultural district to Office & Institutional Conditional Zoning district.
5. Set public Hearing May 18, 2010 for various amendments to the Unified Development Ordinance.
6. Budget Ordinance Amendment No. 9 and Capital Projects Ordinance Amendment for street and sidewalk repairs, electric substation repairs, and relocation of power lines required by NC-540.

Consent Agenda continued on page 2



7. Interlocal Agreement for Building Inspection Services; authorize Manager to approve and execute agreement; and designate building inspectors from Holly Springs to serve as members of the Apex Building Inspections.
8. Authorize Town Manager to execute the attached Performance Letter of Credit Release Agreement in settlement of possible claim against Old Mill Village Letter of Credit Number 3082460 and to execute Beneficiary's Agreement of Cancellation of letter of Credit Number 3082460 upon receipt of good funds in the amount of \$85,000.

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 to the Regular Meeting Agenda. The Regular Meeting Agenda was set.

## PUBLIC HEARINGS

Presenter: Director of Planning Dianne Khin

### **Public Hearing # 01 – Annexation #450**

**Review:** This annexation is the approved site for Estates of Bella Casa. Certified Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-05-05-20A7A63F-9228-A80F-DD564744D4FB7DC8.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-05-05-20A7A63F-9228-A80F-DD564744D4FB7DC8.pdf)

Public hearing and possible motion regarding Annexation Petition # 450: LHP Development, LLC. owner/petitioner, petitioning to annex 11.096 acres into the Town's corporate limits and located at 2650 Evans Road.

Director of Planning presented request for Annexation # 450 as stated, and a new approved phase of Bella Casa, and located south of the town's nature park and Bella Casa and Park Side on the Creek, Staff recommends approval. Public Hearing was opened at 7:15 p.m. No one addressed the request for annexation. Public Hearing closed at 7:15 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jones made the motion to approve the request for annexation, adopting an ordinance to extend the corporate limits of the town by the said acreage. Council member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing

## OLD BUSINESS

There were no Old Business items to be considered.

## 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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

*No one spoke during public forum.*



## NEW BUSINESS

**Presenter:** Director of Finance Lee Smiley

**New Business # 01 – Financial Summary**

Director of Finance gave a review of the 3rd. Quarter FY09-10 Financial Summary. Benchmark for 3rd. quarter financial performance is 75% for revenues and expenditures. Significant variances are noted in the summary. Finance Director reported finances are where he expects them to be at this point. Questions were answered for clarity. Report was well received by Council.

**End of New Business # 01**

**Presenter:** Chief of Police Jack Lewis

**New Business # 02 – Cops Grant**

Request approval to resubmit application to the Office of Community Oriented Policing Services (COPS Office) for 2010 COPS Hiring Recovery Program (CHRP) grant funding. Chief of Police noted an application was submitted in 2009, however funds were unavailable. Application was carried forward in 2010 in anticipation of renewed availability of federal funds. Police received notice that additional funds to this program were allocated and encouraged to resubmit an updated application to be reconsidered for approval. Mayor referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve the request to resubmit the application. Council Member Schulze made the second to the motion. Motion carried unanimously.

Chief of Police noted the Police Department Building Dedication, 205 Saunders Street: May 11, 2010: 5:30 p.m.

**End of New Business # 02**

**Presenter:** Director of Information Technology Peter LaPiana

**New Business # 03 – Paperless Agenda**

**Review:** Council directed staff to come to them to discuss paperless agendas.

Presentation by Staff regarding paperless agendas.

Director of Information Technology noted Council had discussed this item during their retreat; staff seeks direction as Council Member Olive spoke in support of moving forward with paperless agendas; he had suggested timelines proceeding with the paperless agenda process and requested costs analysis; he prefers digital over paper and better allowing searchable content.

Director of Information Technology reported Morrisville, Cary, Raleigh and Garner follow a paperless agenda process, all different. He noted the Town Clerk and he had discussed the attached process, and further he noted going paperless would have a long term cost savings to the town, and to be cost effective, all should participate. Town would provide laptops to those that do not have one, cost of purchase \$910 each. Ultimate goal of IT is to have a secured public share folder on the Town's server that could be made available in a few weeks, where Council could log in from home. Agenda can be emailed in zip file format, or placed on CD, allowing town to save money, go green and streamline the agenda process. Questions were answered for clarity. Council was unanimous in their support of moving forward with the paperless agenda process. Staff will begin working with the process and moving in this direction over the next few weeks.

**End of New Business # 03**



Presenter: Mayor Keith Weatherly

**New Business # 04 –Resolution of Support**

Mayor Weatherly presented for Council's consideration, a Resolution Supporting the Wake County Board of Education. Past history of the Council has been consistent, making their concerns known, and have done so by adopting past resolutions, supporting community schools and opposing mandatory year round schools; supporting good quality education and parental choice. Comments of support by the Council were well taken, with minor amendments made to the resolution. Council Member Jensen hopes lower income housing would be built closer to schools, and perhaps a tax credit offered to live and work closer to the schools. Mayor Weatherly noted this falls out of scope of the school board. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to adopt Resolution No. 2010-0504-09, amending same by removing majority from the second and third whereas, and removing Wake County Board of Education from the next four whereas. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business

**CLOSED SESSION**

Possible motion to move into Closed Session to discuss the following:

**Closed Session # 01 - Potential Eminent Domain Litigation:** Discussion of potential eminent domain cases in connection with West Street improvement project.

**Closed Session # 02 - Senate Bill 44:** Discussion regarding Senate Bill 44: Act to clarify the law regarding appeals of quasi-judicial decisions made under Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes.

**Action:** Council Member Schulze made the motion to move into Closed Session at 8:00 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. The following items were discussed. Minutes of Closed Session are recorded separately.

**Action:** Council Member Schulze made the motion to move into Closed Session at 8:32 p.m. Council Member Olive made the second to the motion. Motion carried unanimously. With Council having moved back into Regular Session, the following action was taken: **Action:** Council Member Jensen made the motion to adopt Resolution No. 10-0504-10 Authorizing Eminent Domain Proceedings Related to the West Street Project for Street Rights-of-way, Related Drainage Easements, and Electric Easements for Improvement of the Apex Street, and Electric Systems related to the West Street improvement project. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Regular Session

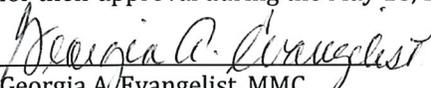
**WORK SESSION**

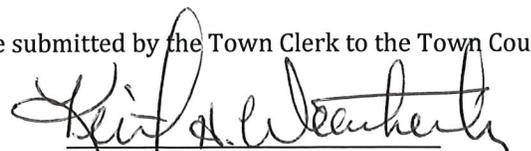
No Work Session was scheduled.

**ADJOURNMENT**

Mayor Weatherly called for a motion to adjourn at 8:35 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The minutes of the May 4, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the May 18, 2010 meeting.

  
 Georgia A. Evangelist, MMC  
 Town Clerk, Apex, North Carolina

  
 Keith H. Weatherly  
 Mayor

# TOWN OF APEX, NORTH CAROLINA

## Town Council Meeting Minutes for May 18, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 18, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

**Mayor:**  
Keith H. Weatherly



**Council Members:**  
Bryan Gossage, Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

### 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 recognized Apex High School Students attending the meeting as a part of their graduation requirements for the Class of 2010.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council 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; with no amendments to be made to the consent agenda, the following action was taken: **Action:** Council Member Jones made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes of May 4, 2010 Town Council Meeting.
2. Minutes of May 4, 2010 Town Council Closed Session (separate cover).
3. Minutes of May 5, 2010 Economic Development Committee Meeting.
4. Approved an addition to the list of official depositories for Town of Apex; recommend Bank of North Carolina.
5. Set date of required Public Hearing regarding proposed FY 2010-2011 Annual Budget for Tuesday, June 1, 2010 at 7:00 p.m., Apex Town Hall.
6. Increase in various non-resident and rental fees for various recreation programs and park facilities; allow non-resident rental requests for selected parks and recreation facilities.
7. Amend Town Code of Ordinances Section 20-100 (Speed Limits) to meet state statutes: Ordinance No. 10-0518-06.
8. Supplemental Project Agreement for traffic signal at the intersection of Center and Salem Streets to extend the project schedule due to unforeseen delays.

Consent Agenda continued on page 2

9. Approve Municipal Agreement with NCDOT for construction of sidewalk along Shepherds Vineyard Drive and Old Raleigh Road; authorize Town Manager to execute same.
10. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners May 3, 2010.

End of Consent Agenda

## PRESENTATION

Special Presentation by David Wood, Apex Parks Recreation and Cultural Resources. David Wood who serves in the National Guard presented John Brown, Director of Parks, Recreation and Cultural Resources with a certificate from the National Committee for Employer Support of the Guard and Reserve recognizing the Town as a "Patriotic Supporter".

## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Mayor Weatherly called for a motion to add New Business Item #2 Appointment to the Board of Adjustment to fill vacancy and to go into Closed Session to receive legal advice regarding litigation matters. **Action:** Council Member Schulze made the motion to amend the agenda as stated. Council Member Olive made the second to the motion. Agenda set as amended.

## PUBLIC HEARINGS

Presenter: Senior Planner June Cowles

### **Public Hearing #1 – Special Use Permit #10SUP02 – Jordan Lake Sudbury School**

**Review:** Planning Board held their public hearing May 10, 2010 closed the public hearing. Vote: unanimous approval. Public Notice: [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-05-18-3AB5787C-FAAA-A2CB-1D086C8BEB0175CE.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-05-18-3AB5787C-FAAA-A2CB-1D086C8BEB0175CE.pdf)

Public Hearing and possible motion for Special Use Permit #10SUP02 Jordan Lake Sudbury School; a private school with an estimated 30 students located at 1200 N. Salem Street.

Staff presented the Planning report which is incorporated as part of the minutes and oriented to the site; the site was formerly Prince of Peace Episcopal Church and is now Peak United Methodist Church. The applicant proposes a private school with an estimated 30 students with the hours of operation of Monday through Friday from 9:30 a.m. to 3:30 p.m. Staff recommends approval with the following conditions:

1. The Special Use Permit shall only apply to Jordan Lake Sudbury School. No other school is allowed under this permit. Any other school other than Jordan Lake Sudbury School shall be required to obtain their own Special Use Permit.
2. The Special Use Permit shall only allow Jordan Lake Sudbury School to have a maximum of 50 students. Any additional students added to the school will require that Jordan Lake Sudbury School to obtain a new Special Use Permit.

Open Public Hearing. Applicant Sherri Bauer offered they are a small school; Peak United Methodist is renting rooms to them; the grades are K-12 and they have regular and one-on-one classes. Close Public Hearing.

**Action:** Council Member Gossage made the motion to approve. Council Member Jensen made a second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Public Hearings continued on page 3

Presenter: Senior Planner June Cowles

### **Public Hearing #2 – Major Site Plan – Ample Storage**

**Review:** Planning Board held their public hearing May 10, 2010 closed the public hearing. Vote: 6:1 approval.

Public Notice: [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-05-18-3AB6A96B-9795-1BDE-6B5F0E64BA332E55.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-05-18-3AB6A96B-9795-1BDE-6B5F0E64BA332E55.pdf)

Public Hearing and possible motion regarding Major Site Plan for Ample Storage.

Staff presented the Planning report which is incorporated as part of the minutes; oriented to the site, noted current 2025 Land Use Classification and current use. Applicant proposes self storage buildings on lot one (1) and lot two (2) will be vacant. Building C will be a two-story building. The applicant proposes the buildings with red and brown brick and a metal roof and will provide landscaping along the railroad right-of-way. Staff recommends approval with the condition that the applicant pay a fee-in-lieu for the inside two (2) lanes of the Apex Peakway and multi-use path.

Open public hearing. Applicant Guy Lampe spoke in favor of the major site plan. He has stores in three states, the doors to the storage units will not be visible from the street, loading and unloading is done interior to the site and from the exterior is designed to look like an office building.

Close public hearing.

Action: Council Member Schulze made the motion to approve. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

Presenter: Principal Planner Brendie Vega

### **Public Hearing #3 – Major Site Plan – Providence Green**

**Review:** At the April 20, 2010 Meeting, Town Council unanimously voted to continue the Quasi-Judicial Public Hearing and Major Site Plan to the May 18, 2010 meeting. Public Notice: [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-04-20-AB50958A-BA91-3EFF-DB9A85C30A2A7A1A.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB50958A-BA91-3EFF-DB9A85C30A2A7A1A.pdf)

The applicant of the Providence Green Major Site Plan requested that the public hearing be continued pursuant to UDO Section 2.2.18(B) (5) (a) Continuance of public hearing to the June 15, 2010 Town Council meeting.

**Action:** Council Member Jones made the motion to continue the Quasi-Judicial Public Hearing and Major Site Plan for Providence Green to the June 15, 2010 Meeting. Council Member Jensen made the second to the motion. Motion carried unanimously.

Quasi-Judicial Public Hearing # 03 continued to June 15, 2010 meeting

Presenter: Principal Planner Brendie Vega

### **Public Hearing #4 – Unified Development Ordinance Amendments**

Public Notice: [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-05-18-5E81324E-CEA1-9955-775AC2C7A370277D.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-05-18-5E81324E-CEA1-9955-775AC2C7A370277D.pdf)

Staff presented the Planning report which is incorporated as part of the minutes. Planning Board wants to leave the compatibility standard with major site plans; they would not have been able to deny Providence Green without the compatibility standard. Open and close of public hearing.

Amendment #1 – **Action:** Council Member Jones made the motion to approve as proposed by Planning Board. Council Member Schulze made the second to the motion. Motion carried. Vote 5:1 Jensen

Amendment #2 – **Action:** Council Member Jensen made the motion to approve. Council Member Schulze made the second to the motion. Motion carried unanimously.

Public Hearing # 04 continued

Amendment #3 – **Action:** Council Member Schulze made the motion to approve. Council Member Jensen made the second to the motion. Motion carried unanimously.

Amendment #4 – **Action:** Council Member Jones made the motion to approve. Council Member Schulze made the second to the motion. Motion carried unanimously.

Amendment #5 – **Action:** Council Member Gossage made the motion to approve with removing supplemental standard for stand alone buildings in O&I from the amendment. Council Member Jensen made the second to the motion. Motion carried unanimously.

Amendment #6 – **Action:** Council Member Gossage made the motion to continue this item to the June 1<sup>st</sup>, 2010 meeting at 7:00 in the Council Chambers. Council Member Olive made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04.

End of Public Hearings

## PUBLIC FORUM

Susan Evans stated her disappointment with Council's decision to go public in support of Wake County Public School Systems Community Schools.

## NEW BUSINESS

Presenter: Mayor Keith Weatherly

### **New Business Item #1 – Appointments for the Apex Parks, Recreation and Cultural Resources Advisory Commission.**

Mayor Weatherly recommended for Council's consideration, to reappoint Chair Angela Reinke and Vice Chair Greg Coley for a three (3) year term. **Action:** Council Member Schulze made the motion to approve the reappointments. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

**New Business Item #2 – Appointment Board of Adjustment.** Mayor Weatherly recommended appointing Staley Smith to serve the unexpired term of Amanda Mann. **Action:** Council Member Olive made the motion to approve the appointment to the Board of Adjustment. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02

End of New Business

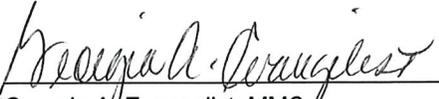
## CLOSED SESSION

Mayor Weatherly called for a motion to move into Closes Session to receive an update regarding a litigation matter and to receive legal advice on a potential litigation matter. **Action:** Council Member Jones made the motion to move into Closed Session at 8:25 p.m. Council Member Olive seconded the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 8:45 p.m. Council Member Schulze seconded the motion. Motion carried unanimously.

## ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 9:00 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Jenson seconded the motion. Motion carried unanimously.

The foregoing minutes of the May 18, 2010 Council Meeting were prepared by Development Specialist Bonnie Brock and submitted by the Town Clerk to the Town Council for their approval during the June 1, 2010 meeting.

  
\_\_\_\_\_  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
\_\_\_\_\_  
Keith H. Weatherly  
Mayor, Apex North Carolina

# TOWN OF APEX, NORTH CAROLINA

Worksession of the Apex Town Council May 27, 2010

Mayor Weatherly opened the Worksession at 6:00 p.m. to conduct the FY2010/11 budget workshop and to seek direction regarding "game rooms" and the possible grandfathering of sweepstakes type games that were in use prior to the adoption of the UDO amendments adopted on April 20, 2010.

Council Members Gossage, Jensen, Jones, Olive and Schulze were present. Town Manager, Town Attorney, Assistant Manager, Town Clerk, and the Directors were also present.

## **Item # 01 - FY2010/11 budget workshop**

Manager Radford presented the "bare bones" Budget Message. The public hearing will be held June 1, 2010 prior to adoption of the Budget Ordinance; the proposed \$65.6 million FY2010-11 budget is available for inspection.

Highlights of proposed budget: General Fund revenues: tax base grew by .5%; tax rate remains \$0.34 per \$100 valuation; sales tax revenues projected to be down and investment earnings projected to decline. \$30,000 is proposed for economic development activities. With no proposed funds included in the proposed budget for plants within town buildings (\$11,000) and no proposed funds for water purchases or coffee supplies for employees (\$6,000), Manager Radford asked Council consider use of contingency funds to allow these items to be included in the budget. Comparison of last year's general fund with this year's total shows an 0.003% increase; \$419,000 from appropriated fund balance will show a net decline in general fund revenues.

Impacts on Staffing and Personnel Expenses: no new humans are recommended; significant expenditure cuts have deferred furloughs; despite a 2.6% CPI, decline in revenues will not support a cost of living adjustment for employees and there will be no funds to support merit pay increases for employees. Town's employer required contribution to the State-administered Local Government Employees Retirement System has increased by a 1.55 percentage point to 6.41% of payroll (\$256,000). A higher benefit level dental plan increased costs (\$41,000). Directors from Human Resources, Information Technology, Parks and Recreation, Legal, and Construction Management gave explanation for their increased budgets.

Decline in General Fund impacts capital spending, forcing existing vehicles to reach higher mileage levels and ages equipment; proposed recommended capital requests: phone system, defibrillators, new ambulance, yard waste collection equipment total \$243,000; capital requests not recommended total \$862,184. Discussions: eliminate smoking on town properties; best pricing when making purchases and need for additional inventory space; making investments for best rates. Manager Radford added plants enhance the looks of the building and noted the importance of the water/coffee services to the employees; after a discussion regarding both matters, consensus of Council was to eliminate the plants (\$11,000), however, agreed to restore the water/coffee (\$6,000) from contingency funds.

There are no proposed increases in development-related fees and charges; solid waste curbside increase \$9.13 to \$9.29 and recycling services increase \$2.16 to \$2.22 July 1, 2010 (22 cent per household per month). Water/Sewer fund projects 4.2% increase in revenues based on 7% increase in water/sewer rates and necessary to fund Apex share of the regional water reclamation facility (\$3.75 per house per month based on 5000 gallon usage). Electric fund projected 3.4% increase in revenues based on lower investment earnings, stable demand for development-related

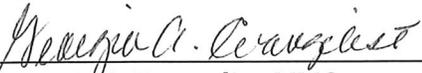
services and projected real increase in power sales; electric revenues bonds issued last May provides funds for system expansion; no electric rate increases are proposed. Staff will continue to watch for any rate proposals by the NC Eastern Municipal Power Agency. Director of Finance and Town Manager gave clarity to questions regarding property tax distribution, monthly adjustments, revenue exceeding projected budgetary funds, and general fund balance adjustments. With no further anticipated changes to the proposed budget, Mayor Weatherly restated the public hearing date of June 1, 2010, and noted the budget ordinance must be adopted by Council before July 1, 2010.

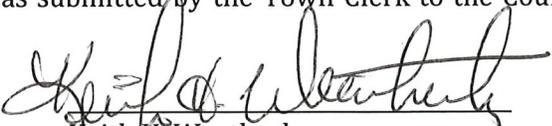
**Item # 02** – Staff seeks direction regarding “game rooms” and the possible grandfathering of sweepstakes type games that were in use prior to the adoption of the UDO amendments adopted on April 20, 2010.

Dianne Khin Director of Planning presented a draft of a proposed ordinance to sections of the UDO and to the Town Code. Staff recommends the changes: Sec. 4.2.2. Use Table, change the use “Game Rooms and Device” to “Game Rooms”; and permit the use in Planned Commercial zoning district; amendment to Sec. 4.3.4(H) Use Classification. Proposed also would amend Sec. 4.4.5(D) Supplemental Standards: Game Rooms. The amendment would require removal of the Town Code of Ordinances Article II. Game Rooms and Devices Sec. 13-30 through 13-38 in its entirety. There are business locations in the B1 Business District where games are in use; the possible grandfathering of sweepstakes type games that were in use prior to the adoption of the UDO amendments adopted on April 20, 2010 were discussed and noted they are currently non-conforming: Sparks, Race Mart, and possibly Iron Horse. Council has legal authority to grandfather such named games at these locations if they so choose. It was noted if the establishments change hands then the grandfathering would go to the new owner. Planning Board will consider the UDO amendments at their June 14, 2010 meeting and staff will present their recommendation to the Council for their consideration at the June 15, 2010 Town Council meeting.

Mayor Weatherly called for a motion to adjourn the Work Session at 7:30 p.m. Council Member Gossage made the motion to adjourn. Council Member Jensen made the second to the motion.

The minutes of the May 27, 2010 Work Session was submitted by the Town Clerk to the Council for approval during their June 15, 2010 meeting.

  
\_\_\_\_\_  
Georgia A. Evangelist, MMC  
Town Clerk

  
\_\_\_\_\_  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for June 1, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 1, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance, and extended a welcome to those in attendance.

## PRESENTATION

Wake Tech Interior Design Student Roxanne Marsh with Instructor Kim Sprig, presented replicate models of real life Apex buildings: Apex Depot and portion of downtown streetscape. Models were donated to the Town and will be placed in the Halle Cultural Arts Center.

## 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. The Consent Agenda was set with no amendments. **Note:** Assistant Attorney Laurie Hohe asked Council remove the indemnity clause from Item #10: Agreement between Wake County and Town of Apex regarding 2010 Fire Contract.

**Action:** Motion by Council Member Jones to approve the consent agenda with the removal of the indemnity clause from item 10 as requested by legal counsel. Council Member Gossage made the second to the motion. Motion carried unanimously.

1. Minutes of May 18, 2010 Town Council meeting.
2. Minutes of May 18, 2010 Town Council Closed Session (separate cover).
3. Minutes of April 29, 2010 Personnel Committee meeting.
4. Annexation Petition # 451 Hendrick Automotive Group, 6000 Monroe Road, Charlotte, N.C., owner/petitioner, petitioning to annex 20.383 acres, located at US64 Hwy and identified as Wake County Registry: (PIN: 0742879872 - 1.67 acres, 1911 Laura Duncan Road); (PIN: 0742980140 - 2.59 acres, 1913 Laura Duncan Road); and (PIN: 0742881153 - 14.84 acres, including CSX Railroad right of way - estimated 1.283 acres, 1907 Laura Duncan Road); 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution Setting Date of Public Hearing for June 15, 2010.

Consent Agenda continued on Page 2

Posted website



5. Transfer Lot 32 Plot H in Apex Town Cemetery: Laurita J. Ray sole Administration of the Estate of Jessie M. Ray, deceased, request transfer of Lot 32 Plot H, to Walter J. McClamb of Albright Funeral Home, 500 S. Salem Street, Apex.
6. Transfer of Lot 91 Plots C and D in Apex Town Cemetery: Kathy P. Lambert and Brenda P. Webster being the executors of the Estate of Lois G. Pendergraft, deceased, request new deeds be issued for Lot 91 Plots C and D into their names.
7. Findings of Fact and Conclusions of Law regarding Special Use Permit #10SUP02 Jordan Lake Sudbury School, property located at 1200 N. Salem Street.
8. Set public hearing June 15, 2010 to consider various amendments to the Unified Development Ordinance.
9. Resolution #10-0601-10 Authorizing Wake County Revenue Director to Collect Taxes on Behalf of the Town of Apex.
10. Agreement between Wake County and Town of Apex regarding 2010 Fire Contract for the provision of fire protection by Apex Fire and EMS Department to the unincorporated areas surrounding Apex, and authorized Town Manager to sign Agreement (with indemnity clause removed; a revised agreement will come to Council for approval on June 15, 2010).
11. Award Construction Contract to Gelder & Associates, Inc. for 2010 Roadway Rehab Project for a total bid of \$254,159.
12. Construction Agreement with CSX for Apex Peakway (N. Salem Street to Laura Duncan Road), and authorized Town Manager to sign Agreement.
13. Agreement with DukeNet, LLC. for proposed use of Town's electric system poles, and authorized Town Manager to sign Agreement.
14. Personnel Committee recommends adoption of new Position Classification Plan for FY10-11.
15. Personnel Committee recommends revision to Apex Personnel Polices: Article II Sec. 16 Fee Based Pay; Article IV. Sec. 8 Workers Compensation; Article VI, Sec. 11 Sick Leave, Sec. 16 Family and Medical Leave and Drug and Alcohol Policy.
16. Proclaim June 15, 2010 as "Byron Pitts Day" and co-sponsor lecture and book signing by Mr. Pitts at the Halle Cultural Arts Center (Proclamation will be written prior to June 15, 2010).
17. Resolution # 10-0601-11 Opposition to Collective Bargaining by Local Governments.

End of Consent Agenda

## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

Presenter: Mayor Keith Weatherly

### **Public Hearing # 1 – Town of Apex FY2010-11 Budget**

Review: Council held a pre-budget hearing January 19, 2010 - Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-01-19-043186EC-DF2A-BA27-E8F9E2A822F9C07C.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-01-19-043186EC-DF2A-BA27-E8F9E2A822F9C07C.pdf)

Council held a Worksession May 27, 2010 to discuss proposed FY2010-11 Budget - Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/2-2010-05-27-932B2148-D892-5336-4230E5E68F0E0184.pdf](http://www.apexnc.org/docs/public_notice/notice/2-2010-05-27-932B2148-D892-5336-4230E5E68F0E0184.pdf)

Council held the scheduled Public Hearing June 1, 2010 - Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-06-01-8884C520-CBEA-4023-43E4B1CE2AC1E10C.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-06-01-8884C520-CBEA-4023-43E4B1CE2AC1E10C.pdf)

Council plans to consider adoption of the Budget Ordinance at their June 15, 2010 meeting.

Mayor Weatherly opened the public hearing regarding the proposed FY2010-11 Annual Budget at 7:14 p.m. Val Wise asked council consider priority funding for a public park around Seagroves Pond, a walkway, or modify signs to allow parents/children to fish. Mayor Weatherly closed the public hearing at 7:17 p.m. The FY2010-11 Budget Ordinance was before Council; Council chose to consider adoption of the Budget Ordinance June 15, 2010.

End of Public Hearing



## OLD BUSINESS

Presenter: Principal Planner Brendie Vega

### **Old Business # 01 – UDO Amendments**

**Review:** Public hearing was held May 18, 2010 to consider amendment; Council asked staff return with a list of projects that would be affected by grandfathering - Public Notice:

[http://www.apexnc.org/docs/public\\_notice/notice/1-2010-05-18-5E81324E-CEA1-9955-775AC2C7A370277D.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-05-18-5E81324E-CEA1-9955-775AC2C7A370277D.pdf)

Possible motion to consider Unified Development Ordinance Amendments to Section 6.1 Watershed Protection Overlay Districts to add performance guarantees for structural BMPs.

May 18, 2010, Council considered UDO amendments to Section 6.1 Watershed Protection Overlay Districts to add performance guarantees for structural BMPs and for the possible grandfathering of projects that were in review process. The Town Attorney reviewed the UDO amendments and found grandfathering would not be necessary as the change to the Ordinance would be a benefit to the applicant by allowing them to choose whether to do the bonding rather than completing the stormwater BMP at the time of the plat; this would give the developers the option of maintaining temporary sediment basin in the same location as the stormwater BMP until a certain percentage of the lots are built out. Staff revised the proposed amendments to reflect these changes and recommended approval. Assistant Attorney Laurie Hohe informed Council with no grandfathering necessary, Section 2 of the Ordinance should be removed: "this amendment shall not apply to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained before the enactment of this ordinance." The Ordinance will be revised by staff to reflect removal of Section 2.

**Action:** Council Member Schulze made the motion to adopt the ordinance with the deletion of Section 2 as stated by legal counsel. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Old Business # 01

Presenters: Transportation Planner Reed Huegerich and Transportation Engineer Russell Dalton

### **Old Business # 02 – STP-DA Projects**

Presentation of approved Surface Transportation Program – Direct Attributable projects through the Capital Area Metropolitan Planning Organization.

Transportation Planner Huegerich stated the Town is a member of the Capital Area Metropolitan Planning Organization; he currently serves as Vice Chair. Town of Apex submitted projects for Surface Transportation Program – Direct Attributable (STP-DA) funding. A presentation was given of approved STP-DA projects, projects pending approval, and future proposed projects. Project ranking criteria, cost considerations, and administration considerations were shared. FY2010 Projects: Lufkin Road Realignment, Old Raleigh Road Sidewalk and Apex Strollway connect Town Campus to the downtown; all require a 20% local funds match from Town. FY2011 Proposed Projects: Lufkin Road Realignment and Center Street Sidewalk. FY 2012 Projects: Lufkin Road Realignment, Old Raleigh Road Sidewalk, and Apex Strollway. Staff noted their next steps: identify projects, prioritize, and apply for funding. Russell Dalton Transportation Engineer reported NCDOT could assist in managing the projects and consider contributions to a fund match; deadlines did not allow application for stimulus funding of these projects; advised construction of concrete sidewalks may be removed with future road way improvements, and noted the sidewalks would be more costly to install them at the ultimate width.

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.**  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*



Tom Colhoun noted focus on the Peakway and asked consideration for completion of the James Street and South Salem Peakway; and second to focus on transportation plans and ideas that are not set in stone, and noted Holland Road, Evans Road and Humie Olive Road areas where folks do not want major thoroughfares running through their subdivisions.

End of Public Forum

## NEW BUSINESS

Presenter: Environmental Services Manager Michael Deaton

### **New Business # 01 – Exchange of Real Property**

**Review:** Certified Public Notice of Town Council's Intent to Exchange Real Property published in Apex Herald May 6, 2010. Possible motion to adopt a Resolution Authorizing the Exchange of Real Property between the Town of Apex and Alfred J. Mitchell and Dianna G. Mitchell, and authorize Town Manager to sign Agreement.

Town Staff discussed a potential land exchange between Town and the Mitchells involving a portion of the Town's recently acquired "Cattano" property and a portion of the Mitchell property located along Templeton Street. Acquisition by Town of the property along Templeton Street would allow Town to widen Templeton Street and improve its appearance and would enhance functionality and appearance of the area surrounding the Halle Cultural Arts Center.

Proposal is for Town to convey to the Mitchells a 0.097 acre parcel and for the Mitchells to convey to Town a 0.037 acre parcel as well as a two foot wide electric easement. Details of the proposal are contained in the Land Exchange Agreement. Town staff is of the opinion the land the Town would receive as part of this exchange is fair consideration for land the Town would relinquish. The land that the Town would get is frontage along Templeton St. The land the Town would give up is largely between the Town's parking lot and the back of the buildings on the Mitchells land. Land Exchange Agreement, Resolution # 2010-0601-12 authorizing land swap, and Public Notice were drafted by the Town Attorney. Proper notice was given per N.C.G.S. 160A-271 and advertised in the Apex Herald.

Recent Phase I ESA on the Mitchell property revealed that 5 former USTs existed in the vicinity of the 0.037 acre parcel. A release occurred; however, the soil was reportedly remediated and the incident was closed out by NCDENR. Town staff has evaluated a worst-case scenario of encountering contaminated soil during construction activities which would be in the distant future as far as funding. Assuming all excavated soil is contaminated the Town could potentially incur approximately \$23,000 in disposal costs. Request Manager be authorized to move forward with transactions and sign Agreement.

**Action:** Council Member Jensen made a motion to adopt a Resolution Authorizing the Exchange of Real Property between the Town of Apex and Alfred J. Mitchell and Dianna G. Mitchell, and authorize Town Manager to sign Agreement. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

Presenter: Town Manager Bruce Radford

### **New Business # 02 – Cancellation of Council Meeting**

Manager Radford requests Council consider the cancellation of the Council meeting of July 6, 2010, as it has been tradition to cancel the first meeting in July once budget is approved, and allows for vacations, and at this point there are no items for the July 6, 2010 meeting.

**Action:** Council Member Schulze made the motion to cancel the July 6, 2010 meeting. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business



### CLOSED SESSION

There were no Closed Session items to be discussed.

### WORK SESSION

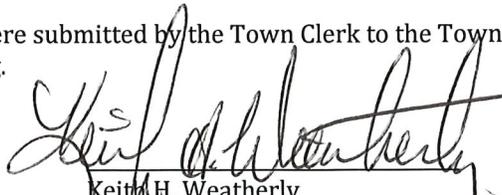
No Work Session was scheduled for this meeting.

### ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 7:45 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the June 1, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the June 15, 2010 meeting.

  
\_\_\_\_\_  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
\_\_\_\_\_  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for June 15, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 15, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Gossage, Jones and Schulze were present.  
Council Member Olive was absent.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order.

Invocation was given by Council Member Schulze.

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

## CONSENT AGENDA

Consent Agenda items are considered routine to be enacted by one motion with its adoption and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda for separate consideration. The Consent Agenda will be set prior to action by the Council on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. The Consent Agenda was set with no amendments. **Action:** Motion by Council Member Schulze to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously with vote of 4 and 0.

1. Minutes of June 1, 2010 Town Council meeting.
2. Minutes of May 27, 2010 Town Council Work Session.
3. Minutes of June 8, 2010 Economic Development Committee.
4. Transfer of Lot 89 Plot(s) B, C and D in the Apex Town Cemetery: Mary C. Chapman, 1200 Fairlane Road, Cary, N.C. owner requests transfer of ownership to Mr. and Mrs. William Spillane, 1225 Lochcarron Lane, Cary, N.C.
5. End of FY09-10 Budget adjustments including Budget Ordinance Amendment No. 10 and Capital Projects Ordinance Amendment for General Capital Projects Fund.
6. Set Public Hearing July 20, 2010: Bella Casa PUD Amendment Rezone #10CZ06/Master Subdivision Ph 5.
7. Renewal of Cooperative Bid Agreement with Electricities to bid on utility materials, supplies, and equipment, effective July 1, 2010 through June 30, 2013.
8. Renew Contract with Capital Area Preservation, Inc. to cover basic historic preservation and Small Town Character Overlay District consultation services.
9. Revised 2010 Wake County Fire Agreement for the provision of fire protection by Apex Fire and EMS to the unincorporated areas surrounding Apex and authorization for the Town Manager to sign the agreement (reflects change regarding indemnification clause to satisfy both entities.)
10. Resolution 2010-0615-\_13\_Abandon Portions of Existing Public Electric Utility Easements not in use.



11. Ordinance 2010-0615-07 Repeal Sections 13-30 through 13-38 of Apex Code of Ordinances Related to Game Rooms and Devices (no longer needed; covered in Unified Development Ordinance).
12. Resolution 2010-0615- 14 Consider Closing portion of Laura Village Drive in conjunction with development plan for Hendrick Automotive (west of its intersection with Merchant Drive) and set Public Hearing for July 20, 2010.
13. Set Public hearing for July 20, 2010 to consider an amendment to Section 7.5.4 Streets of the Unified Development Ordinance (UDO) and other Sections of the UDO affected by the amendment thereof.

End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.  
With no amendments, the Regular Meeting Agenda was set.

**PUBLIC HEARINGS**

Presenter: Principal Planner Brendie Vega

**Public Hearing # 1 - Quasi-Judicial Public Hearing Providence Green Major Site Plan**

Review: Public Notice and vicinity map.

Quasi-judicial public hearing and possible motion for Providence Green major site plan; proposed 71-unit, age restricted, multi-family development on Lot 12 of the Green at Scott's Mill. Town received a letter from applicant requesting withdrawal of Providence Green Major Site Plan. This may come back at some future time in another form; the project will no longer be considered as proposed. No public hearing was held.

End of Public Hearing # 1

Presenter: Principal Planner Brendie Vega

**Public Hearing # 2 - Unified Development Ordinance Amendments**

Review: Public Notice: Planning Board met June 14, 2010; staff will report recommendations; staff recommends approval.

Public hearing to consider various amendments to the Unified Development Ordinance: Sec. 2.3.6 Site Plan; Sec. 4.3.5(A)(3) Electronic Gaming Operations; Sec. 4 Use Regulations; Sec. 7.5.4 Streets.

Staff presented the Planning report for proposed UDO amendments and are incorporated as a part of the minutes. Planning Board recommended approval with minor changes; staff recommends approval.

1. Section 2.3.6(D)(1) and (2) Site Plan: provide process by which multiple site plan submissions in a three year time period are treated in aggregate for determination of minor vs. major site plan. Planning Board recommended: increase 5 (suggested by staff) to 40 multi-family units (discussed by Council). Section 2.3.6(D)(2)(b): site plans proposing 100 or more additional parking spaces to existing development (Council agreed). Section 2.3.6(D)(2)(d): decrease 4 stories to 3: site plans proposing any building taller than 3 stories; Council agreed.

Staff gave clarity to Section 2.3.6(D)(2)(e) "exotic architecture" - a historical architectural preservation term, anything outside western tradition, from the Middle East, India and Asia. Attorney Fordham advised it would be helpful have the term defined in the UDO for common understanding in the architectural community; if consideration is given to defining the term, the amendment could be made now as it pertains to this specific section, however if there's different section(s), should be advertised. Staff will prepare a public notice for July 20, 2010 public hearing for Section 12.2 Terms Defined, to add the definition of "exotic architecture".



2. Section 4.3.5(A)(3) Electronic Gaming Operations to grandfather those places of business in B1 District where electronic gaming operations existed and where a Certificate of Zoning Compliance could have been issued prior to the moratorium date of March 2, 2010: Sparks, Racing Mart and Iron Horse (allows continued operation of such games as an accessory use to the principle use, but did not obtain conditional zoning compliance prior to March 2, 2010); Council agreed.

3. Section 4 Use Regulations: change definition and supplemental standards for Game rooms and device, and exempt accessory game rooms and devices from being a separate use within primary uses such as community centers, restaurants, bars, and hotels; (Code of Ordinances Sections 13.30 – 13.38 is repealed; game rooms are kept in B1 District); Council agreed.

4. Amend Section 7.5.4 Streets: change references in 7.5.4.B.2.b to refer to appropriate sections; Council agreed.

Mayor Weatherly opened the public hearing at 7:20 p.m. No one addressed the proposed amendments, the public hearing was closed; the matter was referred to Council.

**Action:** Council Member Gossage made the motion to approve all the amendments as recommended.

Council Member Jones made the second to the motion.

**Action:** Council Member Jensen offered an amendment to the motion: Section 2.3.6(D)(1) and (2) decrease 40 multi-family units to 20. Council discussed size and experience with multi-family units typically 100 to 200 range and whether or not pending applications should be grandfathered. Staff reported amendments would effect pending applications: 1) Methodist Church parking spaces-review delayed but close to approval; if not grandfathered would qualify for a major site plan; and 2) Green at Scotts Mill Sec. 8 has not received its first TRC comments (applications 40,000 square feet or 50 multi-family units qualify as a major site plan and must go through the quasi-judicial public hearing; compatibility standards were removed from minor site plans and no public hearing is required). Council Member Jones made the second to the motion; felt Council would see multi-family units in the 20 / 40 range and would want to review those 25 units or more. With no further discussion, Mayor Weatherly called for a vote on the amendment to the motion. Vote on the amended motion was 4 and 0. Motion carried unanimously.

Mayor Weatherly stated discussion continues to approve the ordinance change as amended. Attorney Fordham advised if Council were to consider grandfathering of pending applications, they may want to consider a motion to add grandfathering to the proposed ordinance rather than treating it as a separate item.

Staff added Council should be explicit as to whether to grandfather or not, and the proposed ordinance as its written included grandfathering and the motion should remove one of the two options in Section 6: *1) This amendment shall not apply to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained before the enactment of this ordinance. OR 2) This amendment shall not apply to the completion of projects for which a site plan application or subdivision application or both have been received by the Town or to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained, before the enactment of this ordinance.*

Staff asked if it were a lawful option to consider a point in which a project could be grandfathered. Attorney Fordham advised it was a lawful option as long as it could be determined which was which; in considering Section 6, advised practice had always been to grandfather projects that had received prior approval, but was never explicitly stated. Section 6-2 goes further than grandfathering projects that have already been approved - in reaching back to those that submitted applications, and lawfully can do. He continued if there is no guidance as an amendment in the UDO, would have to go through a complex analysis as to whether the party who has received the approval has made substantial expenditures. He noted the perception has always been by Council, if you already had your approval and were moving forward then the amendment would not affect them; so this is to make that explicit. He continued if that's the case, would always have the first option and if you want to grandfather applications, then you would go to the second option. Mayor Weatherly asked if there were another amendment needed for grandfathering applications. Attorney Fordham responded the appropriate selection would be Section 6-2 if Council wanted to grandfather applications that have been submitted.



Attorney Fordham ask clarity with respect to applications, what Council wanted to grandfather. He advised Section 6-2 applies to specific "x" and Section 6-1 applies to everything else (define "x" that which is receiving the extra grandfathering of applications). Council Member Schulze agreed Section 6-2, grandfather everyone at less than 20 multi-family units and 20 automatically qualifies as a major site plan. Council Member Jensen felt obligated to review Scotts Green Sec 8 application. Council Member Jones felt Council should clarify those sections that shouldn't apply to pending applications, with the rest as an option if they had been through multiple reviews. Attorney Fordham advised if there's a rationale basis and it seems so from other criteria, then it would be lawful to do that. Staff asked if it were lawful to consider a specific plan that has been through a certain number of reviews or multiple reviews. Attorney Fordham advised you can pick levels of review, with the argument for grandfathering stronger the more you've been through the process; can pick a certain level of review and you don't want to go back to the application, then the application plus TRC would be a rationale thing to do if that was the policy decision Council chose to make. At this point, staff stated their uncertainty whether the Green would qualify as a major site plan.

Attorney Fordham restated it was a lawful option to grandfather an application at a certain level of review if Council chooses and would select Section 6-2, with the inclusion of the language in italics: "This amendment shall not apply to the completion of projects for which a site plan application or subdivision application or both have been received by the Town *and the application has proceeded through (reached a certain level of review)* or to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained, before the enactment of this ordinance."

Mayor Weatherly commented on expenditure of money during predevelopment planning and Council should consider the developer had been asked to invest money and it could be a significant obstacle. In discussion of Scotts Green Sec 8, Attorney Fordham advised the project would either come to Council with a compatibility standard, opposed to not coming to Council and without a compatibility standard. Staff stated they had done calculations on Scotts Green Sec 8 and determined it would go through a major site plan process, with 20 multi-family units.

Council Member Gossage referenced the optional language in the ordinance to differentiate between the two projects noted, for grandfathering. Mayor Weatherly stated the motion on the floor that is amendable is that Council approve all the UDO ordinance amendments; that has been amended once and now, and would look for another amendment, until Council adopts all UDO amendments; if Council chooses to make a motion to amend, which was to take off one of the suggested languages in Section 6 as the initial motion included both options.

**Action:** Council Member Gossage made a motion to amend Section 6-2: "This amendment shall not apply to the completion of projects for which a site plan application or subdivision application...; he then sought the Attorney's guidance. Attorney Fordham referred to the Planning Director, one that would best understand what one should do at each level, and continued it was a policy decision for which level. Council Member Gossage wanted to assure the correct language for each project from both the legal and planning standpoint. Director of Planning Khin responded the language should be ... *and has been submitted at least one time*. Attorney Fordham will assure the language is correct in the final version of the ordinance. Council Member Gossage then continued, this would be his amendment. Mayor Weatherly stated the motion was to amend as so stated. Council Member Schulze made the second to the motion. There was no further discussion and Mayor Weatherly called for the vote on the amendment as so stated. Vote was 4 and 0.

Mayor Weatherly stated the discussion recurs on the motion to approve the UDO ordinances as amended. With no further discussion, he called for the vote on the motion to approve the UDO amendments as modified. Vote on the motion was 4 and 0. Mayor Weatherly stated all the UDO amendments are approved as amended. Mayor Weatherly clarified outcome for pending applications: United Methodist Church parking lot project has been grandfathered, and Scotts Green Sec 8 project in all likelihood according to the calculations, has not been grandfathered.



Presenter: Director of Planning Dianne Khin

**Public Hearing # 3 – Annexation Petition # 451 Hendrick Automotive Group**

**Review:** Public Notice: Annexation is required by the Town, vested right, in conjunction with the site plan.

Public hearing and possible motion regarding Annexation Petition # 451 Hendrick Automotive Group, 6000 Monroe Road, Charlotte, N.C., owner/petitioner, petitioning to annex 20.383 acres including CSX Railroad right-of-way, into the Town's corporate limits, and located at US64 Hwy. Property is identified in the Wake County Registry as: (PIN: #0742879872: 1.67 acres, 1911 Laura Duncan Road); (PIN: #0742980140 – 2.59 acres, 1913 Laura Duncan Road); and (PIN: #0742881153 - 14.84 acres, including CSX Railroad right-of-way – estimated 1.283 acres, 1907 Laura Duncan Road).

Staff presented the petition for consideration, required by the Town, vested rights and in conjunction with site plan. Mayor Weatherly opened the public hearing at 7:50 p.m. With no one addressing the petition for annexation, the public hearing was closed. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jones made the motion to approve annexation petition # 451 for Hendrick Automotive Group. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 4 and 0.

End of Public Hearing # 03

End of Public Hearings

**OLD BUSINESS**

Presenter: Town Manager Bruce Radford

**Old Business Item # 01 - Town of Apex FY2010-11 Budget Ordinance**

**Review:** Proposed Budget: Council will consider adoption of the FY2010-11 Budget Ordinance June 15, 2010 (second read).

**Council Activity:**

**Public Notice:** Pre-budget hearing January 19, 2010.

**Public Notice:** Council Work Session May 27, 2010.

**Public Notice:** Public Hearing held June 1, 2010 with Budget Ordinance first offered for possible adoption.

Possible motion to adopt the Town of Apex FY2010-11 Budget Ordinance (second read).

**Action:** Council Member Schulze made the motion to adopt FY2010-11 Budget Ordinance. Council Member Jensen made the second to the motion. Motion carried unanimously with a vote of 4 and 0. Manager Radford noted the difficulty, due to the economy, in presenting a balanced budget; was fearful next year would be more difficult; applauded staff for tightening their belts. Mayor Weatherly commended staff, noting they had found ways to continue providing the level of services to the citizens without having to increase taxes; noted staff had been trained well; perform their jobs well; however, had accomplished a difficult task, and had presented a balanced budget.

End of Old Business # 01

Presenter: Director of Construction Management Kent Jackson

**Old Business Item # 02 – Apex Peakway Completion Plan**

**Review:** During Council's annual planning retreat, staff was asked to present additional information and suggestions for completion of the Apex Peakway.

Manager Radford asked the Apex Peakway Completion Plan presentation be pulled and would be brought to Council at their July 20, 2010 meeting.

End of Old Business # 02

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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

*No one spoke during public forum*

## NEW BUSINESS

There were no New Business items to be considered.

## CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss potential litigation and receive legal advice at 7:55 p.m. **Action:** Council Member Schulze made the motion to move into Closed Session for the stated purpose. Council Member Jensen made the second to the motion. Motion carried unanimously with a vote of 4 and 0. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move from Closed Session back into Regular Session at 8:15 p.m. Motion carried unanimously with a vote of 4 and 0.

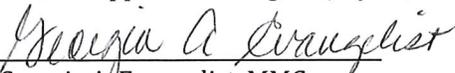
## WORK SESSION

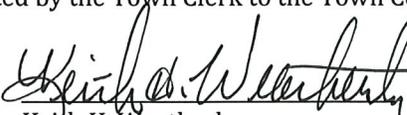
No Work Session was scheduled for this meeting.

## ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 8:15 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Gossage made the second to the motion. Motion carried unanimously.

The June 15, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the July 20, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Town Council Minutes for July 1, 2010 Special Meeting

A Special Meeting of the Town Council scheduled for Thursday, July 1, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Gossage, Schulze and Olive were present.  
Council Member Jones and Attorney Fordham were absent.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

### COMMENCEMENT

Mayor Weatherly called the meeting to order and stated the purpose of the meeting: the special meeting was to hear a presentation from the North Carolina Department of Commerce regarding the potential for the expansion of a local industry. The Company was to request assistance from the Town for the improvements to be made at the facility.

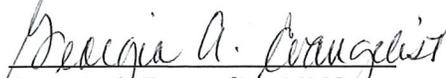
### CLOSED SESSION

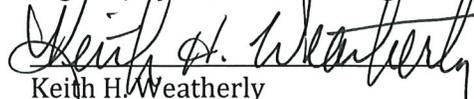
Mayor Weatherly immediately called for a motion for Council to move into Closed Session to discuss matters related to the meeting purpose as required by State law. **Action:** Council Member Schulze made the motion to move into Closed Session at 7:01 p.m. Council Member Olive made the second to the motion. Motion carried unanimously. Minutes of the Closed Session will be recorded separately. **Action:** Council Member Olive made the motion to move back into Regular Session at 8:05 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

### ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 8:05 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the July 1, 2010 Special Meeting of the Town Council were submitted by the Town Clerk to the Town Council for their approval during the July 20, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for July 20, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, July 20, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Gossage, Jones, Schulze, and Olive were present.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Olive. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

## PRESENTATION

**"Triangle Tomorrow"** A program of the Research Triangle Regional Partnership: Smedes York and Pam Wall presented for Council's consideration, a "Resolution Endorsing the Reality Check Guiding Principles for Quality Growth", with focus on transit, vibrant centers and sustained green space. Brief discussion regarding density and development occurred. Council took no action to adopt the resolution.

End of Presentation

## 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 on the following items. Attorney Fordham offered a substitute Municipal Agreement with the Turnpike Authority. Mayor Weatherly stated there was no need for the closed session to be held. **Action:** Motion by Council Member Jones to approve the Consent Agenda to include the substitute Municipal Agreement. Council Member Schulze made the second to the motion. Motion carried unanimously. Council consensus was to eliminate the closed session discussion. The Consent Agenda was set as modified.

1. Minutes of June 15, 2010 Town Council meeting.
2. Minutes of June 15, 2010 Town Council Closed Session (separate cover).
3. Minutes of July 1, 2010 Town Council Special meeting.
4. Minutes of July 1, 2010 Town Council Closed Session (separate cover).

Consent Agenda continued on page 2



5. Annexation Petition #452, Mabel H. Burton, owner/petitioner, petitioning to annex 0.779 acres into the Town's corporate limits and located at 2237 Old US1 Hwy; 1) Resolution directing clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting public hearing for August 3, 2010.
6. Annexation Petition #453, James M. Upchurch, owner/petitioner, petitioning to annex 4.8857 acres including right of way into the Town's corporate limits and located at 2105 Kelly Road; 1) Resolution directing clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting public hearing for August 3, 2010.
7. Budget Ordinance Amendment No. 1 and Capital Projects Ordinance Amendment: First Street improvements and additional money from Wake County for fire service.
8. Rezone #09CZ11: Apex First Development, LLC, petitioner, for the property located between Windy Road, Ambergate Station and Branch Line Lane; Statement of Council and Ordinance (11/17/09).
9. Resolution #2010-0720-14 declaring the structure at 400 West Williams Street (former Chamber Building) as surplus property; the structure will be sold to the highest bidder on GovDeals for either relocation or deconstruction to make way for the eventual expansion of the Public Works facilities.
10. Resolution #2010-0720-15 Abandonment of sewer utility easement area as shown on Exhibit A as "40' Sewer Outfall (Hereby Abandoned) in conjunction with the development plan for Hendrick Automotive.
11. Accept offer to purchase a permanent drainage easement and temporary drainage construction easement from the NC Turnpike Authority.
12. Accept and approve independent Benefit Advisor's offer to pay rental and plant maintenance agreement with Jones Landscaping to provide plants in Town Hall lobby, and acknowledge this donation with a small plaque placed above one of the planters in the lobby.
13. Authorize Town Manager and Town Attorney to finalize and approve a Municipal Agreement with NC Turnpike Authority related to construction of Triangle Expressway (NC540 Western Wake Freeway).
14. Tax Report for Town of Apex, approved and accepted in the Wake County Board of Commissioner's regular session June 7, 2010.
15. Tax Report for Town of Apex, approved and accepted in the Wake County Board of Commissioner's regular session July 6, 2010.

End of Consent Agenda

## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.  
With no amendments, the Regular Meeting Agenda was set.

## PUBLIC HEARINGS

Presenter: Attorney Hank Fordham

### **Public Hearing # 01- Closing Portion of Laura Village Drive**

*Review: Council on June 15, 2010 adopted Resolution 2010-0615-14 scheduling a public hearing regarding closure of a portion of Laura Village Drive; proper notice has been given and proposed street closing signs posted.*

Public hearing and possible motion to approve an Order Closing a Portion of Laura Village Drive (west of its intersection with Merchant Drive) and reserving utility easements as shown on the attached Survey # 1 and Survey # 2.

Attorney Fordham requested continuance of this hearing to August 3, 2010 to allow negotiations to continue regarding acceptable access; advised public hearing does not have to be readvertised if continued to a date certain.

**Action:** Motion by Council Member Gossage to continue the public hearing to August 3, 2010. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01



Presenter: Director of Planning Dianne Khin

**Public Hearing # 02- Unified Development Ordinance Amendment**

*Review: Planning Board met July 12, 2010 and voted unanimously for approval; none of the development projects currently under review would be affected by the proposed UDO amendments. Staff recommends approval of the proposed amendments to the UDO. Certified Public Notice*

Public hearing and possible motion regarding amendments to the Unified Development Ordinance:

- Amendment to Section 7.5.4 Streets to reduce the distance allowed between median cross-over spacing; the removal of a provision for existing lots of record; and the reduction in spacing for right-in/right-out access (request by Town Attorney and Town’s Engineering Department).
- Amendment to Section 12.2 Terms Defined to add the definition of “exotic architecture” (request by Council).

Staff presented the proposed amendments. Planning Board unanimously voted to recommend approval of the UDO amendments. Staff recommends approval. Public hearing was opened at 7:25 p.m. and with no one addressing the proposed amendments, the public hearing was closed and matter referred to Council.

**Action:** Motion by Council Member Gossage to adopt the amendments to the UDO. Council Member Olive made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02  
End of Public Hearings

**OLD BUSINESS**

Presenter: Construction Management Director Kent Jackson

**Old Business #01- Apex Peakway**

*Review: During the 2010 Planning retreat, Council requested a comprehensive plan for completing the remaining sections of the Apex Peakway and future expansion of the entire loop to four lanes. Staff will present the completion plan and give update of current construction project.*

The Apex Peakway Completion Plan covers approximately 6 miles of roadway. Staff gave an update of current construction project schedule that reveals the Peakway should open to traffic approximately midyear 2011. Discussion occurred regarding missing links, 4-lane construction costs, and transformation of miss-matched sections. Funding option, conclusions and recommendations were presented. Council took no action. Staff recommends an update during the 2011 retreat with discussion of funding options. Presentation will be available on the weblink Apex Peakway.

End of Old Business #01  
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.  
Your comments must be limited to 3 minutes to allow others opportunity to speak.**

Ann Symm represented the US64 study team, and gave her support for the upcoming proposed joint response to the study and recommends approval by Council. Asked to label the section of NC540 between US64 and US1 as the US64 By-Pass, prior to opening this section for traffic; stated current US64 should not be considered part of the US64 corridor; noted Pittsboro has been by-passed on the US64/NC49 corridor. Other recommendations: integrity of existing US64 be preserved; NC540 between US1 and US64 be designed as US64 bypass, toll free; US64 in Cary/Apex be renamed Tryon Boulevard/Buss. US64; Super Streets not be constructed along US64 in Cary/Apex.



## NEW BUSINESS

Presenter: Transportation Planner Reed Huegerich and Transportation Engineer Russ Dalton

### **New Business# 01- US64 Corridor Study**

**Review:** CAMPO asked Apex provide a statement on the US64 Corridor Study; Cary recommends a joint resolution between Cary and Apex regarding the study; staff will present a response to study recommendations.

Consideration for approval of Joint Resolution between Towns of Cary and Apex regarding US64 Corridor Study. Apex/Cary and regional partners have been involved in US64 Corridor Study Phase II since 2007. Both towns are asked to provide a statement regarding the study. Both Cary/Apex staff has drafted a response to the report, once approved, will be sent to the transportation committee of Capital Area Metropolitan Planning Organization (CAMPO); the statement highlights areas agreed to by both towns and also highlights areas of disagreement with particular study recommendations by Cary Council; also, Cary Council proposes additions to the study recommendations. Cary Council approved the joint statement in response to the draft US64 Corridor Study recommendations. Staff supports the recommendations agreed to by both towns; with respect to the areas Cary disagrees and to Cary proposed additions, staff felt best Cary handle those as they pertain to Cary. Lake Pine preferred design was shared; staff agrees and noted there are no funds for the project. Apex Transportation Planner and Transportation Engineer gave professional opinions regarding all the areas discussed by Council, and recommended Council endorse the joint US64 Corridor Draft Final study.

**Action:** Motion by Council Member Jones to adopt the recommendations as presented. Council Member Olive made the second to the motion. Motion carried unanimously.

End of New Business #01

Presenter: Transportation Engineer Russell Dalton

### **New Business# 02- Lufkin Road Realignment Agreement**

**Review:** The Town has a plan on file, but to be eligible for federal funding of construction, the project must first meet federal requirements for study and design; staff will report.

Possible motion to approve a Municipal Agreement for an environmental study and the final design of Lufkin Road Realignment at Ten-Ten Road; the Agreement requires 20% local matching funds (estimate to be at most \$30,000) with NCDOT providing up to \$120,000 in STP-DA funds for a total of up to \$150,000 in FY2010.

Staff presented the agreement for the Lufkin Road realignment at Ten-Ten Road; estimate of \$150,000 is based on the highest expected level of effort requiring Apex share \$30,000; permitting, right of way and construction is anticipated in 2011. Attorney Fordham noted paragraph 11, indemnification was non-negotiable, however unlikely liability would occur. Dalton reported in legal discussions, the funding is in place and expects to move forward. Manager reported Apex share was in the approved budget.

**Action:** Motion by Council Member Jensen to approve the municipal agreement. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business #02

### **New Business# 03- Utility Relocation Agreement NC Turnpike Authority**

**Review:** Construction of NC540 Section B requires relocation of existing Apex electric utilities.

Possible motion to approve Utility Relocation Agreement with the North Carolina Turnpike Authority and the Town of Apex. John Maclaga, Electric Department, presented the agreement and identified the area Section B of NC540, and noted it necessary to relocate existing Apex electric utilities; Town will be reimbursed for associated costs. Significant relocation areas: Beaver Creek and Apex Barbecue Road.

**Action:** Motion by Council Member Jones to approve the Utility Relocation Agreement with the North Carolina Turnpike Authority. Second by Council Member Gossage. Motion carried unanimously.

End of New Business #03



**New Business# 04 – Utility Agreement NC Turnpike Authority, NCDOT and Town of Apex**

**Review:** Construction of NC540 Section C western part of Apex.

Possible motion to approve Utility Agreement with NC Turnpike Authority, NC Department of Transportation and Town of Apex. Director of Public Works Donnelly presented the Agreement identified as Section C of NC540; noted the project was moving quickly and on schedule; due to critical path issues and potential cost savings for all parties, stated the agreement completes negotiations and recommended its execution as soon as possible. Staff believes negotiations completed in a timely manner can reduce costs from approximately (\$843,450 to \$650,000). Staff asked the Town Manager and Town Attorney be authorized to finalize the agreement.

**Action:** Motion by Council Member Jensen to approve the Utility Agreement and authorize the Manager and Attorney to finalize and Town Manager execute same. Second by Council Member Jones. Motion carried unanimously.

End of New Business # 04  
End of New Business

**CLOSED SESSION**

No Closed Session was held.

**WORK SESSION**

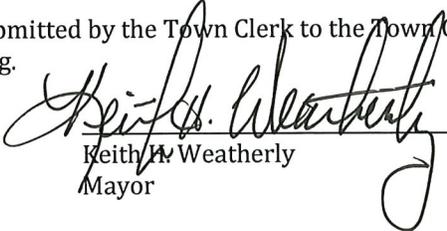
No Work Session was scheduled for this meeting.

**ADJOURNMENT**

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 8:30 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Olive made the second to the motion. Motion carried unanimously.

The July 20, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the August 3, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith W. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for August 3, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 3, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation and extended a welcome to those in attendance. Presentation of Colors and Pledge of Allegiance was led by Scout Troop 131.

## PRESENTATIONS

Presenter: Fire Chief Mark Haraway

### **# 01 - Presentation/Recognition**

1) Apex Fire/EMS was recognized for receiving CAAS Accreditation (*Commission on Accreditation of Ambulance Services*). Accreditation plaque was presented; EMS Assistant Chief Nicky Winsted and Admin Assistant April Haughney were recognized for their efforts in helping to meet the accreditation agencies "Gold Standard".

2) Fire Chief Haraway stated by direction of the Governor's Office for Public Safety, Artist Katie Brown had done a painting of Fire Station 4; unveiling the print, he noted it will be released to the Town and displayed in Station 4. Wake County Manager David Cooke noted the EMS transition from County to Town went smoothly.

End of Presentation # 01

Introduction: Town Manager Bruce Radford

### **# 02 - Presentation: Wake Transit Plan**

Town Manager Radford introduced David Cooke, Wake County and David King, Triangle Transit for a presentation of Wake County Transit Plan (bus and rail) and related Legislation HB148; plan offers opportunity for multiple transit initiatives allowing triangle counties to create a transit fund in the Capital Area. The plan offers Town participation in current, future and ongoing transit planning efforts; plan would extend bus service to the Town; future rail service to the Town would be based on local land use decisions and population density. A draft Interlocal Agreement identifies funding sources that could be considered: 1/2 cent sales tax, new vehicle registration fees, increase existing vehicle registration fees, and authorizes RTP to charge property tax for public transportation projects; approval of funding sources would require a voter referendum; the County would be competitive for federal funds. Wake County Board of Commissioners would approve Triangle Transit plan updates and receive input from parties to the agreement. Ed Johnson from CAMPO was present.



Mayor Weatherly agreed Apex is in need of expanded bus service, however, was a wrong priority to fund light rail when Apex may not be able to use it and may never see it. Long range transit plan looks at corridors to determine expansion/costs as it relates to roads (transit plans supplement roads). Discussion evolved: costs are to be determined; planning forecasts a Wake County population increase of more than 600,000 people over the next 20 years, and transit is important for their future; comparisons to the Charlotte rail system recognizes riders, housing, peak hours of use, and development around the station; maps show future planning routes to include Research Triangle Park and Raleigh-Durham Airport. No action was taken.

End of Presentation # 02

## 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 on the following items. There were no amendments to the consent agenda.

**Action:** Council Member Jones made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes of July 20, 2010 Town Council meeting.
2. Budget Ordinance Amendment No. 2 and Capital Projects Ordinance Amendment for street improvements and NC540 utility relocation.
3. Transfer Deed for Burial Rights: Osby and Sue Clark, owners, request transfer of Lot 78 Plots A and B in the Hillcrest Memorial Cemetery No. 2 also known as the Apex Cemetery, to James L. and Renate M. Robbins, 215 Eyam Hall Lane, Apex, N.C. 27502.
4. CSX Transportation Agreement No. 636424 with to allow one storm drain crossing to be included in construction of Apex Peakway (North Salem to New Dover Road) and allow Town Manager to execute same.

End of Consent Agenda

## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Attorney Fordham asked to add a Closed Session for a report on litigation: Bregman vs. Town of Apex.

**Action:** Council Member Jensen made the motion to add the Closed Session as stated. Council Member Jones made the second to the motion. Motion carried unanimously. The Regular Agenda was set with the amendment.

## PUBLIC HEARINGS

Presenter: Attorney Hank Fordham

### **Public Hearing # 01 – Closure of a Portion of Laura Village Drive**

**Review:** Council adopted [Resolution 2010-0615-14](#) on June 15, 2010, of its intent and scheduling a public hearing regarding closure of a portion of Laura Village Drive; proper notice was given and proposed street closure signs were posted; Council on July 20, 2010 voted unanimously to continue the hearing to August 3, 2010 to allow negotiations to continue regarding acceptable access; closing of this designated portion of Laura Village Drive would facilitate implementing the Hendrick Toyota development plan.



Continuation of public hearing and possible motion to approve an Order Closing a Portion of Laura Village Drive (west of its intersection with Merchant Drive) and reserving utility easements as shown on the attached Survey # 1 and Survey # 2.

Attorney Fordham oriented to the location of the property; noted Council adopted a resolution seeking the street closure on June 15, 2010; noted an objection has been made to the closure by adjacent land owner Judith Freeman regarding a 30' private access easement to her property that would be eliminated by the closure. The proposed closing would facilitate implementation of the development plan for Hendrick Automotive Group. Hendrick proposed new easement options that were not acceptable to Ms. Freeman. Maps show location and survey(s) for reservation of public utility easements within the area to be closed. Ms. Freeman suggested an option: a map shows adjacent property to her property along Ramblewood Drive, through which she recommended an access could perhaps be purchased through Ramblewood Subdivision. Ms. Freeman expressed her willingness to make such access available to Williams Creek Station. An order has been prepared to reflect the closure and reserving utility easements as shown on the attached Survey # 1 and Survey # 2. Ms. Freeman requests Council deny the Order to close the portion of Laura Duncan Drive until there is acceptable access to her property. It was further noted to the north side of the property, there is potential for access through the Ellington Development.

Mayor Weatherly opened the public hearing at 8:07 p.m.

Greg Clark of HAG and Gene Cocchi, Director of Corporate Real Estate for Hendrick Automotive Group, spoke in support of the closure and stated Hendrick had offered alternative access to Ms. Freeman, however she had not dropped her objection, stating she would not be in agreement with any proposals which shows traveling through the dealership property to access her property.

An initial proposal was east of the dealership; secondary access option proposed by Ms. Freeman was through Ramblewood Drive and was unacceptable to HAG, as HAG did not own the property; HAG agreed to leave the access easement in place extending it to the edge of Merchant Drive, and agreeing to pay all costs of maintaining, repairing and replacing the extended portion. HAG proposed a third option and a viable solution for access to the Freeman property that would go through the northern portion of the easement that utilizes the same area as the existing sanitary sewer, providing a paved access through the Hendrick lot back to the drive leading to the sewer station.

Discussion continued regarding possible access through Ramblewood Subdivision. HAG noted there was no practical way to get access through Ramblewood, and that Hendrick has control of their property and this option falls outside their reasonableness. HAG concluded they offer a better resolve that would be maintained and better than the easement Ms. Freeman currently has. HAG feels they had done what was within their responsibilities to provide an access for Ms. Freeman, and should there be modified plans, HAG would have to repeat the TRC and Planning Board process, and HAG representatives would need to consider whether to leave the easement or modify the plans, or reconfigure the site, noting to repeat the process would be timely. Council discussed costs and access availability, with HAG stating they had not discussed this with the Ramblewood owners or the Ellington Developers. Attorney Fordham stated in regards to the Order and conditions for Closing, if Council chose to approve the closure, they must be satisfied that the closing of the designated portion of Laura Village Drive is not contrary to the public interest and would not deprive any individual owning property in the vicinity of reasonable means of ingress and egress to that property, Ms. Freeman then could accept the approved access or not, and would have 30 days to appeal to the closure. Council concluded that HAG should seek out the alternate access option through Ramblewood Subdivision that was suggested by Ms. Freeman and possibly to the north through the Ellington Development access. HAG expressed their willingness to investigate the options and could do so within the next two weeks.

**Action:** Council Member Gossage made the motion to continue this hearing to August 17, 2010 to allow continued negotiations. Council Member Olive made the second to the motion. Motion carried unanimously.



Presenter: Director of Planning Dianne Khin

**Public Hearing # 02-Annexation Petition # 452**

*Review: Applicant requests annexation of non-contiguous property that would allow connection to Town water for existing commercial store; certified public notice.*

Public Hearing was cancelled to allow staff to work on additional annexation requirements; the public hearing will be readvertised.

Public hearing and possible motion regarding Annexation Petition #452, Mabel H. Burton, owner/petitioner, petitioning to annex 0.779 acres into the Town's corporate limits and located at 2237 Old US1 Hwy, Apex.

End of Public Hearing # 02

Presenter: Director of Planning Dianne Khin

**Public Hearing # 03- Annexation Petition # 453**

*Review: Applicant requests annexation of contiguous property that would allow connection to Town water for existing house; certified public notice.*

Annexation Petition #453, James M. Upchurch, owner/petitioner, petitioning to annex 4.8857 acres including right of way into the Town's corporate limits and located at 2105 Kelly Road.

Staff oriented to the location of the property, noting the petitioner requests town water to an existing residence, and noted the well will be taken by NC540 construction.

Mayor Weatherly opened the public hearing at 8:30 p.m. and with no one addressing the petition, closed the public hearing and referred the matter to Council.

**Action:** Council Member Jensen made the motion to approve Annexation Petition #453, adopting an ordinance to extend the corporate limits of the Town. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

End of Public Hearings

**OLD BUSINESS**

There were no Old Business items to be considered.

**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.**

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Elizabeth Bruner wants to better educate citizens regarding environmental conservation, thinking it could be made better in all areas involving town resources. Asked Council to hold folks accountable regarding the transit planning, expressing pleasure with the dialogue, as she had attended the past workshop on the transit plan and reported there was no dialogue.

End of Public Forum



## NEW BUSINESS

There were no New Business items to be considered.

## CLOSED SESSION

**Closed Session:** Mayor Weatherly asked for a motion to move into Closed Session to receive a report from the Town Attorney on litigation: Bregman vs. Town of Apex. **Action:** Council Member Jensen made the motion to move into closed session for the purpose stated. Council Member Schulze made the second to the motion. Motion carried unanimously. Minutes are recorded separately. Council moved back into Regular Session. Mayor Weatherly asked to add a Closed Session item to receive legal advice from the Town Attorney. **Action:** Council Member Jones made the motion to add a closed session item for the purpose stated and to move into Closed Session. Council Member Schulze made the second to the motion. Motion carried unanimously. Minutes are recorded separately. With closed session concluded, Council moved back into Regular Session.

## WORK SESSION

No Work Session was scheduled for this meeting.

## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:45 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The August 3, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the August 17, 2010 meeting.

Handwritten signature of Georgia A. Evangelist in cursive script.

Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

Handwritten signature of Keith H. Weatherly in cursive script.

Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for August 17, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 17, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Gossage, Jensen, Jones and Olive were present.  
Council Member Schulze was absent.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Webelos Cub Scouts led the Pledge of Allegiance. Mayor Weatherly extended a welcome to those in attendance. Invocation was given by Council Member Jones.

## PROCLAMATION

**Proclamation:** "Neighbors Helping Neighbors Program" offered through the Western Wake Crisis Ministry. Becky Spell Executive Director of Western Wake Crisis Ministry received the Proclamation, and expanded on the crisis ministry program. Manager Radford offered town utility customers could make donations to the program through their monthly bill pays, and the donation would be made directly to the ministry for distribution by the ministry guidelines.

## PRESENTATION

### **Presentation # 1:**

Steve Stone of the Raleigh Raptor Center made a presentation about their facility and function; the only fully licensed all volunteer raptor center and hospital in North Carolina. Their request was made for use of Town owned land in the Apex Nature Park to build a permanent public facility, through land lease arrangements, for an "Apex Raptor Refuge" (rehabilitation and education program), a project of the American Wildlife Refuge (AWR). AWR believes the facility would create an attraction and bring tourism and income and at no cost to the town; Town would allow use of the land by AWR while maintaining a full lease agreement that leaves the town free of liability; the independent facility would bear 100% of the responsibility and expenses; Town would provide utilities. Finances and assistance comes from volunteers, private donations, grants, and fund raisers. AWR presents 130 presentations per year seen by 250,000 people. Stone brought for show, a Western Screech Owl "Blinky", one that had been through their rehabilitation program and now education program. Mayor Weatherly and Council agreed this offer was worthy of discussion and directed the Manager to enter into discussions with this group.

End of Presentation #01



**Presentation # 2:** Dr. Ruth Relos spoke in regarding to: "Raising awareness and fostering action to stop human trafficking in our region." Facts were shared about Human Trafficking, noting it the second largest criminal activity per year, exceeded only by drug trafficking. North Carolina was listed in the top 10 states where human trafficking occurs. Regional Conference "Stop Human Trafficking", Co-sponsor Triangle J Council of Governments, arranged by Patricia Witt, Soroptimist International of Raleigh and Raleigh Women's Club, will be held September 1, 2010; Council was urged to attend to learn and observe the signs of human trafficking, and reporting such information to authorities, and goal to put an end to Human Trafficking.

End of Presentation #02

## CONSENT AGENDA

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Mayor Weatherly presented the Consent Agenda to be set prior to taking action on the following items. There were no amendments to the Consent Agenda. **Action:** Council Member Gossage made the motion to approve the Consent Agenda. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes of August 3, 2010 Town Council meeting.
2. Minutes of August 3, 2010 Town Council Closed Session (minutes recorded separately).
3. Tax Report for Town of Apex, approved and accepted in the Wake County Board of Commissioner's regular session August 2, 2010.

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 to the Agenda; it was set as presented.

## PUBLIC HEARINGS

Presenter: Town Attorney Hank Fordham

### CONTINUATION OF PUBLIC HEARING FROM AUGUST 3, 2010 COUNCIL MEETING

#### Public Hearing # 01- Closure of a Portion of Laura Village Drive

*Review: Council adopted [Resolution 2010-0615-14](#) on June 15, 2010, of its intent and scheduling a public hearing regarding closure of a portion of Laura Village Drive; proper notice was given and proposed street closure signs were posted; Council on July 20, 2010 voted to continue the hearing to August 3, 2010 to allow negotiations to continue regarding acceptable access and voted to continue the hearing to August 17, 2010 to allow negotiations to continue regarding acceptable access and consider the closing of this designated portion of Laura Village Drive that would facilitate implementing the Hendrick Toyota development plan.*

Continuation of public hearing and possible motion to approve an Order Closing a Portion of Laura Village Drive (west of its intersection with Merchant Drive) and reserving utility easements as shown on the attached Survey # 1 and Survey # 2.



With the public hearing having been continued from August 3, 2010, Mayor Weatherly stated the hearing was open, with Greg Hartley, EMHT assisted by another representative of HAG, summarized events that had taken place relating to Laura Village Drive Abandonment/Judith Freeman Access, and in a current report submitted by EMHT. Freeman had suggested an access to her property from Ramblewood Drive. Council asked HAG investigate provision of a viable easement acceptable to Ms. Freeman from Ramblewood Drive and an additional alternative north to Laurel Park II. HAG had provided several options, believed to be viable to Freeman, however agreed to pursue Council's suggestions.

Property owners at the end of Ramblewood Drive were approached by Gene Cocchi regarding provision of a private access easement to the Freeman property. One property owner had responded and HAG had submitted a proposal to the property owner, who expressed concern, and some other property owners as well, should the Freeman property be developed in the future, there would be an increase in traffic on Ramblewood Drive. The owner requested conditions be placed on the property easement for a single family residence; a private easement is being proposed for the Freeman lot (6.6 acres) currently zoned RA and requires a 5 acre average lot size, and believe to be a viable option; and would not be a valid access if the property were rezoned and developed noted it would require a public access easement. 2025 Master Plan shows the property for office or medium density and would have to go through a rezone from RA. Ramblewood Drive owner has not gotten back in touch with HAG regarding the proposal. (Easement Exhibit page 5 current correspondence).

The future development north of the Freeman property, Laurel Park II (had been referred to as Ellington) proposal is under review by the current land owner; easement would follow future public right of way and shown on their master plan to extend public right of way to the Freeman property; estimated time frame to construct that portion 3 years. HAG has not heard whether an option is acceptable or not. (Easement Exhibit depicted page 6 current correspondence).

If a proposal is accepted for an easement either through Ramblewood Drive or through Laurel Park II, HAG will present it to Freeman in hopes an acceptable resolution for access would be reached. Since HAG had not heard a response from either proposal, they asked continuance of the Public Hearing to September 7, 2010. They are hoping any day to start the project. Mayor Weatherly asked if there were a motion for continuance: **Action:** Council Member Jensen made the motion to continue the hearing to September 7, 2010. Council Member Gossage made the second to the motion. Vote on the motion to continue the hearing to the date certain was 4 in favor and 1 opposing, with Council Member Jones casting the opposing vote. Council Member Jones expressed this was a private property matter regarding the easement and they were being asked to go above and beyond; if it works that was fine with him. The issue before Council was an option to close the street and was uncertain whether Council had jurisdiction to deal with an easement issue, thinking it was a matter between private property owners. Attorney Fordham advised Council didn't have jurisdiction to force them to do any particular thing, however, Council would have to make the determination whether closing of the street would deprive any land owner who presently has access, reasonable ingress/egress to the property. Council Member Jones was basing his opinion on what had been offered by HAG the first three times was substantial to what was already there. Mayor Weatherly stated that option would still be on the table if the alternative options didn't work out over the next few weeks and may see that option again. Council Member Jensen felt an alternative option could work for everybody. Again Council Member Jones felt this was a private property matter and Council didn't have jurisdiction over that.

Concern by HAG was if they presented the two alternative options and they were not acceptable, asked what they would do at that point. Mayor Weatherly responded they would come back and Council would have to make the decision at that point on whether to close that portion of the street or not. The issue is whether Council has authority to close the street or not and the decision is whether they would be deprived of reasonable ingress/egress; he was not sure about what was there now whether it was egress at all into the property. Attorney Fordham added it was the legal aspect of it, and suggested Council amend the agenda to add an item to Closed Session to receive legal advice regarding this, however not in any way related to their continuance. Mayor Weatherly noted the public hearing was continued to September 7, 2010.



Mayor Weatherly asked for a motion to amend the agenda to include the Closed Session to receive legal advice. **Action:** Council Member Gossage made the motion to add the closed session item as requested. Council Member Jones made the second to the motion. Motion carried unanimously.

Public Hearing # 01 continued to September 7, 2010.

**OLD BUSINESS**

There were no Old Business items to be considered.

**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.  
 Your comments must be limited to 3 minutes to allow others opportunity to speak.**

Sue Horton asked Council look into expansion of bus services, hopefully to accommodate her daughter who has difficulty getting to work in Raleigh, as she is wheelchair bound; she reported they must call early in the morning to get the C-Tran bus and may not get a seat and often rides through Garner and Fuquay before she gets home to Apex. Mayor Weatherly stated the Town continues conversation for extended bus service in apex, and he knows the needs are there and are not being met.

End of Public Forum

**NEW BUSINESS**

There were no New Business items to be considered.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to discuss potential eminent domain litigation at 7:55 p.m., and the added Closed Session item to receive legal advice. **Action:** Council Member Jones made the motion to move into Closed Session. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move from Closed Session back into Regular Session at 8:12 p.m. Council Member Olive made the second to the motion. Motion carried unanimously.

**WORK SESSION**

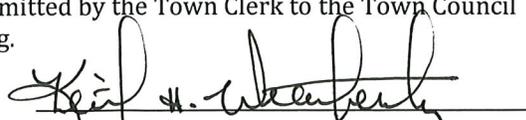
**The Work Session to discuss the Veridea Project was completed on Monday, August 16, and continuance of the Work Session was not necessary .**

**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:15 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The August 17, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the September 7, 2010 meeting.

  
 Georgia A. Evangelist, MMC  
 Town Clerk, Apex, North Carolina

  
 Keith H. Weatherly  
 Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for September 7, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 7, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Jones, Schulze and Olive were present.  
Council Member Gossage was absent.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

## PRESENTATIONS

Presenter: Mayor Keith Weatherly

### **Presentation # 01 - Zoning Official Certification**

Mayor Weatherly presented a North Carolina Local Government Zoning Official Certificate to Apex Zoning Compliance Officer Cliff Joyner for completion zoning official's course.

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 on the following items. There were no amendments to the Consent Agenda. **Action:** Council Member Jones made the motion to approve the Consent Agenda. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes of August 16, 2010 Town Council Work Session Veridea.
2. Minutes of August 17, 2010 Town Council meeting and Closed Session (recorded separately).
3. Revert unpaid lot(s) and plot(s) on reserve in the Apex Town Cemetery back to the Town for resale pursuant to Apex Town Code Section 6.63 Defaulting purchasers.

Consent Agenda continued on page 2



4. Set Public Hearing for September 21, 2010 Town Council meeting regarding BOP Development Rezone #09CZ06; subject property located at end of Whistling Quail Road containing 11.096 acres.
5. Set Public Hearing for September 21, 2010 Town Council meeting regarding Bella Casa PUD Amendment Rezone #10CZ06; subject property located at 2709 Evans Road containing 1.025 acres.
6. Set Public Hearing for September 21, 2010 Town Council meeting regarding Ellington Place PUD Amendment Rezone #10CZ07; subject property located at Laura Duncan Road between Old Apex Road and Ramblewood Drive containing 20.38 acres.
7. Set public hearing September 21, 2010 Town Council meeting regarding Broadstone Station PUD Rezone #10CZ10; subject property located at Apex Peakway between S. Hughes Street and Broadstone Way containing 57.45 acres.
8. Set Public Hearing for September 21, 2010 Town Council meeting regarding Calvary Chapel Rezone #10CZ11; subject property located at 2633 Schieffelin Road containing 1.19 acres.
9. Approve Service Contract between Town of Apex and Hare Pipeline and authorize Town Manager to sign same on behalf of the Town.
10. Approve CSX Transportation Wire Line Crossing Permit #CSX-660397 Facility Encroachment Agreement and authorize Town Manager to sign same on behalf of the Town.
11. Approve: (1) Resolution # **2010-0907-16** Award of Bid to Seaside Environmental Constructors, Inc., And (2) Construction Contract for the Middle Creek Water Reclamation Facility Sludge Thickener.
12. Approve Budget Ordinance Amendment No. 3 and Capital Projects Ordinance Amendments for street improvements and sludge thickener project at wastewater plant.

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 to the Agenda; it was set as presented.

## PUBLIC HEARINGS

Presenter: Town Attorney Hank Fordham

### **Public Hearing # 01- Closure of a Portion of Laura Village Drive**

#### ***CONTINUATION OF PUBLIC HEARING FROM AUGUST 17, 2010 COUNCIL MEETING***

***Review: Resolution 2010-0615-14 was adopted by the Town Council on June 15, 2010, noting their intent and scheduling a public hearing regarding closure of a portion of Laura Village Drive; proper notice was given and proposed street closure signs were posted; Council on July 20, 2010 voted to continue the hearing to August 3, 2010 to allow negotiations to continue regarding acceptable access; Council on August 3, 2010 voted to continue the hearing to August 17, 2010; Council on August 17, 2010 voted to continue the hearing to September 7, 2010 to allow negotiations to continue regarding acceptable access and closing of this designated portion of Laura Village Drive that would facilitate implementing the Hendrick Toyota development plan.***

Continuation of Public Hearing and possible motion to approve an Order Closing a Portion of Laura Village Drive (west of its intersection with Merchant Drive) and reserving utility easements as shown on the attached Survey # 1 and Survey # 2: With the public hearing continued from August 17, 2010, Attorney Fordham referred to Gene Cocchi, Director of Corporate Real Estate for Hendrick Automotive Group, who advised an agreement had been reached for an acceptable access easement through the Ramblewood Subdivision to the Freeman property. Agreement has been executed by all parties. Attorney Fordham reviewed the signed documents. With no further discussion and noting there was an agreement in place for access to the Freeman property, Mayor Weatherly closed the public hearing and called for a motion.

**Action:** Council Member Jones made the motion to approve an Order Closing a Portion of Laura Village Drive (west of its intersection with Merchant Drive) with reservation of utility easements. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01  
End of Public Hearings



## OLD BUSINESS

There were no Old Business items to be considered.

## 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.**  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Elizabeth Brenner spoke in support of locating Raleigh Rapture Center within the Apex Nature Park. Further suggested organization of an environmental studies group to study environmental issues.

End of Public Forum

## NEW BUSINESS

Presenter: Attorney Hank Fordham

### **New Business #01 – Proposed Code of Ethics**

Discussion and possible motion regarding adoption of a Code of Ethics for the Town Council (and possibly Board of Adjustment and Planning Board). Attorney Fordham presented a proposed Code of Ethics for the Town Council pursuant to NC Session Law 2009-403 that must be adopted prior to January 1, 2011. The Code of Ethics would guide actions by the governing board in the performance of their official duties and was developed using guidelines from "A Model Code of Ethics for NC Local Elected Officials" published by the UNC School of Government. He offered Council may want to consider adoption portions relevant to the Board of Adjustment and Planning Board. There is no provision for violations. **Action:** Council Member Schulze made the motion to adopt the proposed Code of Ethics. **Action:** Council Member Schulze amended his motion to include the Planning Board and Board of Adjustment. Council Member Jensen made the second to the amended motion. Attorney Fordham will amend the document to include same and will come to Council for final adoption. Motion carried unanimously on the amended motion.

End of New Business #01

Presenter: Council Member Jensen

### **New Business #02 –Renewable Energy Systems**

Council Member Jensen offered a *Resolution to Enable Renewable Energy Systems in the Town of Apex*, expressing concern with global warming and worsened by man-made pollution/gases; fuel/gas costs will rise and folks will want to install the technology. He stated the resolution was a recommendation for the construction and business industry, encouraging them to prepare for the future by being voluntary compliant, installing solar collectors, preparing buildings and parking lots for future technology to be applied (plug ins); as well for residential housing, and noted installation costs continuing to decrease. He felt Council should be leaders in moving forward with future technology. Mayor Weatherly questioned the issue of global warming, the statement that the problem would be exacerbated by man, discussion of carbon-dioxide gases, and the costs to install these features. Council Member Schulze offered the fact that there wasn't anything man could do to reduce the effect of global warming, and this would encourage people to spend money, resources that could be utilized elsewhere; and further if it were a good deal, the market would take care of itself and didn't think they should encourage this. Council Member Jensen reiterated this was a recommendation to consider this, and a smart thing to do. Mayor Weatherly asked if there were a motion to adopt the Resolution. **Action:** Council Member Jensen made the motion to adopt the Resolution as written. There was no second. Mayor Weatherly stated the motion dies for a lack of a second.

End of New Business #02



Presenter: Mayor Keith Weatherly

**New Business #03 -Reappointments**

Mayor Weatherly recommended the reappointment of Apex representatives to the Wake County Growth Issues Task Force: Mayor Weatherly, Council Member Jones and Alternate Council Member Schulze. Task force was formed in 2008 and plans to re-convene.

**Action:** Council Member Schulze made the motion to approve the reappointments. Council Member Jones made the second to the motion. Vote on the motion was 3 in favor and 1 opposed, with Council Member Jensen voting no. Motion carried.

End of New Business # 03  
End of New Business

**CLOSED SESSION**

**Closed Session:**

Mayor Weatherly called for a motion to move into Closed Session at 7:35 p.m. to receive legal advice from Town Attorney regarding potential litigation. **Action:** Council Member Schulze made the motion to move into Closed Session. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move from Closed Session back into Regular Session at 8:10 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

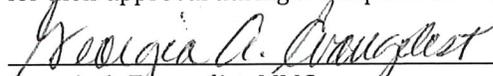
**WORK SESSION**

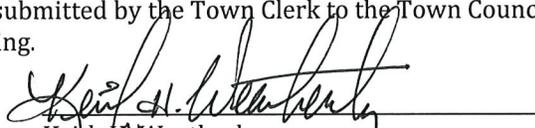
No Work Session was scheduled.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:11 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The September 7, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the September 21, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for September 21, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 21, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

## PRESENTATIONS

There were no Presentations.

## CONSENT AGENDA

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Mayor Weatherly presented the Consent Agenda to be set prior to taking action on the following items. There were no amendments to the Consent Agenda. **Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of September 07, 2010 Town Council meeting.
2. Minutes of September 07, 2010 Town Council Closed Session (separate cover).
3. Annexation Petition # 454, BOP Development LLC. owner/petitioner, petitioning to annex 10.565 acres into the Town's corporate limits, located at 2504 Whistling Quail Run; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of Public Hearing for October 5, 2010.
4. Transfer Lot 268 Plots A & B in Apex Town Cemetery: Jarvis O. Wood and Helen J. Wood, 3243 MacGregor Drive, Palm Harbor, Florida 34584 owner(s), to John & Ellie Goss, 3439 Bosco Road, New Hill, NC 27562.
5. Final Version: Order Closing a Portion of Laura Village Drive (west of its intersection with Merchant Drive), and reserving utility easements as shown on the attached Survey # 1 and Survey # 2.
6. Code of Ethics for the Town Council and including Board of Adjustment and Planning Board.
7. Tax Report for Town of Apex approved by Wake County Board of Commissioners and accepted in

End of Consent Agenda



## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Mayor Weatherly asked an item be added to Closed Session: to receive advice regarding pending litigation relative to the Regional Wastewater Reclamation Facility. **Action:** Council Member Jones made the motion to add the item to Closed Session. Council Member Schulze made the second to the motion. Motion carried unanimously. The Agenda was set with the amendment.

## PUBLIC HEARINGS

Presenter: June Cowles, Senior Planner

### **Public Hearing #01**

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C8FF009E-931F-154B-04A88511128E2DE1.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C8FF009E-931F-154B-04A88511128E2DE1.pdf)

**Review:** *Planning Board met June 8, 2009 and unanimously recommended approval of Rezone Case #09CZ06 with conditions (Cecil Bunn Olive, Jones & Cnossen Engineering, PLLC, applicant, seeking to rezone from Rural Residential to Medium Density Conditional Zoning, property located at 2504 Whistling Quail Run, containing 10.65 acres, with conditions); staff recommended approval with conditions; June 16, 2009 Public Hearing was continued to July 21, 2009; July 21, 2009 Applicant requested public hearing be removed from the agenda for consideration at a later date to allow additional time for bank financing to be finalized. Applicant contacted staff in August 2010 and requested the rezone be heard by Council; Public Hearing was readvertised.*

#### **Rezone #09CZ06: Cecil Bunn Olive**

Public Hearing and possible motion regarding **Rezone #09CZ06 Cecil Bunn Olive** (BOP Development, applicant/owner) seeking a rezone from Rural Residential to Medium Density Residential Conditional Zoning, property located at 2504 Whistling Quail Run, containing 10.656 acres. Staff presented the Planning report which is attached and incorporated as a part of the minutes; presented Review section above for historical data; stated the applicant's proposal and conditions offered:

The applicant is requesting to rezone 10.65 acres site from Rural Residential to Medium Density Conditional Zoning. The applicant is requesting uses and conditions as follows;

Accessory Apartment  
Single Family Home  
Church or Place of Worship  
Day care Facility (Special Use Permit)  
School (Public or Private)  
Botanical Garden  
Greenway  
Park (Active or Passive)  
Private Recreation Facility

#### **Conditions:**

1. No direct residential driveway access onto Milano Avenue for any lot less than 20,000 square feet.
2. All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding.
3. Covered porches or front stoops are required on the front façade of each single family residential structure facing the public right-of-way.
4. All residential units shall require a crawl space or a minimum of two steps and 14 inches to the front door.

The applicant conducted a neighborhood meeting on May 27, 2009. There were no attendees.

The 2025 Land Use classification is Medium Density Residential. The proposed zoning is Medium Density Conditional Zoning which is consistent with the 2025 Land Use Plan.

Staff recommends approval of the BOP Development 09CZ06 Rezone with conditions as proposed.

The Planning Board recommended unanimously for approval with conditions of the Rezone #09CZ06 at their June 16, 2009 meeting.



Mayor Weatherly opened the Public Hearing at 7:07 p.m.

Speaking in favor: Stuart Jones, Jones and Cnossen Engineers, 221 N. Salem Street, on behalf of BOP Development; presented the petition to rezone; continuing the same type development similar to the Estates of Bella Casa even though it wasn't the same partnership, connects to Bella Casa; have turned in a Subdivision Plan for 13 lots; Bella Casa has been successful.

With no one speaking in opposition, Mayor Weatherly closed the Public Hearing at 7:08 p.m. and referred the matter to Council.

**Action:** Council Member Jensen made the motion to approve Rezone # 09CZ06. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

**NOTE: (Public Hearing #01 A) PUBLIC HEARING #07: Transportation Plan Amendments was held before Public Hearing # 02 relative to Bella Casa Subdivision Plan.**

Presenter: Reed Huegerich, Transportation Planner

### **Public Hearing #07**

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C8FDECCD-DB3D-CF5D-4DD04D7A098BC5CF.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C8FDECCD-DB3D-CF5D-4DD04D7A098BC5CF.pdf)

**Review:** Plan was addressed in 2006 and recommendation made to make Milano Drive a Major Connector; Planning Board met September 13, 2010; Planning Board's recommendations will be presented at the Council meeting.  
[http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf)

### **Apex Transportation Plan: JVI Development**

Public Hearing regarding amendments to the Apex Transportation Plan; proposed by JVI Development, Inc. The most up to date information was submitted to Council; the original proposal is no more (stated below); current proposed amendment submitted by Jones and Cnossen Engineering, for JVI, Inc. this afternoon; asking for the removal of Milano Avenue between Evans Road and Holland Road;

#### **Original proposal:**

JVI Development, Inc., has asked the Town to review the Thoroughfare and Collector Street Plan and make the following changes:

1. Remove Milano Avenue (Major Collector) between Evans Road and Holland Road.
2. Remove Grouse Trail Extension (Minor Collector) between Evans Road and Holland Road.
3. Realign Evans Road (Minor Collector) from the north to intersect Holland Road.
4. Realign existing Evans Road from the south to a T intersection with realigned Evans North.

Staff does not support the changes proposed by JVI Development, Inc., for the reasons outlined in the staff report.



From the staff report:

Town Staff does not support the changes proposed by JVI Development, Inc., for the following reasons:

1. Milano Avenue is intended to provide a direct east-west connection as an alternative to Olive Chapel Road and Old US 1 between Kelly Road and New Hill Olive Chapel Road. The developer's proposed alternative does not.
2. Removing Milano Avenue (the Major Collector Street) will place a greater burden on local residential streets not designed for through traffic. Major Collectors encourage cross-neighborhood traffic on a street with no driveways, reduce traffic volumes in front of driveways, and minimize future "cut-through traffic" complaints.
3. Milano Avenue and Grouse Trail Extension in combination would provide route choice. The developer's single alternative does not.
4. There are no critical environmental barriers to the construction of Milano Avenue east of Evans Road.
5. Rerouting Evans Road to the southeast involves realignment of a state-maintained section of the roadway through multiple smaller parcels, some with occupied residences, reducing the likelihood that it will be constructed in a timely manner if at all. This would interrupt continuity of existing Evans Road and we would have to explore renaming Evans Road north of the realignment.
6. The developer's approved subdivision plans already include part of this section of Milano Avenue.
7. Milano Avenue to the west of Evans Road is already constructed stubbing out to future planned sections.

Area is in close proximity to Town's Nature Park up from Evans Road; noted Transportation Plan was addressed in 2006 and recommended Milano as a major connector street; located within emergency planning zone for the Harris Plant and would provide connectivity for the area; in conjunction with the Hazard Mitigation Plan - addresses disaster preparedness; infrastructure improvements will benefit future development; location is approximately one mile from Holland Road and NC540, and at US1 expects change to the area once the interchange is constructed; found lack of connectivity results in neighborhood complaints (example: area of Dogwood Ridge, Cameron Park and Scotts Mill); try to place some of the traffic onto major collectors; would be the only north/south connection for the area that has potential for 3000 dwelling units; would be an alternative to Olive Chapel Road; there are issues with alignment and options have been offered; photo's of area major collectors were shared with White Dogwood similar to that of Milano Avenue through Bella Casa; has driveways and a fair amount of traffic; bike lanes may be appropriate.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Speaking in favor:

Stuart Jones, Jones and Clossen Engineers, 221 N. Salem Street, gave his credentials; represents JVI, developer of Bella Casa; stated projects by JVI and request to eliminate the major collector street between Evans Road and Holland; (plan submitted today), and has withdrawn the second portion of the request - that of realignment of Evans Road. Noted major impacts to the area; he plans to participate in a transportation workshop in January. Presented a revised layout for Phase 5 Bella Casa PUD project; continues to work with Town to reach a compromise. Presented exhibit map, expanding on timeline of the collector street; noted change in the transportation plan: collector street through Bella Casa to major collector street and does not allow driveways. Stated while JVI was working on the Bella Casa project, a change in the transportation plan split the project in two halves; noted from a pre-submittal meeting to final approval, there was a nine month time delay and due to the same road, Milano Avenue.



Noted the topography of the area; noted plan eliminates the major collector street between Evans Road and Holland Road; showed three points of inter-connection, stub streets to the Lee and Jablonski properties; noted McLamb property has frontage on Evans Road; proposes second stub from Bella Casa onto Evans Road; gave negative impacts of Milano Avenue on properties between Evans Road and Holland Road – through McLamb property, through Bella Casa in which they would construct two dead-end stubs that would go unconnected for years. Stated largest impact of the road: will create a division through one of the nicest neighborhoods in Apex; worked with this scenario between phases 2 and 3, noting it difficult planning and a marketing challenge; general flows connects one neighborhood to another with neighborhood streets and sidewalks; major collector through the Lee and Jablonski properties and onto Holland Road; noted the creek / flood plain, wetlands and one other stream crossing/buffers to get to Holland Road; noted while the collector street has been shifted south, to avoid the FEMA map floodplain, noted the actual flood plain does not stop but continues upstream for several hundred feet; noted 35 acres with only 15 acres of usable property; noted the road passes through developable land and no drive ways allowed; stated the Town is asking for a project with a series of short cul-de-sacs coming off the collector, and a small number of homes for the property owners or developer to recoup construction costs of the road. Believe the character of the road has changed, stated a quote from the transportation plan page 4-26; area will be developed residential neighborhood and streets promote interconnectivity; multiple points of access and ways to get in and out in a slow safe pattern are advantageous. In their opinion the connection of the major collector street Evans Road to Holland Road in conjunction with connections to New Hill – Olive Chapel Road is changed from collector road to a thoroughfare road. Noted City of Raleigh plan shows short street connections not continuing along the same alignment. Noted original Apex Transportation Plan shows a short connector from Evans Road to Holland Road; believes original intent of Apex Transportation Plan was to provide a change in alignment, however the location of the portion of Evans Road to Holland Road was not practical, now the major collector is destined to connect Kelly Road to New Hill- Olive Chapel Road, has stopped as a collector street and more a thoroughfare road.

Third reason to eliminate this road is the practicality of the connection; stated a quote from the transportation plan page 1-1; based on their information of other roads and construction of existing Milano Avenue, gave road costs and property values, fairness of the road, budget of funding with cost estimate over \$1.5 million; his opinion no developer would want to buy property or build the road, and ultimate responsibility to build would fall on the town, with purchase of right of way, and not including move of residents \$2 million. If major collector is eliminated and property connected by residential streets, Town cost would drop to \$0. Noted buffer of 10 feet to each side of 60' right of way and traffic through the neighborhoods, timing of construction if major collector stays on the plan, doubts section of road will be built in our lifetime, and landowners are forced to hold on to their property. Noted it was not only about Bella Casa, but the homeowners and the quality of development and the future of Apex. Once Bella Casa builds one section of the major collector, the die is cast and nearly impossible to make the road go away. This is a chance to save these properties from a major collector that will act like a thoroughfare through these properties. He has not been able to convince staff that the change to the transportation plan is warranted, believes the chance is practical, functional and financial cost effective that would still allow emergency access. Major Collector is being called an alternative to Olive Chapel Road connecting New Hill-Olive Chapel to Kelly Road, asked, is this is the type road you would want running through the nicest neighborhood in Apex? He asked, would they want it to run through their neighborhood. He asked, if it were fair to take traffic from Richardson Road and route it through these properties. He asked, had they not rather have the tax base from the development of these properties, than pay for road construction with tax payer dollars. He ended, these questions need to be answered. He asked consideration of the request.

Karma Lee and James Lee owns 40 acres on Holland Road between Crocketts Ridge and Hollands Farm; they oppose the plan for a major collector from Evans Road to Holland Road, as did the Planning Board, as it would cross their property. Jones shared estimated cost of construction \$1.1 million dollars based on \$500 per foot; Russ Dalton quoted \$800 per foot. Noted the topography of the land leaves few options for placement of the road; with no driveway connections all that could be done with the remainder of the property is to build cul-de-sacs and noted the UDO frowns on this type development and she would too. Noted Holland Farm land sold in 2005 for approximately \$1.6 million with cost of \$1.1 million dollars to build their road. With limitations on what could be done with the remainder of the land, she doubts any developer would be interested in purchase of their property, and staff plans would basically create an unmarketable, and undesirable tract of land, that could sit for decades undeveloped and the road un-built; to build the collector road, the burden and costs would fall on the Town; a plan where everyone loses. Eliminating this road would allow their property to be developed as a well planned subdivision, noting water/sewer is in place, with a stub out to Holland Farm and Bella Casa, provides a connection from Holland Road to Evans Road. RCA of Holland Farm and Crocketts Ridge could be tied together with theirs and possible greenway planned that could connect to the Town Park property on Apex Barbecue Road at their northwest corner. Noted area that most likely would be in RCA and that could be RCA. They would one day like to have the option to develop their property, where all would win. Again they oppose the plan for a major collector from Evans Road to Holland Road, and they support the JVI plan to eliminate the major collector road. Asked Council support the recommendation of the Planning Board and eliminate Milano Ave from Evans Road to Holland Road.



Tom Carter, 7104 Campbranch Lane, agrees with the JVI proposal to eliminate the major connector and agreed with all the impacts that it would bring to the Lee and Jablonski properties. He supports the elimination of the road as a major connector.

Larry Harris, Evans Family, is opposed to the JVI proposed amendment plan, glad to see the portion withdrawn. He asked for future planning and during the workshop in January, they consider placing the burden of roads on developers and not small land owners. He gave a handout of the history of his community and western Wake County, stated he had served on various committees of the Town and Wake County and noted the significance of Friendship Community, history of the residents and Evans families that they hold dear (1800's), and encouraged its preservation, being mindful of it during development and hopes Council does likewise; looks forward to working with the Town making it a greater place to live, work and raise family.

Shelley Curry, 2821 Evans Road, Evans family, appreciates growth and development, but would agree to limited reconstruction of the area for development; preserve as much property as possible; agrees to remove that portion of the connection from Apex and Holland.

Shelia Morrison, Evans family, agreed with all said, questioned the plan amendment, the new location of a minor collector from Whistling Quail to Evans Road, noted it on the Apex Transportation Plan, that would make about one-third of her property unusable and she needed to attend the transportation workshop in January.

Paul Burkhead has 12 acres; understood JVI proposal was off the table and now is the plan for a minor collector, and the major collector Milano is an active plan and what will be discussed; he will come to the workshop in January. He thinks the plans are trying to have the least impact; glad the Lee's have put face on the property, other folks and the McLambs have plans too; all of these have an impact on a lot of properties and will devastate the future of a lot of people that have been in this region for 25 or more years. He's nine generations in North Carolina and noted collectors streets have helped those who have moved here, however a potential big impact on those that are already here; those who bought land and are descendants here, their way of life, and appreciates it if all the planning keeps face on those plans and their impacts. He appreciates these occasions to talk; he asked how to find the notification for these things probably on the website. Khin advised they are published on the website by authority of local legislation. Changes to the transportation plan: planning workshop January 27, 2010 4:00 p.m. to 7:00 p.m. will be advertised in the Apex Herald four consecutive weeks. As this proposal tonight was not from staff and not a major change it was not in the local papers, but was on the Town's website. Transportation Planner Huegerich noted Planning Board voted 4 to 3 in favor of removing Milano Avenue from the Transportation Plan.

Mayor Weatherly closed the public hearing at 7:50 p.m. and referred the matter to Council. The locations of Apex Barbecue Road, proposed Milano Avenue, and Evans Road were noted. The quotes were noted.....not to be a straight shot....; Khin stated Huegerich had been working on this, and reason for the January workshop; text of the transportation plan will be revised. She noted at the time written, there was only one collector called a minor collector, and correct they do not want roads where people connect straight shots and move quickly. The major collector came from work with CAMPO, the regional transportation group, and at the time were only allowed to put thoroughfares on the plan, and came up with major collectors and not as wide or fast as thoroughfares, however have one quality, they try to minimize driveways; the reason for a disconnect between the text of the document and the map and will be correcting the Transportation Plan that was adopted in 2002.

Mayor Weatherly added from a planner's perspective this makes good logical sense, and is what they are employed to do for the community and he appreciates that. He asked Khin speak to the issue of government involvement that puts a plan on a map that virtually makes someone's private property diminished in value, if worth anything at all, and she may want to say that's why we have a Council. Khin responded, that's why we have Council; explained the transportation plan is their best educated thoughts as to where roads should go and if they don't plan ahead, ends up in an area such as Stephenson/Smith Roads, a long cul-de-sac road; they don't want to make the mistake of having one way out due to danger, where there may be hurricanes, events from the Harris Plant or an accident, trapping folks that can't get out should an event occur; if there's an alternate that's fine. Mayor Weatherly continued there must be an alternate for this, because this road would never be built unless the Town does assume financial responsibility to build it; so we have a line on a map, and they have discussed this before, a line that has real consequences for something that probably want come to fruition, and this is a real problem for him and there's got to be an alternative. He asked if she had looked for one that would provide the same amount of transportation, safety and other issues that needs to be in that area.



Khin responded, Jones and Clossen had officially submitted today, a plan for Bella Casa to have a stub street to the east, and that under the current UDO standards, should the Lee's farm be developed, the developer of that property would be required to connect the stub street, a connection between Holland Road and Evans Road, a residential street with driveways along that street; the quality of the street would be diminished, but there would be a connection. Mayor Weatherly saluted her for doing what she was supposed to be doing, that was bringing these issues before them; he does appreciate that.

Mayor Weatherly stated if there was no change in the transportation plan it would not require a motion by Council, and no motion by Council would leave it, the transportation plan, status-quo; not that he was suggesting that's the way it needs to be. Council Member Schulze expressed, he understood need for collector streets, however the impact was severe, not only on private property owners but the way it forces people to develop their land. Council Member Gossage commented on an alternative and if there's a way for connectivity and allow property development down the Road; he didn't know if removing the major collector from the map was the way they wanted to go, or downgrade to a road that allows drive way access.

Jones and Clossen provided a copy of the revised plan to Council, as of this meeting date however, Council had not had time to review it and frankly didn't understand it. It was noted no one had spoken in opposition to the plan presented at this meeting, and would also oppose street with driveway access. Council Member Jones noted cost for streets with driveway access would be less, with narrower streets, however would still have other issues to address; he doesn't know. Council Member Gossage stated Milano is all that's being considered.

Russ Dalton, Transportation Engineer brought to Council's attention, drives take the most direct route; noted a stub to the east however, if they would also ask for a stub to the west, it would still align with Milano Avenue; it would be a residential street with driveways and a more direct route, safer for the neighborhood, as you would not have as much traffic going past driveways – one option; potentially it's what Milano Avenue is now, instead of it being a major collector, it would be a residential street. One problem was complaints received from neighbors that of folks driving past their homes; folks take ownership of the street when driveways connect to it and the more direct route the better; they would like to take driveways off of them; he understands it does cost developers more money to build roads that doesn't have driveway access directly on them. It was noted that developers that don't want to build those roads, then the responsibility falls on the Town; Dalton agreed this was true with smaller parcels of properties where developers may not be interested in smaller parcels, and then the responsibility falls on the Town; financially private owners aren't able to build those. He continued the more land a developer assembles in one piece, the better off they are as far as getting connections. He felt the more rural areas they get into, the more problems like this will occur; hopefully the January workshop will allow them to take a harder look at the plan and talk to more people to come up with solutions; option minor collector reduced.

Mayor Weatherly asked if Council wanted to adjust the major collector to a minor collector, could he explain that. Dalton explained a minor collector allows residential driveways, has sidewalks on both sides, and the same width of residential streets, and would substantially reduce the burden on future developers.

Mayor Weatherly stated this would be an alternative to leaving it as is or taking it off entirely as a collector. Dalton noted the main purpose of the road was to serve the general area. He noted the main complaint, cut-through traffic, but most of what he sees is cross-through neighborhood traffic. They don't want to encourage higher speed traffic, however try to reduce the amount of traffic driving through neighborhoods and reduce driveway access; however they do plan for connectivity.

**Action:** Council Member Gossage made the motion that the road on the transportation plan be marked as a minor collector street, Milano Avenue. Council Member Olive made the second to the motion. Council Member Jensen expressed concern with the longer road, using the examples: Surry Meadows that has driveways and Vintage Grove that has cul-de-sacs. He noted folks that file complaints are the Surry Meadows folks that have driveways. He noted planning folks didn't like the cul-de-sacs, but they work well, and in this situation, if the status of the road is lowered, they could always put in cul-de-sacs; he hopes when there's development, they actually consider them; he lives on one himself. Motion carried unanimously. Council Member Schulze agreed.



Presenter: June Cowles, Senior Planner

## Public Hearing #02

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C8FF009E-931F-154B-04A88511128E2DE1.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C8FF009E-931F-154B-04A88511128E2DE1.pdf)

**Review:** *Planning Board met September 13, 2010 and unanimously recommends approval of the PUD Plan Rezone and Phase 5 Master Subdivision Plan with conditions: [http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf); Staff recommends approval of the PUD Plan Rezone and Master Subdivision Plan Phase 5 with conditions to comply with Apex Transportation Plan, Hazard Mitigation Plan, and Unified Development Ordinance.*

### Rezone #10CZ06: Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan

Public hearing and possible motion regarding **Bella Casa PUD Amendment Rezone #10CZ06 and Phase 5 Master Subdivision Plan** (JVI Construction, Inc. applicant/owner) seeking to rezone from Rural Residential district to Planned Unit Development Conditional Zoning district, property located at 2709 Evans Road containing 1.025 acres.

Staff presented the Planning report which is incorporated as a part of the minutes. Cowles stated the plan is to bring this parcel into Bella Casa; she noted Phase V has 21 lots; south of the line is PUD Plan Phase VI, however not being considered during this meeting. Noted revisions have been made, with discussion of cul-de-sacs and connection to the east. The proposed, before Council now is consistent with the UDO, the 2025 LUP and medium density residential. Neighborhood meeting was held May 19, 2010; holds same architectural standards as Bella Casa PUD and with the change in the transportation plan, now meets that. Staff recommends approval. Dianne Khin injected, this was actually downgraded to a minor collector, with sidewalks on both sides, and they need to show a stub going to the west in order to meet the transportation plan. Cowles noted this as a revision. Review by Planning Board, at that time, the developer did agree to connect Veda Cove to Evans Road (UDO). The change to the transportation plan has to be incorporated into the plan tonight and does not affect the connection of Veda Cove; Planning staff does recommend approval with those conditions.

Mayor Weatherly opened the public hearing at 8:12 p.m.

Speaking in favor: Stuart Jones, Jones and Clossen spoke in support of the plan revision; stated the Planning Board approved another layout with the connection of Veda Cove and the greenway over to the Lee property; they voluntarily agreed to the stub to the east to the Lee property; with a road stub to the west, and change from the major collector to minor collector, he's unsure the developers will be happy with providing basically the same layout as they had before; with the change from a major collector to a minor collector, as it really doesn't have much impact on Bella Casa; they will have another stub that's not shown on this here. He noted now that there's a road connection from the existing Milano, that's going to go through Bella and now we've made the connection of the other cul-de-sac, asked how many road connections do we need. He noted the original cul-de-sac, and agreed to provide the stub to the east, and in return they also connected to Evans Road; he noted now another stub – distance 300 to 400 feet

Mayor Weatherly asked if this made sense to do both, with Huegerich responding that based on 2<sup>nd</sup> point of access, it may be awhile before there was the road connection; can't exceed more than 1000'. Manager Radford asked, would it be simpler to not allow number of houses say 50 lots until 2<sup>nd</sup> access is built. Khin noted this was a fire code issue, and to get 51 or more lots they have to have a second connection. Manager Radford noted they already have one connection, and the second one looked easier to get than the middle one being Milano Avenue, with Stuart Jones agreeing. Kent Jackson added a factor to consider, in that the homes now have sprinkler systems and may have some impact on the fire marshal's consideration, if a revision is being considered; this is a different neighborhood. Khin reported UDO Sec. 7.5.4(e) based on the fire code section, a 2<sup>nd</sup> point of access is required for over 50 units, single family; it wouldn't meet the UDO by having sprinklers.

Joey Iannone, JVI, noted the original approval; then looked at the current alignment; he was not opposed to Veda Cove connection to Evans Road; he is opposed to another street stub to the east, in that it defeats the whole purpose of their last conversation; all that's been done here is to take a 30' street to a 27' street, a straight drag strip through the neighborhood; they still have the same situation and hasn't solve any problems. He stated they need to make the right decision tonight and do it one time and one time only. He added he's been developing in this town since 1991 and can take them to several other locations where he has been made to do things that has never matured, and have never been completed, and are still in his name and he pays the taxes; he's holding the property that the Town has made him set aside for roads that will never exist. He wants to do the right thing and every one of them knows this; putting a speed-way through his neighborhood is not the right thing. He has worked with staff for three years; noted last Thursday as his first amicable meeting and thought they had a resolution and was what's on the screen. They meet all the intent of the UDO with this plan; they meet all the intent of connectivity through all the properties, and is a win-win for everybody. Town gets what it wants; future landowners have stub streets to their properties, and it's not a race track through their properties. He can't see adding another street stub to the east at the McLamb property that he will have to deal with; you still have the same issue with the McLamb property as if you had a 32' back to back street; we didn't solve anything by a downgrade to a minor thoroughfare from a collector. He continued if they wanted connectivity, he was more than glad to give street stubs, but two street stubs to no-where makes no sense to him. He's upset.



Mayor Weatherly noted the minor collector helped alleviate the problems other property owners are going to have with the major thoroughfare. He continued, if he were just talking about his property, then point well taken, as it did solve some problems. Iannone responded, it did for some but it's still going to be a straight shot to Evans Road, still a straight shot through his property, McLamb property, Lee property; their proposal has it where you have to stop and start, you have to make turns, and if you look at the whole plan, even his street stub can go down and make a T - intersection; it doesn't have to be a straight shot through the Lee's property; it doesn't have to be a race track, there can be residential streets where you weave through there. He asked what the destination was on Holland Road, he'd love to hear it as he hasn't found it yet.

Mayor Weatherly noted two access points that had to meet the UDO; Khin added it meets the UDO as shown, but not the transportation plan. Mayor Weatherly added if they change the transportation plan, it could meet the UDO with Khin agreeing. Mayor Weatherly continued the previous action does solve some of the issues, but not.....Khin added that adding the Milano stub does not make it non-compliant with the UDO; it's still compliant either way.

With the public hearing closed, Karma Lee added they are very much impacted and appreciated the discussion by Council, as Joe Iannone had said, downgrade from a major collector to a minor collector - you can put driveways on it, so that's a plus, but still is pretty much the same road standards as the major collector ... with Mayor Weatherly interjecting, but it's still developable with a few cul-de-sac issues, its more developable, with Lee continuing, its more developable but ideally what a person would want to see is that stub going into their property from the JVI property would be a regular residential road and would open up a lot more possibilities on their property and would be the most helpful with his property. Mayor Weatherly stated that would take action for Milano Avenue as a minor collector, not knowing the destination. Lee continued - just throw it out. Council Member Jones was hearing, that the proposed layout before them meets the UDO, has a stub to the east and has the capacity of having a stub to the west to the McLamb property. At whatever point, between now and January on what happens to Milano Avenue, whether it remains as what they have just changed it to - a minor collector - moved or removed. Dalton confirmed he was saying, leave it on the plan. Council Member Jones was trying to understand; they changed Milano to a minor collector and asked how it impacts the proposed layout. Dalton responded, the proposal the way it is now shows lots encroaching on the area where you would actually have a road stub; he continued this would meet the UDO, but not the transportation plan. He continued this may not be thought about, but when you buy a house, you buy based on location, convenience, access; if you buy in this area and want to get to the park you would look at street network, is it out of the way to drive through the subdivision or not; their main concern is you have a route where people will drive by lots of driveways, and make lots of turns. He added the term speedways, you can fix that by putting in a traffic circle, as done in other communities, of course the developer may not want to pay for it, but things can be done to slow traffic, it's not a speed way, it's a direct route, it provides the least impact on residential driveways, and where he gets complaints, where kids are biking and skating from their driveways, and where you get conflicts. Conflicts are not usually on through streets, as people recognize them more as being the preferred route for traffic between neighborhoods.

Attorney Fordham asked Khin if the UDO required conformity with the transportation plan. Khin stated it use to; she referred to Sec. 2.3.7(d)(2) to approve a master subdivision plan the Town Council shall find that the master subdivision plan complies with all standards of this ordinance and all other relevant Town ordinances and regulations. It does not specifically mention in the subdivision there but could be another section. She noted this is the PD plan and the part that he's presenting; the PD plan for a PUD must be consistent with Apex Transportation Plan and Town of Apex Construction and Standard Details and shall require right of way with roads. Attorney Fordham suggested Council move into Closed Session to receive legal advice. Mayor Weatherly called for a motion to move into Closed Session at 8:30 p.m. to receive legal advice from the Town Attorney.

**Action:** Council Member Gossage made the motion to move into closed session. Council Member Schulze made the second. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move from Closed Session into Regular Session at 8:35 p.m. Council Member Olive made the second. Motion carried unanimously.

Mayor Weatherly asked if there were a motion to be made. Council Member Gossage asked if it were appropriate to make a motion on the previous item. Attorney Fordham advised it would be in order.

**Action:** Council Member Gossage wanted to make a motion to reconsider, asking Attorney Fordham to assist: Attorney Fordham stated: The motion would be to reconsider the former action taken tonight with respect to the transportation plan. Council Member Gossage stated that would be his motion. Council Member Jensen made the second to the motion. Mayor Weatherly stated those voting in the affirmative could make the motion and it was unanimous. Mayor Weatherly stated the reason for the motion was that the Town Attorney had brought to their attention some issues that Council should thoughtfully consider over the next two weeks and those directly affected by this will be brought into the conversation. He continued they need to basically start over on public hearing 01A (PH #07 Transportation Plan). Motion carried unanimously.



Mayor Weatherly asked for a motion to reopen the public hearing #01A (Public Hearing #07 Transportation Plan).

**Action:** Council Member Gossage made the motion to reopen Public Hearing #01A (Public Hearing #07 Transportation Plan). Council Member Jones made the second to the motion. Motion carried unanimously.

Mayor Weatherly asked for a motion to continue the Public Hearing to October 5, 2010 Council Meeting.

**Action:** Council Member Gossage made the motion to continue the Public Hearing to the Council's next regular meeting (October 5, 2010). Council Member Olive made the second to the motion. Motion carried unanimously. Mayor Weatherly added Council would basically start over at this point, continuing the Public Hearing, with no additional re-advertising, and the Transportation Plan amendments will be on the next meeting agenda, two weeks.

Attorney Fordham advised Council, that they may want to continue the item before them, also: Public Hearing #02 Rezone #10CZ06 Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan. He advised the Public Hearing should be reopened to allow it to be continued.

**Action:** Council Member Jones made the motion to reopen Public Hearing #02: Rezone #10CZ06 Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan. Council Member Gossage made the second to the motion. Motion carried unanimously. Mayor Weatherly stated with Council back in Public Hearing # 02, he asked for another motion.

**Action:** Council Member Jones made the motion to continue Public Hearing # 02 to the Council's next regular meeting (October 5, 2010). Council Member Gossage made the second to the motion. Motion carried unanimously. Mayor Weatherly stated the public hearing will be on Council's next regular meeting agenda.

Joey Iannone asked if the public hearing was still open. Mayor Weatherly stated it had been continued for two weeks, however Iannone asked to speak. Mayor Weatherly allowed him to make an informal comment, and stated it would not be a part of the public hearing. Iannone stated, if they turn Veda Cove into a minor collector, verified they were recommending a minor collector, with sidewalks on both sides, confirming this with Russ Dalton, Iannone continued, he was going to recommend they turn Veda Cove and street stub to the west to the Lee properties, into the collector street with sidewalks on both sides, and could approve this and move on, if we can't do this tonight, then come back. Mayor Weatherly added they need to assure this conforms to everything else, the UDO, transportation plan and legal requirements.

#### Public Hearing # 02 continued to October 5, 2010

Presenter: Brendie Vega, Principal Planner

### **Public Hearing #03**

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C9047058-9042-BB26-35FCD1E2F7498B38.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C9047058-9042-BB26-35FCD1E2F7498B38.pdf)

**Review:** Planning Board met September 13, 2010 and unanimously recommended approval; [http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf)  
Staff recommends approval.

#### **Rezone #10CZ07: Ellington Place PUD Amendment**

Public Hearing and possible motion regarding **Rezone #10CZ07 Ellington Place PUD Amendment**, Chris Pope, Bass, Nixon & Kennedy, Inc., applicant, seeking to rezone from Planned Unit Development Conditional Zoning district to Planned Unit Development Conditional Zoning district, property located at Laura Duncan Road between Old Apex Road and Ramblewood Drive, containing 20.38 acres.

Staff presented the Planning report which is incorporated as a part of the minutes; noted location and surrounding land uses, that the original PUD was approved as two rezones, Ellington PUD and another; Laurel Park II Subdivision was approved with 151 lots; the property has changed owners since the last rezone; Phase I is platted and under construction, has not received Certificates of Occupancy and are not requesting change to the subdivision plan; original zone condition was for homes to be a minimum of 2100 square feet in size; applicant requests removal of the condition as economic downturn no longer supports market for 2100 square foot minimum homes; they offer a range of 1600 square feet to 2500 square feet, offering all housing sizes to potential residents. Neighborhood meeting was held, and seven residents of Laurel Park attended:

The main concerns were:

1. Standard Pacific told residents they would build a pool/amenity center in Laurel Park II for both subdivisions. Lennar representatives made it clear that they are not affiliated with Standard Pacific and had no plans to build a pool or community center at the present time.
2. Neighbors questioned housing sizes, Lennar representatives responded that they had models ranging from 1,614 to 2,529 square feet.
3. Neighborhood residents asked about build out time, the response was 3-years.



Planning Board held a public hearing, September 13, 2010, and unanimously recommended approval of the amendment to the Planned Unit Development. Staff recommends approval. Commissioner Jensen expressed concern with folks expecting this level of housing and Council agreeing to let the developer have smaller home sizes. Attorney Fordham advised the developer could have restrictive covenants for minimum house size for that subdivision and the PUD has a minimum house size; having minimum house size as part of the regulation is somewhat suspect and not per-say illegal, but it's somewhat suspect to have it in there in the first place. He was not saying it's unlawful, but potentially could be; he doesn't think the Town has exposure to someone complaining about removing it from the regulation. Mayor Weatherly confirmed no houses have been sold, however under construction. Council Member Schulze recalled illustrations of the houses and had taken issue with that. Vega responded they had not; Standard Pacific submitted an amenity center. Council Member Gossage recalled talking about the neighborhood, with Mayor Weatherly recalling a grading issue. Vega stated the conversation with grading was for infrastructure and not the lots. Council Member Gossage asked why 2100 square feet was introduced. Vega responded staff had asked the same, and could not find an answer; the PUD does allow for townhomes and multi-family; subdivision plan was approved for single-family homes.

Mayor Weatherly opened the Public Hearing at 8:50 p.m.

Those speaking in favor: Mitch Huff, Lerner Carolinas LLC, current owner, stated the property had been under several ownerships; property was foreclosed and they had purchased the property from SunTrust. Laurel Parkside is in Cary, and Laurel Park here; one home, the model is framed; homes have been sold, and no representations of anything different to any homeowners; anything built but the price list they received shows houses across the property 1600 square feet to 2500 square feet. Asked to remove the requirement: explained 1) the property was zoned in two different pieces; 151 total lots; 77 lots "o" square footage requirement – the bottom part of the property; half of the property has no square footage requirement, half of the property does; doesn't make a lot of sense to sell without being able to spread the product line across the whole thing; and 2) with the 2100 square feet issue, when they first put the property under contract with SunTrust, they had a joint meeting to discover all they could about this before entering into the agreement to close on the property; the first question was what was the 2100 square feet and no one could remember a reason it was offered, when it was offered much less why, again, doesn't make sense to have it; as it was offered on those 74 lots, whoever offered it, also ignored the physical aspects of the neighborhood, of the 74 lots with 2100 square foot minimum, 18 of those lots back to Laura Duncan and 27 of those lots back up to the railroad tracts; 45 of the 74 lots have physical characteristics that doesn't scream out loud for larger more expensive homes, and why they are offering their product range, recognizing it's a great location and love the deal, but really wasn't suited for homes of a certain magnitude and expense and do not know why it was in there, and 3) it does not meet economy; all know what has happened in the building business and in the national economy and are trying to get jobs started; everyone has been driving past this for the last couple of years, and its growing weeds; good news, the plan they have put into effect with their product line and their pricing is working; they are half way through building a model home, and have 14 presets; people are buying what they are selling and recognize the opportunity, quality of the location, but couldn't be happier; their proposal - they are trying to make it what it should be and more importantly what the home-buying market is telling them it should be right now.

No one spoke in opposition. Mayor Weatherly closed the public hearing at 8:55 p.m. and referred the matter to Council.

**Action:** Council Member Jones made the motion to approve Rezone #10CZ07 as requested. Council Member Jensen made the second to the motion. Motion carried unanimously.



Presenter: Brendie Vega, Principal Planner

## **Public Hearing #04**

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C9056E20-E591-2B79-479B73992BE0F845.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C9056E20-E591-2B79-479B73992BE0F845.pdf)

**Review:** Planning Board met September 13, 2010 and unanimously recommended approval; [http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf)  
Staff recommends approval.

### **Rezone #10CZ10: Broadstone Station PUD Amendment**

Public hearing and possible motion regarding **Rezone Case #10CZ10 Broadstone Station PUD**

**Amendment;** Kite Realty Peakway at 55, LLC, applicant, seeking to rezone from Planned Unit Development Conditional Zoning district to Planned Unit Development Conditional Zoning district, property located at South Hughes Street and Apex Peakway, west of NC55 and north of US1, containing 57.45 acres.

Staff presented the Planning report which is attached and incorporated as a part of the minutes; noted location and Apex Peakway connection to Tingen Road; Wal-Mart location, and Cambridge Village under way. Applicant seeks to rezone four parcels originally part of the Peakway @55 PUD in order to make changes to the existing PUD; stated the original intent; reminding Trim-pro came in with a multi-family product. Staff presented:

The applicant is seeking to rezone portions of the original Peakway @ 55 PUD in order to move uses from set locations as originally proposed. When the applicant first presented the Peakway @ 55 PUD; the intent was to have all of the commercial uses, a hotel, and outparcels on the south and the multi-family, residential and office uses to the north. The applicant believes that market conditions have made the residential uses more feasible for use by Townhomes rather than multi-family residential. The movement of land uses from one area to another will support pedestrian-oriented shopping from the residents in the mixed-use development.

With the construction of Wal-Mart complete, and the senior housing underway – those parcels are set land uses. The 3 of 4 of the outparcels near the Wal-Mart are proposed to stay as commercial outparcels. The retail intended to go adjacent to the Wal-Mart has been moved to the parcel at the corner of the Peakway and South Hughes where the multi-family was proposed. The residential uses once proposed as multi-family apartments on the corner of the Peakway and South Hughes have been relocated to the site originally slated for the Broadstone Retail Shops. The hotel has moved from the same location as the shops to an area between the proposed retail and office along South Hughes. Please see attachment for locations.

The TIA has not been revised. Applicant is planning a townhome product of 170 units, where the original piece was approved for 300 multi-family units and in talking with applicant they are looking at the townhomes and allows for a great mix of uses, giving opportunity, more for walking to retail, also allows for the senior facility to walk; restrictions/conditions proposed by the applicant:

- Residential Internal Setbacks (Rear to Rear): 40 feet
- The height of the foundation has been reduced to 12" with a turndown slab or crawlspace on Townhomes/ Condominium/ Multi-Family/ Congregate Living Facility

30 feet was suggested by staff, they reminded the utilities were back there, and opted to go 40 feet. It would not be slab-on-grade but higher than normal requirement in residential single-family subdivisions.

The applicant held a neighborhood meeting on August 19, 2010. There were three people in attendance. Concerns were raised over construction traffic, traffic on Hughes St., people turning around in Ms. Hack's driveway, and the need to change the land uses.

The developer made no changes to the PUD and noted that these issues would come up at Site Plan to be dealt with at that time.

Mrs. Hack attended the Planning Board meeting, however was not present; she wants to work to find a way to stop folks from turning into her driveway. Plan is consistent with 2025 Land Use Plan and the UDO. Planning Board met September 13, 2010 and held a public hearing (folks spoke mainly about adjacent land uses) and unanimously recommended approval of the PUD Amendment; staff recommends approval of the proposed rezone of the Broadstone Station PUD.



Council Member Schulze asked, if there were concerns with the Wal-Mart location. Vega responded no, noting the pond location, and requirement of a buffer; folk's that would want to live here would like the convenience of walking, eating and shopping; a walkable area and the visibility of commercial will get people onto the Peakway vs. Hughes Street and hopefully eliminate some of the issues there.

Mayor Weatherly opened the public hearing at 9:05 p.m.

Speaking in favor: Craig Duerr, WSP Sales, addressed: 1) flexibility of internal setbacks: took retail down the road with improvements, some infrastructure is in the ground, for storm water, water/sewer infrastructure that puts barriers on their product type if they were to come forward with the site plan, no site plan has been submitted, but gives more flexibility when trying to fit their product type when you have stormwater in the ground, 40 feet vs. 50 feet may allow a different configuration and would get more detail design, and 2) it's an entirely market driven decision to switch residential and retail; he noted the significant change in topography; Wal-mart, stream buffers, US1, creating a spot of seclusion that perhaps was not recognized five years ago in the original rezone, 4) getting traffic more concentrated onto the Peakway, visibility of the commercial properties is a win-win for those land uses, 5) architectural standards, slab step-up and wrap with brick façade, still giving the 24 inch appearance of brick, and 6) with access, there will be less traffic generations and they would work with staff on access points with site plan,

David George, Kite Realty, addressed the original rezone; with the economic environment, noted they had been successful; WalMart is open, Cambridge is a good addition to the community; lessens traffic - different from what was originally proposed and beneficial; put in utilities and everything to get the site ready for marketing - noted in getting it ready for the grading, would show the residential and commercial and actually looked at opposite sides; residential liked being lower, to be off the Peakway, and for almost the same reasons, the commercial people wanted to be on the other side as it was a bit higher maybe less comfort to get onto the Peakway, and reason for the change; hopes to be back quickly with a site plan; have worked with commercial folks that if they did make the change, it would be more received on the market place; as the economy heals, hopes to bring that forward; they wanted to assure in making the swap, essentially the same type size, and will be able to have the same commercial usage, so the net change would be negligible, same tax base. Mr. King there wanted to assure this change would help him and not hurt, and would clarify that. Their request is to keep the zoning as is, it could be multi-family or townhomes and they are getting from the people they are working with townhomes; they had told them to go if the rezone was successful, not saying townhomes but would clarify that.

No one spoke in opposition. Mayor Weatherly closed the public hearing at 9:10 p.m. and referred the matter to Council.

**Action: Action:** Council Member Jensen made the motion to approve Rezone #10CZ10 as requested. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

**Mayor Weatherly called for a recess of the Regular Meeting at 9:10 p.m. Council reconvened in Regular Session at 9:15 p.m.**

Presenter: June Cowles, Senior Planner

### **Public Hearing #05**

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C906280A-D8A8-DA0D-29D2ADEEDC7B265E.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C906280A-D8A8-DA0D-29D2ADEEDC7B265E.pdf)

**Review:** Planning Board met September 13, 2010 and unanimously recommended approval; [http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf); Staff recommends approval with conditions noted by applicant.

### **Rezone #10CZ11: Calvary Chapel Cary**

Public hearing and possible motion regarding **Rezone Case #10CZ11 Calvary Chapel Cary**, owner, seeking to rezone from Residential Agricultural district to Office & Institutional Conditional Zoning district, property located at 2633 Schieffelin Road, containing 1.19 acres.



Council Member Gossage stated the company that is doing the work for this project, contracts with his company, and requested the Council recuse him from participation and voting during this item.

**Action:** Council Member Jensen made the motion to recuse Council Member Gossage. Council Member Olive made the second to the motion. Motion carried unanimously.

Staff presented the Planning report which is incorporated as a part of the minutes; shared aerial photos; stated the applicant's proposal: The applicant is requesting a rezone of 1.19 acres from Residential Agricultural (RA) to Office and Institutional Conditional Zoning (O&I-CZ). The site is currently owned by the Calvary Chapel Church that is located on the corner of Center Street and Investment Boulevard. Applicant requests to use the existing residential house as an office. The Land Use Plan classification is Industrial and Office and Institutional classification.

The applicant has proposed to permit all uses permitted in the Office and Institutional zoning except the following uses: same as Calvary Chapel Church;

1. Hospitals
2. Funeral homes
3. Dry cleaners
4. Veterinary hospitals or clinics

The proposed uses are the same uses for the Calvary Church owned parcels on Center Street. Staff recommends approval with the conditions noted by the applicant. Planning Board met September 13, 2010 and unanimously recommended approval with conditions for Rezone #10CZ11.

Mayor Weatherly opened the public hearing at 9:20 p.m.

Speaking in favor: Steve Percy stated he hopes to use the house; has been vacant for some time; has renovated it.

No one spoke in opposition. Mayor Weatherly closed the Public Hearing at 9:21 p.m.

**Action:** Council Member Schulze made the motion to approve Rezone #10CZ11. Council Member Jones made the second to the motion. Motion carried unanimously, with Council Member Gossage having been recused.

End of Public Hearing # 05

Presenter: Brendie Vega, Principal Planner

### **Public Hearing #06 (QUASI-JUDICIAL)**

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C8FADAF9-A1A6-7AB6-24610EE72D2BFA97.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C8FADAF9-A1A6-7AB6-24610EE72D2BFA97.pdf)

**Review:**

Planning Board met September 13, 2010 and unanimously recommended approval; [http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf); staff recommends approval.

### **Major Site Plan: The Green @ Scotts Mill Section 8**

*Quasi-judicial Public Hearing: All persons addressing this item was administered an oath by the Town Clerk prior to giving testimony relative to the major site plan.*

Public Hearing and possible motion regarding Major Site Plan for The Green @ Scotts Mill Section 8 – Scotts Woods, LLC, owner; proposes 33 residential units for property located at Providence Green Lane and Village Commons Drive, containing 1.60 acres.



Brendie Vega, Principal Planner gave her credentials; presented the staff report which is incorporated as a part of the minutes. She stated this was a quasi-judicial public hearing for Major Site Plan for The Green @ Scotts Mill Section 8 (former lot 12 site plan withdrawn); noted other undeveloped property Lot 9. This lot is 1.6 acres zoned TND Design Conditional Use; adjacent zoning and land uses: townhomes and single family homes; the Green and Townside Drive, the pool location and commercial.

The applicant is proposing two mixed use buildings facing the green along Village Commons Avenue. The mixed-use buildings will each have 6,888 sq ft of retail on the first floor for a total of 13,776 square feet of retail. Each building will also have 4 condominiums on the second floor and 4 condominiums on the third floor, for a combined total of 16 condominiums.

There will be 17 Townhomes behind the mixed-use buildings. The Townhomes are similar to the existing townhomes to the north of the site. The pedestrian sidewalk will continue through the site giving a route from the Green that will connect to the Greenway.

Parking is provided under the mixed-use building, as well as within the development. A total of 65 off street spaces are provided per the plan. There is also an existing 30 parking spaces along Village Commons Avenue and Townside Drive.

16 total condominiums are in Buildings A and B; parking spaces are below grade. Explained the multi-use path is not currently up to standard that connects to the greenway. Intent is to mirror the existing townhomes, with a multi-use path, a proposed public access easement from the Green down the sidewalk and back to the greenway. Proposal meets the parking requirements – onsite and the additional parking adjacent to the public street. Site is currently vacant; RCA – Green at Scott’s Mill TND-CU was approved prior to the adoption of the UDO, therefore no RCA is required. Scotts Mill participated in the purchase of Kelly Road Park property to cover the development’s Parks and Recreation requirements; no fees or land dedication are required for this project. Applicant is showing landscape at the foundation of the building, in the landscape island, and along the green areas and meets the BUA. No new lighting is proposed for the site; current street lights are available along the perimeter of the property; if anything would probably see wall packs and may not need them if street lights are enough. Stormwater management was part of the original Green at Scott’s Mill Plan; there are no new requirements that need to be met. Applicant will tie into existing public utilities and has proposed to use Apex Electric. Neighborhood meeting was held July 17, 2010 with 17 residents in attendance. Main concerns were: adequate parking, style of townhomes, types of retail and skateboard use of the switchback sidewalk. Transportation: the parcel is set up on a grid and will have no new roads or road improvements required other than final lift as part of the development. Site plan meets the 2025 Land Use Plan for the area. Applicant met the UDO requirements in place at the time the zoning was approved. Planning Board held a quasi-judicial public hearing on September 13, 2010 and unanimously recommended approval. Staff recommends approval. Concerns were raised about visibility site distance triangle in the area; sure they will come up again.

Council Member Schulze question:

- 1) parking pads at the condos - will fit two vehicles; Vega noted asphalt parking pads on the site plan.
- 2) greenway path not up to standards (8 feet), assuming new one meets standards (10 feet)

Council Member Gossage question:

- 1) how elevations compare with townhomes across street- style will match close, height and elevations

Council Member Jensen question:

- 1) what are the widths of the townhomes – 20 feet



Mayor Weatherly opened the public hearing at 9:30 p.m.

Having been sworn the following spoke: Donna Blumberg with Austin Winters Cary, representing Scotts Woods, stated the section before them was for major site plan approval; noted recommendation was unanimous by the Planning staff and Planning Board. Pointed out the site plan before them was very much consistent with the original plan for this section of The Green. She was here to answer questions; noted Stewart Jones was Project Engineer and Tom McKay was Project Manager.

Stewart Jones, Jones and Cnossen Engineering, PLLC, 221 N. Salem Street, gave his credentials. Commented The Green @ Scotts Mill Section 8 was similar to the original intended layout for Section 8; slight bit different, in that they did not anticipate the switchback in the middle, but is an effort to meet the handicap code. The two mixed use buildings will have an elevator, and handicap people will have access to the back of the building; they can come underneath the building and take the elevator to the first floor and be able to access the retail spaces, also to get to the 2<sup>nd</sup> and 3<sup>rd</sup> floors where the condos are. The switchback was not an idea for skateboarding, but was to meet the handicap code and created identity for this space. Townhome elevations are almost exact as the elevation of the section across the street; they have a new builder, and have charged them with making it look as much like those that's out there as they can; they want to try and mirror those across the street. They want to continue the multi-use path; the proposed path is 9 feet wide, current code requires 10 feet, but the existing path across the street is 9 feet and would like to stay with the existing path width. The switchback is 5 feet wide and is the minimum sidewalk width, but if they tried to do a 9 feet walk on the switchback, it would be paving an entire hillside; this gave them an opportunity to landscape that area, attractive and something those property owners would be proud of.

Council Member Jensen question:

1) clarified condo's were townhomes, could they be flexible enough to use for offices - Tom McKay will respond.

Council Member Schulze question:

1) he was hearing the multi-use path was not up to standard - Stuart Jones responded it doesn't have to be - the greenway path was voluntary. They agreed to do it, with the original intent of the greenway at Scotts Mill was to get people from the public greenway path that the Town has on the creek up to the Town Square.

Tom McKay, stated they are happy to bring this project, and have been trying to bring the Green at Scott's Mill to closure for some time; first setback hit them hard, events of 911 postponed commercial, and about the time they recovered from that, they hit the beginning of the 2007 recession. Reported Scotts Woods LLC is a strong partnership, has held together, with doubts of the future, their group has stayed together, although there has been some internal changes, it's still there and still strong, and hasn't had to change ownership revisions. He's happy for that and the neighborhood as well. This portion was designed to complete the connection of the Town Square feeling down to the greenway, which is a greenway that runs from Kelly Road Park to the Jaycee Park, behind the post office area. He noted it was a midway point to walk up to the Town Square urban type environment and for that reason very important; although the elevations are intended very much to reflect what is there already and blend, internally it might be a bit different for the present, as market has kicked up just a bit over what is there now.

In regard to Council Member Jensen's question: clarified condo's were townhomes, could they be flexible enough to use for offices - he thinks the zoning permits that, current plans are to build out like a residential unit, with bath and kitchen facilities; he supposed if someone chose to make it something else, it's possible to do that; plans are to build those out as residential units on the second and third floors. He stated that was learning from the lesson of the Townside Center that currently exists there; original plan was for commercial first floor, residential on second and third. During the time it was done, they had real estate advice that it



really should be office there; personally he disagreed, but at the time it seemed pressure was moving that way. They found out if they had made it residential, they would have sold it out and the building would be full. They have had a strong demand to convert some of the office space to residential. They have a penthouse suite on the third floor that is occupied by an American Company, Chicago owned; on the second floor they built it out as a multi-tenant office space, and he has his office there now, and has several inquiries as to how to use that as office space, so that may work out well in the end. He reported the first floor did well as commercial standpoint and had no trouble getting users, but the economy and other things knocked a lot of things that's going on in the tail. They continue to work in the Hoppers House to help them in stay there; the dentist is doing great, but the photography studio business has gone away and the coffee shop had internal problems. They are working to replace all of that. He thinks part of the problem is they don't have enough of the synergy that these other commercial units will bring, to bring it to fruition. That would only leave them with the lager parcel 12 and reviewing what that might be, and at the same time, the unused parcel. The portion that's undeveloped that is not under review, the proposal would be to continue the same townhomes product. Noted the plan before them tonight finishes the portion shown, and trying to retool this which was initially thought of as the independent living facility that was withdrawn; showed the parcel that would be 8-10 more townhomes, depending on how it goes. He noted this would wrap this up completely, and bring closure to the project that set a lot of standards in a lot of ways. He's surprised how popular it is, and that he hears it referred to at times where in other parts of the state/country has seen it and knows about it, and thinks this is a compliment to us all. He thinks this Town was instrumental in pushing the TND aspect of planning early on and this project burst out from that, due to Stuart Jones being in touch with what was going on with planning, and when that became a possibility, he brought it to their attention; it helped get the church here, because he doesn't think the church would have located here had they not had this kind of facility to work with them. It's not been as quick as they wanted to bring it, but are happy to do it, and are glad to do it consistently with what the original plans were, and respectfully requests approval.

Chris Earnhardt, 407 Village Loop Drive, is the treasurer of the HOA, which McKay had said this new development will have to be a part of; the only concerns he has with this, with the Green, they have a series of alleyways that runs behind; some of the houses having parking in the rear to alleviate parking on the street; with that their garbage cans and receptacles and recycling, the garbage trucks pick them up from the rear. When first built, he didn't know if there was a standard for the alleyways, they were considered private drives, so lots of these alleyways today would be considered substandard in the fact that though the Green is 10 years old, some may say it's an established neighborhood, roads 10 years old are not that old. If you check out the alleyways there, some are in good shape and don't allow garbage trucks to go down them, and some alleyways are crumbling and falling apart; noted alleyways running from Townside and loop around; some houses face the alleyway and not facing the street. He noted these alleyways were built to substandard with ruts from where the garbage trucks are in the concrete. They have gotten paving estimates since the HOA is responsible for maintaining the alleyways to bring them up to standard and allow for commercial traffic, garbage trucks, recycling trucks, tearing them down and rebuilding them, looking at over \$300,000. With this particular development, you have some alleyways, essentially what this will be, a private road; they join HOA which they would want them to be a member, the HOA takes on the ownership and maintenance of these roads and if they are built to the same type standards. He noted some alleys with curved drains where some have drains in the middle. Over time everyone knows roads settle, and if the drain is in the middle of the road, the water comes down the middle; it's like putting a bucket there, and not collecting all the water; water runs off the side and causes drainage issues. The other alleyways are smart and water runs to the edge of the road, collects the water and discharges it, and doesn't tear up the alleyways. He assumes what McKay has told him, they will do the same here, the curb. His question: what about the actual alleyways, will they be built to a standard the city has set forth, to where they will not be dealing with this again, because if they are, what they are having to look at now in the HOA is allowing garbage and recycling trucks to not go down those alleys, they can't afford \$300,000 every few years; if that's the case, they have to tell these homeowners they got to take their trashcans and receptacles to the street; he noted taking their trash to the street creates a jam on the street. Some homeowners park along the street, allowed to park on the street because the streets are owned by the city, and not designated as a "no parking zone". If there's parking occurring on both sides of the street, you have already narrowed the street, and if they make homeowners take their receptacles to the street, because of the alleyways, now, you've got a bigger cluster. Garbage trucks, school buses, fire trucks, emergency vehicles want be able to get through, you can forget that, it's not going to happen.



He's for the development, but wants it done responsibly, and doesn't know if the city can actually set forth the standards for the way those alleyways get built, to where they will not be facing these issues. He would also like to see, and doesn't know if it can be done during this meeting or not, between Providence Green and Townside, would like to see it as a "no parking zone". Here again with cars allowed to park on both sides of the street, emergency vehicles can't get through. He did talk with McKay, the developer, and wants to work with them to see that gets done. He thinks that's the Town's decision to make sure that gets done. When they are looking at accepting this, he wants them to consider making sure these alleyways get built to a good standard and really take into consideration the parking that it's going to be occurring on that road.

Mayor Weatherly asked those that wanted to speak in opposition to come forward:

Bob Sleight, 403 Village Loop Drive stated he was not an original member of this community; has lived in his house for six years; for 18 years was an appraiser outside of Washington DC and member of the American Society of Appraisers, and achieved status as an Accredited Senior Appraiser. This type community doesn't work, trying to mix business and homes. Columbia, Maryland tried to get this idea to work for 40 years, it worked for a couple of months then businesses went out. You are looking at an idea that is already flawed, they are trying to shove it down their throats, saying it was grandfathered in and you have no choice, you have to live with it. This is 12 years old; an idea that's flawed and you are going to force it on them; it makes absolutely no sense.

Getting into safety, the one concern that really bothers him more than any of the others. Stated 911 - thousands of lives were lost. Congress for once did what they were suppose to do, protected the safety and integrity of the US citizens, they forever changed the way we are to board planes and the way air travel is done. In doing so, how many planes have not crashed, how many lives have been saved. In this situation, the Town of Apex is contributing to a potential death of a child and the loss of one child is too many. Noted: 20 spaces owned by the Town and anywhere you go left on Village Loop to Townside, whether you make a left from Village Commons onto Townside, whether you make it from Oak Pine onto Townside, it's an incredibly nasty left hand turn; one is a blind turn. There is traffic coming out of there and there's a school bus stop at Village Loop, and Townside Road, where children board buses. In the morning this is like Brooklyn New York and Manhattan Island. The amount of traffic going up and down Townside is absolutely incredible. If you approve this situation, this proposal, you are going to be adding 96 cars potentially to that one square block. Traffic will be absolutely astronomical; you are turning a nice community in Apex, NC into a killing zone of children; noted the location of the Catholic Church and the main place where the kids on the west side cross to go to the Church School on the east side is at Oak Pond. By doing any construction here, all vehicles have to go in front of the school to get to the lot, and will not come in the other way because of speed bumps previously mentioned. All know the most hazardous vehicle on the road today is a dump truck; can pick those apart - he's not really worried about that because he can call state police and have them sit on Apex Barbecue and wait for them before they get into the neighborhood. All it takes is one mishap and a child is gone. He was raised in a family where his older brother died of leukemia, it forever changed their family; their whole dynamics. By killing a child, changes in that family instantaneously become different. It's something he doesn't wish on anybody, not any way, shape, form or manner; it should never happen. Your job as Town Council here is to protect the safety of the citizens of their neighborhood, and if they are not willing to do that, why are you here. You are adding 96 cars to a bad traffic situation already, and takes no imagination to see that that police officer over there will be responding to a situation where they have a dead child and will have to go knocking on the door, Smith, we regret to tell you your son was killed by a dump truck coming down the road. He asked: do you want to do that? He didn't know if they had kids or not, sure is something he doesn't want to hear. He's not opposed to this parcel being developed, he's not opposed to Scotts Woods LLC figuring out a way to finally come to bring this development to a close, but this is not the way to do it. He noted Chris brought up a great point, there's no way an ambulance is getting through there. He purposely parks his truck on the street; he heard others talking about drag strips. He saw an 18 wheeler come down Village Loop Drive and by the time it was done, he had to have been doing 45 mph; he's all for doing anything to pinch off the street, but you can't pinch off the street if you are going to prevent safety vehicles from getting to the people. There are serious issues here, you cannot pass this tonight. There are things you can do to improve the situation, by putting proposals in place saying no construction vehicle is allowed to enter the neighborhood until 9:00 a.m. in the morning and all construction vehicles must be stopped and parked by 2:30 in the afternoon; that way the kids are on their buses on to school before any construction starts, and are parked so the kids get home



safely in the afternoon. He lives in a wonderful neighborhood, a great neighborhood for six years, and the kids are part of what makes it; the people are part of what makes it. By putting this potential hazard in place, you are killing the neighborhood. Again, all you need to do is go do research, look up Columbia, Maryland and see this idea just does not work. There are things that need to be done, does he have the answers, some yes and some no. Your job is to protect the safety of the citizens of Apex and if you are not going to do that, you may all need to think about putting in your resignations.

Mayor Weatherly asked if anyone else would like to speak.

Tom McKay stated he had not given his qualifications, asking the Town Attorney if it were in order. Attorney Fordham responded it would be in order. McKay continued, giving his credentials. 35 years of development started with large scale project planning, working in Apex since 1989 first project Perry Farms with Carl Helton, and sale of the land led to the Library. He's work in various states doing this type thing, and seen successful projects like this; they are not all failures, some do work. He clarified with the alleyways: Stuart Jones could speak to the more technical terms, showed aerial photos with a rolled curb and different paving standard, vs. the other section. They will be doing this or something similar not exactly, than some of the earlier alleyways; they did use some inverted crowns on the initial alleyways, and did it to a slightly different standard, but did learn and did do extra stuff after they had obligated to improve some of those alleyways. He looks forward to working with the Town and the HOA board members about traffic, and some ways they can improve some of the traffic there. Although, the streets can get clogged, that's the beauty of what the grid-street pattern is about, if that one street is clogged along there, there are plenty of other ways for emergency vehicles to get there, and is part of why you come up with a little bit of different standards a grid pattern in this neighborhood.

Council Member Jensen question:

- 1) would he be willing to work with the Town's basic standards as a minimum - Stuart Jones responded: the cross sections on the plan is the same stone and asphalt as residential streets; they found the biggest problem with alleys, inverting the crown and getting drainage down the middle; they learned, they put roll curb on the edges, put in catch basins, and will be doing this here; all alleys will be equal to residential streets.
- 2) in terms of construction, anything to mitigate - could the hire someone to be there during this time could he speak to that - Manager Radford responded: Saint Mary Magdalene does not run school buses; it's not private schools, its public schools; there are 380 some bus stops in the community. There's no way the Town can take on the responsibility of having someone in place where there might be construction traffic.

Tom McKay comments: 1) when constructing Townside Center building, they did for a while close off one side of the street to keep construction only type traffic, a bit of inconvenience, but did do some protecting of the residences, 2) observing the traffic pattern, traffic, schools and pickup, he's seeing things happening in the neighborhood that was not the way it was designed to work, operational decisions made that are not the way it was designed, and pledged cooperation to work with the HOA and Town to try and identify how they can fix some of those things. He thinks there are a number of ways to modify some stuff happening there in an operational fashion that is not consistent with initial thoughts on the matter. He went out yesterday during pick up time at Saint Mary Magdalene and looked at where cars were parking where they were not intended to park for pickup and children are being picked up in places that were not designed for drop off and pick up spots for children. He thinks if they pay attention to that; there have been some efforts by the Town and rightfully so to try and mitigate some of the activity at that intersection, Townside and Oak Pine; that intersection takes way more than it should just with operational decisions, and nothing to do with good highway design. He has had comments with staff about how they can get together and try to mitigate that and make it work; he thinks they can do that, it will take all of them. Parking spaces, he would do something a bit different, he thinks they can get through most of the challenges and can certainly regulate work house.



Council Member Schulze question:

1) he can't see blind left turns there, there's no buildings there, asking are all those streets built to standard as far as visibility and lighting and sight - there's a park there and a blank field and he's not sure how it could be a blind left turn - Russell Dalton, Transportation Engineer, gave his credentials and responded:

1) Roads are designed to the Town's residential standards; some of what is being referred to is probably the vertical grades, that come in close to those intersections, where it might be a little uncomfortable at times, if there are heavier amounts of traffic. One of the problems they have had in this neighborhood, that he's worked with police on is limiting some of the parking and trying to change some of the patterns; you are trying to do lots of things and it's an area where people will probably move into the area thinking they are moving into a single-family typical subdivision, and then they find they have traffic, and there are lots of complaints and he understands the issues behind them. People have to understand that when you move into these kinds of neighborhoods with these kinds of uses, you are going to have to expect a little more traffic than the typical suburban neighborhood, and that's some of what's going on.

2) As far as site distance concerns, he's looked at those with the police and continue to address them as they come up. He's not aware of any high incidences of crashes at these intersections; one thing they look for in sight distance. Another thing on neighborhood streets particularly is that people see stop signs, but don't like to stop; they like to slow and go and when they don't have a complete clear line of sight, from 20 or 30 feet back from the intersection, and they actually have to come to a full stop and look both ways, they start to feel like that's a sight distance problem, and it's really not; it's a stop controlled intersection and are suppose to take caution when traveling through those. If there are specific ones, they can email or call and he can look at those locations again and address those.

Council Member Jensen questioned:

1) Parking requirements from the corners - Russell Dalton, Transportation Engineer, responded: parking is one of those things they do allow within the site triangles; they try and push that back as far as possible; that can be an issue at some time, some cars are short and some cars are tall; they can look at that issue as well. He understands the concerns, however, he's driven those streets, and he knows he comes from the mountains, with probably more sight distance problems than there are around here, but he doesn't feel a real sense that any of these intersections are completely dangerous, no more so than a lot of other intersections in Town; they may not be wide open visibility as some people might want to see.

Mayor Weatherly closed the public hearing at 10:10 p.m. and referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the Major Site Plan for The Green @ Scotts Mill Section 8. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 06

Presenter: Reed Huegerich, Transportation Planner

**Public Hearing #07** (Heard prior to PUBLIC HEARING # 02 continued to 10/05/2010)

**Public Notice:** [http://www.apexnc.org/docs/public\\_notice/notice/1-2010-09-21-C8FDECCD-DB3D-CF5D-4DD04D7A098BC5CF.pdf](http://www.apexnc.org/docs/public_notice/notice/1-2010-09-21-C8FDECCD-DB3D-CF5D-4DD04D7A098BC5CF.pdf)

**Review:** Planning Board met September 13, 2010; Planning Board's recommendations will be presented at the Council meeting.  
[http://www.apexnc.org/docs/plan/pb\\_agenda.pdf](http://www.apexnc.org/docs/plan/pb_agenda.pdf)

**Apex Transportation Plan: JVI Development**

Public Hearing regarding amendments to the Apex Transportation Plan; proposed by JVI Development, Inc.

PH # 07 proposed to be continued to October 19, 2010  
End of Public Hearings



## OLD BUSINESS

Presenter: Council Member Bill Jensen

### **Old Business #01**

#### **Resolution: Enable Renewable Energy Systems**

Council Member Jensen offered a revised Resolution to Enable Renewable Energy Systems in the Town of Apex, pointing out the revisions, noting he was trying to prepare for the future, when action now will become very viable, and made the motion to adopt the Resolution:

**Action:** Motion by Council Member Jensen to adopt the revised Resolution to Enable Renewable Energy Systems in the Town of Apex. There was no second to the motion. Mayor Weatherly noted the motion died for a lack of a second. Council Member Jensen noted a company in Holly Springs that has installed rooftop solar that's enough to supply power for sixty homes, and noted the ribbon cutting; he continued there's nothing like this in Apex and he's going to the dedication and congratulated Mayor Sears, noting Holly Springs ahead in this.

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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.***

Gary Simms, Wake County Board of Elections, on behalf of the Board and Director Cheri Poucher, stated the State Board of Elections on August 24, 2010 denied the objections of the Town of Apex for use of the Summit, and Pinnacle Rooms for early voting. He had copies of the order with him. A staff member spoke with the Parks and Recreation Director and have worked out today, what they hope will be good use of that space, Apex Community Center, Pinnacle and Zenith Rooms. In addition to what was submitted, the voting dates were revised to start on October 22, 2010 and working closer to that date making it less inconvenient for anybody at the community center. On behalf of the Board, himself, and staff, they have not been able to work with the Apex staff, and noted everything he's gotten from staff was their willingness to work with them, and very nice people. Noted tomorrow is officially one month out from early voting, and important they will be training early voting precinct workers starting next week for Apex and do need to move forward. He hopes if there are any obstacles they have, they are in a position to move past those.

Attorney Fordham asked Simms, if his proposal was that early voting would start on October 22, 2010? Sims responded this is the date early voting will start and needs to get in on the Tuesday prior the 19<sup>th</sup>, if not Tuesday, Wednesday. They have to assure the IT infrastructure and repair of any problems they may have.

Attorney Fordham asked if they were willing to set up Apex last? Sims responded they will have two teams working; it's not just Apex, but all municipalities they are working with, two teams and working with IT also. Simms confirmed the 19<sup>th</sup> of October to accommodate the building.

End of Public Forum



## NEW BUSINESS

**Mayor Weatherly noted New Business #01 and #02 sidewalk projects could be presented together**

Presenter: Russ Dalton, Transportation Engineer

### **New Business #01**

#### **Municipal Agreement: Center Street Sidewalk**

Possible motion to approve a Municipal Agreement between Town and NCDOT for TIP project EL-5100 DC, Center Street Sidewalk; this would authorize up to \$296,000 in federal funds through the STP-DA program toward the sidewalk from Parkfield Drive to North Salem Street. Town is obligated to match 20% of project costs estimated to be \$74,000.

Presenter: Russ Dalton, Transportation Engineer

### **New Business #02**

#### **Municipal Agreement: North Salem Street Sidewalk**

Possible motion to approve a Municipal Agreement between Town and NCDOT for TIP project EL-5100 DB, North Salem Street Sidewalks; this would authorize up to \$74,400 in federal funds through the STP-DA program toward the strollway and sidewalk from Town Campus to Center Street. Town is obligated to match 20% of project costs estimated to be \$18,600.

Russ Dalton, Transportation Engineer, presented both sidewalk project agreements: Center Street (connects sidewalk gaps between Seagroves Farm and downtown Apex) noting the cost and match, and North Salem Street (connects strollway to Town Campus and Thompson Street at-grade crossing back of Duncan Commons and to the new signal at Center Street) noting the cost and match. Noted this was part of the STP-DA Program, similar to stimulus with less red tape; a newer way NCDOT is trying to get funding down to the local level. Apex met a tighter time frame for eligibility. Noted: Apex Council had expressed concern with some of the standard NCDOT language in the Agreements. Attorney Fordham stated they couldn't work too much with NCDOT on this language, however, wanted to make Council aware of it, and it was outlined on the cover sheets.

Clarity regarding the strollway was given by Reed Huegerich, Transportation Planner, and Dalton continued they typically get sidewalk easements and some compensation involved and was included in the estimates.

Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jones made the motion to approve Municipal Agreements between the Town of Apex and NCDOT for TIP Projects: EL-5100 DC, Center Street Sidewalks and EL-5100 DB, North Salem Street Sidewalks. Council Member Schulze made the second to the motion.

A person from the audience asked which side the sidewalk would be placed in the Center Street project. Council allowed the person to speak. He noted setbacks of his aunt's house and a utility pole and fire hydrant. Other side is more setback. Dalton responded there was an environmental process that would follow that would minimize impacts and he doesn't know yet; however would seek public input and would also require easements.

Motion carried unanimously.

End of New Business # 01 and # 02



Presenter: Kent Jackson, Director of Construction Management

### **New Business #03**

#### **Amendment to Town Code of Ordinances: Alternate Method of Paying Capacity Fees**

Discussion and possible motion to amend Article III, Section 12-48 (f), "Alternate method of paying capacity fees; guaranteed capacity", of the Apex Code of Ordinances.

Jackson stated the Town Code has a provision regarding prepaid capacity fees and to request a refund. Currently the Ordinance gives that authority to the Town Manager to review refund requests and make a final determination.

Recent request was received from the original owner of the Holland Farm project for \$275,000. Stated the Manager has denied the request due to the hardship it would place on the Town's Sewer Fund. Advised, they have discussed the potential in the development community for refunds to be requested. Noted due to the economy and slow down in building, there's a lot of prepaid capacity fees that have not been used, so potential is there for refunds to be requested. Stated this was the reason they thought it was timely to consider returning the authority to the Council, because of the potential for the magnitude of financial impacts if we get a lot of these requests in a short period of time.

Manager Radford added it's not in the best interest of the Town to allow refunds at all; the people who purchased sewer capacity fees did so in a way and a desire to corner the market in some cases to keep others from getting sewer capacity and that has created problems of its own. Once permits for the new regional wastewater facility are allowed, and are given notice to go to construction, anyone of the persons holding a single dollar in fees would have the ability to come and ask for a refund. His belief and recommendation would be to amend this ordinance in the very near future to not allow refunds at all, and that would take the Town back to where the Town once was originally, which was a much better condition. A mechanism is in place that would stop one from transferring the prepaid capacity fees to another; one could ask for a refund if they paid for 100 lots and could only place 97 lots. Council stated years ago wastewater capacity was not a commodity.

Discussion followed regarding setting precedent: Attorney Fordham stated any precedent issue would be the same whether done by the Manager or Council. He noted two different mechanisms to get a refund: where the developer doesn't develop what was anticipated or cause-based refund and would never use it; the mechanism for cause-based refunds is the one issue.

Mayor Weatherly added that he thought folks saw the Council as the last resort and not necessarily satisfied with the Manager's decision, and insist on the Council for an answer. He referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the amendment to Article III, Section 12-48(f) related to refunding of unused prepayment of capacity fees. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business # 03  
End of New Business

### **CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session at 10:30 p.m. to:

- 1) receive legal advice from Town Attorney regarding potential litigation and the Add-on;
- 2) receive legal advice from Town Attorney regarding pending litigation.

**Action:** Council Member Jones made the motion to move into Closed Session. Council Member Schulze made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately.

**Action:** Council Member Schulze made the motion to move from Closed Session back into Regular Session at 10:45 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

With Council having moved back into Regular Session the following action was taken:

**Action:** Council Member Schulze made the motion that Apex intervene in the administrative decision related to the Waste Water Treatment Facility with Cary as Lead Agency. Council Member Jones made the second to the motion. Motion carried unanimously.



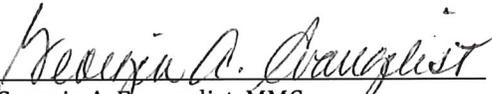
## WORK SESSION

There was no Work Session scheduled.

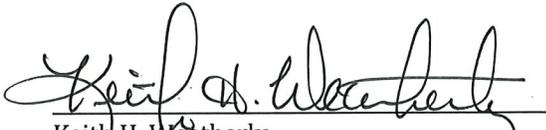
## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 10:57 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The September 21, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the October 5, 2010 meeting.

  
\_\_\_\_\_  
Georgia A. Evangelist, MMC

Town Clerk, Apex, North Carolina

  
\_\_\_\_\_  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for October 5, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 5, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order, led the Pledge of Allegiance and extended a welcome to those in attendance. Council Member Olive gave the Invocation.

## RECOGNITIONS AND PRESENTATIONS

**Recognitions and Presentations No. 1:** Apex Certified Planners Lauren Simmons and Reed Huegerich were presented their American Institute of Certified Planners Certificates.

**Recognitions and Presentations No. 2:** Apex Communications Center was awarded, "Communications Team of the Year" by NC Chapter of National Emergency Number Association for exemplary handling of hundreds of calls during the peak of activity during the May shooting incident at Target. Communications Director David Boggs and Senior Telecommunicator Beverly Beacham, were on duty the day of the incident, and received the award on behalf of the Town.

End of Recognitions and 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 on the following items. There were no amendments to the Consent Agenda. **Action:** Council Member Olive made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of September 21, 2010 Town Council meeting.
  2. Minutes of September 21, 2010 Town Council Closed Sessions (separate cover).
  3. Budget Ordinance for Police and Fire Restricted Funds.
  4. Set [Public Hearing](#) October 19, 2010: Rezone #10CZ12 Mullins Property; proposed rezone from Planned Unit Development Conditional Zoning district to Planned Commercial Conditional Zoning district, 6.1 acres located at 1548 E. Williams Street.
  5. Set [Public Hearing](#) October 19, 2010 for various amendments to the Unified Development Ordinance.
  6. Closure of certain streets for the Apex Christmas Parade to be held Saturday, December 4, 2010.
  7. Closure of certain streets for Christmas on Salem Street to be held Friday, December 3, 2010.
  8. New World Systems Software Maintenance Agreement.
  9. Criminal Justice Law Enforcement Automated Data Service License and Usage Agreement.
- 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 to the Regular Meeting Agenda and was set as presented.

## PUBLIC HEARINGS

### **Public Hearing #01**

**Presenter:** Dianne Khin, Director of Planning

**Review:** Continued from September 21, 2010 Town Council meeting; staff recommended continuance to October 19, 2010.

**Planning Board** met September 13, 2010 and voted 4-3 in favor of the amendments; staff does not support changes proposed by JVI Development, Inc.; Council met September 21, 2010 and voted to continue public hearing to October 5, 2010 meeting; JVI requested continuation of Bella Casa PUD and Subdivision amendments that would rearrange lots in the area of Milano Avenue; staff asked item be continued to October 19, 2010; Council voted to continue the public hearing to October 19, 2010 meeting. [Public Notice](#)

**Continuation of Apex Transportation Plan Amendment: JVI Development:** Director of Planning Dianne Khin recommended the hearing be continued until such time Bella Casa PUD and Subdivision amendments are considered; further Applicant recommended continuance of Bella Casa PUD amendment and Phase 5 Master Subdivision Plan public hearing to October 19, 2010 meeting. Staff recommends continuance for both public hearings to October 19, 2010.

**Action:** Council Member Gossage made the motion to continue the public hearings for Apex Transportation Plan amendment and Rezone #10CZ06: Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan to October 19, 2010. Council Member Schulze made the second to the motion. Motion carried unanimously.

Public Hearing # 01 continued to October 19, 2010

### **Public Hearing #02**

**Presenter:** Dianne Khin, Director of Planning

**Review:** Continued from September 21, 2010 Town Council meeting; staff recommended continuance to October 19, 2010.

**Planning Board** met September 13, 2010 and unanimously recommended approval of the PUD Plan Rezone and Phase 5 Master Subdivision Plan with conditions: staff recommended approval of the PUD Plan Rezone and Master Subdivision Plan Phase 5 with conditions to comply with Apex Transportation Plan, Hazard Mitigation Plan, and Unified Development Ordinance. Applicant JVI Construction, Inc. requests continuance of the Public Hearing to October 19, 2010 meeting to allow for additional time for resolution of current proposed transportation plan amendment; Council voted to continue the public hearing to October 19, 2010 meeting. [Public Notice](#)

**Rezone #10CZ06: Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan:** Continuation of Public Hearing regarding Bella Casa PUD Amendment Rezone #10CZ06 and Phase 5 Master Subdivision Plan; JVI Construction, Inc. applicant/owner has requested a continuance to the October 19, 2010 Council meeting.

Public Hearing # 02 continued to October 19, 2010

### **Public Hearing #03**

**Presenter:** Dianne Khin, Director of Planning

**Review:** Property is contiguous to the Town's corporate limits; petition: develop property with Town utilities. [Public Notice](#)

**Annexation Petition # 454: BOP Development LLC:** Public Hearing and possible motion regarding Annexation Petition #454, BOP Development LLC. owner/petitioner, petitioning to annex 10.565 acres into the Town's corporate limits and located at 2504 Whistling Quail Run. Director of Planning noted the location of the property having been recently rezoned. Staff supports the annexation of the said property to allow it to be developed with Town utilities and planned future subdivision. Mayor Weatherly opened the public hearing at 7:15 p.m. No one addressed the annexation. The public hearing was closed and matter referred to Council.

**Action:** Council Member Gossage made the motion to approve Annexation Petition #454, adopting an ordinance to extend the corporate limits of the Town. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03



**Public Hearing #04**

**Presenter:** Lee Smiley, Director of Finance

**Review:** Notice of Public Hearing was published in the News and Observer and posted on the Town’s website. [Public Notice](#)

**Refinancing Debt and requesting approval from Local Government Commission:** Public hearing and possible motion to adopt Resolution regarding refinancing of debt and requesting approval from the Local Government Commission. Director of Finance stated Town’s financial advisors believe there is an opportunity to refinance \$8 million of debt issued in 2008 for construction of the Police Station and Public Safety Station #4; debt is currently owed to SunTrust Equipment Leasing at a fixed rate of 4.57% with maturity of 18 years; refinancing rate could be around 3.5%. Depending on changes in interest rates over the next 45 days, potential savings are estimated at \$20,000 to \$40,000 a year for a total of \$300,000 to \$500,000 over the remaining life of the loan. Staff recommends adoption of the Resolution regarding refinancing of the debt and receipt of approval from the Local Government Commission. Mayor Weatherly opened the public hearing at 7:17 p.m. No one addressed the refinancing of the debt. The public hearing was closed and the matter referred to Council.

**Action:** Council Member Gossage made the motion to adopt Resolution #2010-1005-17 Refinancing Debt and requesting approval from Local Government Commission. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04  
 End of Public Hearings

**OLD BUSINESS**

There were no Old Business items to be considered.

**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.  
 Your comments must be limited to 3 minutes to allow others opportunity to speak.**

Mr. Paul Sheridan, Attorney at Law, represented Apex First Development, requesting refund of prepaid sewer capacity fees. AFD reserved a high number of units for Old Mill Village and North Village, allowed by Ordinance 12-42(f). Due to economic downturn of residential construction, many contractors have gone out of business and lenders foreclosed; AFD plans were to collect prepayment at time of certificate of occupancy or closing from lots sold to builders and is not happening; added if Town continues to apply prepaid capacity fee to the development as a whole, opposed to designating payment for lots as determined by AFD at time of hookup, it leaves AFD in the position of having paid for sewer allocation without much legal recourse or opportunity to collect the fees from the ultimate beneficiary of prepayment; thinks it best not to tie prepayment to bankruptcy being unsure of the legality of doing so, and not sure all were involved in bankruptcy. AFD noted unused prepaid capacity fees on deposit with the Town and requests pursuant to Ordinance 12-48(f) they be granted noncause-based refund for the affected lots of Old Mill Village and North Village; if denied, then repayment due to a cause-based scenario; if AFD is not refunded, it would result in irreparable and immediate harm to AFD. Council discussed their position, purpose and intent of the ordinance; noted other case scenarios, with the Manager expanding on third party involvement, and further was not an unreasonable request: estimate \$76,500. Discussion continued regarding lawfulness and consequences of taking action so quickly, and waiting to the end of the development, then determine the number of lots used, and then consider settlement. Attorney Fordham asked if they were considering amending the ordinance to allow for a mechanism so the payor would have final say on application to each lot, expanding on the prepayment process. Sheridan stated the ordinance was not clear as to when the prepayment gets attached to a piece of property. Attorney Fordham advised on how prepayment had been administered having been treated: each lot as prepaid and advised it could be changed; agreed this is not spelled out in the ordinance but the practice, it’s paid for a project. Attorney Fordham stated this was in the Code of Ordinances and didn’t require a public hearing before considering this; stated in a general meeting it would be lawful to act on any item that doesn’t require a notice to folks, and could adopt an ordinance to suspend on a noncause-base at this meeting, referencing Section 12-48(f). Further advised they could run some risk with someone that wanted to take advantage of what’s been prepaid. Mike Howington and Mark Gramling AFD were present and engaged in conversation; gave support to the requests and noted time was of the essence with 5 homes coming close to receiving COs, and wanted the Town to work with them on these 36 lots, having discussed various other uses for these prepaid capacity fees. Sheridan advised this was brought forth due to the lateness of recognizing this was an issue that needed to be addressed immediately. Council understood the situation, not wanting to act too quickly, however asked staff to review AFD requests and the ordinance as it pertains to prepayment of capacity fees, and bring their findings back to Council for consideration at the next regular meeting.

End of Public Forum



## NEW BUSINESS

### New Business # 01

**CALEA Law Enforcement Accreditation Enrollment:** Chief of Police Jack Lewis asked Council's consideration in allowing the Apex Police Department to enter into CALEA Law Enforcement Accreditation Enrollment process. He will pay for the accreditation from use of funds collected through the department over time; noted it would require significant work of one person fulltime and a strong level of commitment by the Department to achieve this status.

**Action:** Council Member Olive made the motion to encourage Chief and the Department to achieve the accreditation. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business

## CLOSED SESSION

There were no Closed Session items for discussion.

## WORK SESSION

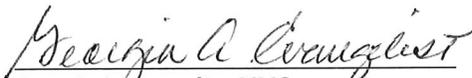
No Work Session was scheduled.

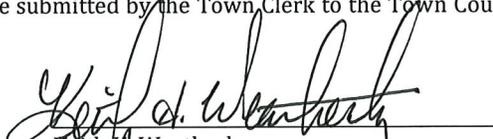
## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:45 p.m.

**Action:** Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The October 5, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the October 19, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith M. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for October 19, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 19, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Gossage, Jones, Schulze and Olive were present.

Mayor:  
Keith H. Weatherly



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

Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

## RECOGNITIONS – PRESENTATIONS - PROCLAMATIONS

### **PROCLAMATION NO. 1**

Mayor Weatherly proclaimed the month of November, 2010, "Pancreatic Cancer Awareness Month"; Apex Senior Fire Fighter Ryan Hillen accepted the Proclamation; noted his father had passed from this cancer; a walk/run fund raiser for pancreatic cancer research will be held November 2, 2010 at Cameron Village, Raleigh.

End of Proclamations

## 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 on those items. There were no amendments to the Consent Agenda and it was set as presented. **Action:** Council Member Olive made the motion to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Town Council meeting minutes for October 5, 2010.
2. Revise Apex Code of Ordinances: Ordinance No. 2010-1019-09, Section 6-66 Apex Cemetery Charges/Fees.
3. Transfer Cemetery Lots/Plots within Apex Town Cemetery: Block B, Lots 2B and 4B S.S. Rogers Section of Apex Town Cemetery and owned by Elizabeth Covington and asking transfer to William and Patricia Sutton.
3. Transfer Cemetery Lots/Plots within Apex Town Cemetery: Block B, Lots 6B and 8B S.S. Rogers Section of Apex Town Cemetery and owned by Elizabeth Covington and asking transfer to Bruce and Kelly Radford.
4. Wake County Tax Report for Town of Apex approved and accepted by the Wake County Board of Commissioners during their regular session held October 4, 2010.

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 to the Regular Meeting Agenda and it was set as presented.

## PUBLIC HEARINGS

### **Public Hearing #01**

**Presenter:** Reed Huegerich, Transportation Planner

**Review:** Planning Board met September 13, 2010 and voted 4-3 in favor of the amendments; staff does not support the amendments proposed by JVI Development, Inc. Council met September 21, 2010 and voted to continue the public hearing to October 5, 2010. JVI Development, Inc. requested continuation of Bella Casa PUD and Master Subdivision Plan that would rearrange lots in the area of Milano Avenue; staff asked Public Hearing be continued to October 19, 2010; Council voted for continuance to October 19, 2010. Public Notice was given.

**Apex Transportation Plan Amendment: Public hearing remains open and continued from October 5, 2010 Town Council meeting.** Amendment proposed by JVI Development, Inc. is to remove Major Collector Milano Avenue between Evans Road and Holland Road from Apex Thoroughfare and Collector Street Plan. Staff does not support the amendment. The public hearing remained open from October 5, 2010 meeting and the following addressed the proposed amendment.

Stuart Jones, Jones and Cossen Engineering, 221 N. Salem Street, presented the request proposed by JVI Development, Inc. to remove Major Collector Street Milano Avenue between Evans Road and Holland Road from Apex Thoroughfare and Collector Street Plan. Impacts to adjacent properties were noted, road construction costs estimated over \$1.5 million, with potential that the town may have to construct the road; stated it best to remove the major collector from the plan with an alternative solution to replace it with a residential street; and are working on the best solution for Bella Casa that will address connectivity, and may include additional parcels of land. Asked Council make a decision on the transportation plan amendment, so they would know how to proceed.

Karma and Jim Lee, 2700 Holland Road, identified their property and spoke in favor of eliminating Milano Avenue from Evans Road to Holland Road that would impact their property; do not anticipate an increase in population if developed as the area is zoned medium/low density, and with protected open space; noted existing road networks that serve the area. Expressed concern they could not sell and development their property and thus the Town may have to consume cost and burden to construct the road. Noted significant rain fall causes flooding and noted no other subdivisions were required to build or connect through wetlands, and should be left alone. Planning Board voted to eliminate Milano Avenue from Evans Road to Holland Road and asked Council vote to do same.

Tom Carter, 7104 Camp Branch Lane spoke against the construction of Milano Avenue, seeing no need because of its impact on surrounding properties; the road would not have a direct impact on him; doesn't know why the road is being considered.

Joe Iannone, JVI, reiterated the impact of the road to his property, the Lee, LeBronsky and McLamb properties, and Bella Casa; sought a safe environment for children to live - without a thoroughfare through their neighborhood vs a cul-de-sac. He had spent countless hours talking about this, has offered alternatives and good solutions; said he or another developer could pay vs the Town and not damage these properties.

Claude Burkhead, 2805 Walden Road, doesn't see need for Holland Road to Evans Road connection, now or the future; area is served by Apex Barbecue Road, US 1 and Olive Chapel Road; master plan shows a road from Kelly Road through Milano Avenue over to Olive Chapel-New Hill Road in the original plan; noted Grouse Trail Extension was proposed a minor collector and would have huge impacts; if Milano Avenue is eliminated, that's the only alternative shown on the maps; he doesn't see need for collectors across roads like Olive Chapel and Evans Road.



Shelly Curry, 821 Evans Road, understood the proposal to eliminate Milano Avenue which may affect the other area; this affects her property on two sides; she asked if they were going to eliminate one, take this into consideration; she noted six properties that it would be affected later based on their decision.

Joe Iannone, JVI, stated the "x" on the map represents roads to be deleted and not roads to go through and have changed those dotted lines on the map and are not trying to draw new ones. He was asking to delete Milano Avenue from Evans Road to Holland Road and will address new roads during the transportation plan workshop; he has identified vacant parcels of land they can route roads through and work with current land owners to purchase properties. Said he would build the roads, Town would not have to build them. Said it was out of order to talk about any other roads other than Milano Avenue.

Larry Harris thought Planning Board voted in favor of the dotted line future road south that crossed their properties. He doesn't believe it honors the spirit or intent of the UDO; asked Council if the road is withdrawn from the proposal, would it come up again. Mayor Weatherly offered staff would give the Planning Board decision, and the Planning Board acts in an advisory role and has no formal standing as far as the final decision, however Council takes their vote under advisement. Harris asked if it was off the table for now was it possible it could come up again if Milano Avenue is taken off the plan. Mayor Weatherly responded if the subdivision is built, it's proposed without that and thinks would be a final determination; they wouldn't proceed with the site plan and build that. Harris wanted to assure the dotted line for a road south on the map that was not "x" out was off the table. Director of Planning said it's off the table for now. Council Member Jones said it may come back during the overall transportation plan workshop in January; public comment will be taken.

Russ Dalton, Apex Transportation Engineer, said taking Milano Avenue off the plan doesn't ensure cross connectivity and puts the burden on other areas. Staff does not support the amendment; concern is connecting land uses; costs bring needed utilities for fire flow, sidewalks, and assures connectivity; plan brought to Planning Board showed no connectivity to the east and plan brought to Council showed a stub to the east providing connectivity; noted there are not many options for road connections to the land uses in the future. Possible downgrade of the major collector had been discussed since Council's last meeting and he understood Council wasn't as concerned with residential driveway connections, if they were able to bring down the cost of the road for the landowners. As far as the transportation planning for roads outside the subdivision plan, they could be considered in January, and could talk about establishing a residential connector road type that shows residential connections between roads but are not collector streets and a lower designation on the plan. He said the only way to show connectivity is with collector streets, a higher level of road that does put an additional burden on landowners. Staff asked applicant to come forward with a subdivision plan; understands their concerns about not knowing what's in the plan and trying to conform to it, but at the same time, staff has to assure connectivity between land uses and pulling it off the plan and waiting for it to come back is not assurance to them that it will provide connectivity for the citizens in that area.

Mayor Weatherly asked how a line can be put on a map that effectively goes right through the Lee's property, greatly diminishes in value as far as development potential in the future; noted they can't do anything with it without building the road for a future owner. Dalton said he could make the argument it adds value to their property; when subdivided would have to build public streets, if residential streets; agreed a collector street is a higher level of street and adds costs to the project, but if they show a line on the map that says residential connector or residential street, they normally have to build those anyway; and staff is trying to connect between Evans Road and Holland Road. He said there's not a lot of room to move the road on the Bella Casa property, already approved in the plan for that alignment; on the Lee property there's flexibility to show a residential connector and could have a different alignment not necessarily across from Camp Branch Lane; it might not even be a direct connection but at least in the plan that shows connection to Holland Road and allows flexibility and could provide another route other than through the Lee property however would probably be through their property, looking at the whole area, you don't have another way around it. Whoever buys and subdivides will have to build residential streets.



Dalton continued you may get 4/5 lots when you subdivide the McLamb property and may think they could connect to Evans Road; asked would they want a cul-de-sac coming in across from Milano Avenue or would they want to be able to connect a street straight through and come off that with a cul-de-sac and gives more flexibility. As far as the Lee property, it adds value to be able to get to it; you have a more direct connection for a road to serve the park.

In response to Council Member Schulze concern, the road would never be built and the Lee property not being developable even though there's a line on the map, and that it doesn't serve the purpose intended, Dalton said a major collector would increase costs but a residential alignment would show connectivity on the plan, would not add any more costs they incur when subdividing the neighborhood as they would have to provide residential streets.

Mayor Weatherly clarified if the major collector is removed, that keeps that option in play, with Dalton responding if they keep the major collector on the map it shows connectivity and would wait for the Bella Casa subdivision to come back with what their proposal; if they downgrade it to a residential street, like they have asked, they might be able to take it off the plan. For now staff wants to assure connectivity and unsure of the developers plan; they say either downgrade it like a minor collector or a residential connector and show a different line on the map; it keeps it on the map and provides flexibility. A minor collector is more extensive; you could still connect residential driveways but takes more room; concerns regarding the alignment, the wet areas and the topography there, it wouldn't cost anymore money for a residential street; they want to show it on the plan.

Council Member Jones clarified effectiveness of having the street as a series of streets with stop signs, which may help the layout. Dalton said they wanted to continue Milano Avenue to get into the area and once into the Lee property would have options to connect, maybe a series of streets; further a residential circle, a calming device with a yield on all approaches, fits within the foot print of two residential streets without change in curb lines; they have run this option by the fire department - it doesn't include landscape in the middle but is a raised stamped decorative concrete island and could work for the alignment in Bella Casa. Council Member Jones asked if a residential connector would be defined as a single street. Dalton said it would be defined as connector and important for locations on each end. Staff is not ready to connect Camp Branch Lane, it's a separate tract and doesn't go anywhere, and does not see it as a continuing road in the future; if it moves north or south for the layout staff would be open to that. Even if the Lee's provided residential streets it would not go to Holland Road, they would choose another alignment; their property comes close to Holland Farm entrance. Another concern, providing two points of access, since their frontage on Holland is limited and a strange alignment through there, have the connection to Holland Farms stubbing to the north, want to assure a connection back to Evans Road. Noted Holland Road, was not a great road.

In response to Council Member Schulze, Dalton said Grouse Trail Extension, is possible for an upgrade, a minor collector street to a major collector, and would relieve pressure from Milano Avenue and will discuss this at the transportation plan workshop. Concern is with smaller properties, more homes, and tougher to build and developers don't want to necessarily buy those properties at least not the value homeowners may ask. He stated the road may even be downgraded to a residential connector in talking with the community at least there would be two connections for residential streets, not necessarily preferred by staff, but least impact on property owners.

Council Member Jensen shared concern it seemed residential connector provides a cut through when other streets are overloaded that residents don't like; would be an expensive way to get across wetlands rather than going in on both sides and not bothering them and are asking for trouble. Hugerich responded to discuss a residential connector may be premature; they have looked at this throughout Apex and the transportation plan will show a collector street from existing development and should be; it really doesn't serve any purpose as a collector street but they want to show the connection being made. A residential collector street would show where they want connection to be made, recognizing it doesn't need to be a major route, could be a minor



residential street that would keep traffic speed flow, and discourage traffic, but shows staff wants an alignment something like this between Evans Road and Holland Road. As far as winding streets around, to create a disconnect, they find in subdivisions like Abbingtton with a connection onto US64 and Kelly Road; it's more major but not a direct connection; people find their way through there and now we have a greater distance of road that people are going on, more driveways people cut in front of; he explained if you have the straight connection you reduce the number of driveway impacts; staff thinks it would be a good situation not to have driveways, in the initial plan you reduce those complaints; They found previous town council action before them, felt that was not a single priority, as reducing costs to the landowners and recognizes that is a decision that could be made. By proposing residential connection, they say connection is still important, they greatly reduce the costs to the landowners and still provide a connection over to the park, between these uses and provide some traffic calming along it so it's not just a cut through. He said Milano Avenue was in the approved subdivision plan as a major collector with connections north and south; added in 2004 with a different alignment originally going through the wetlands and flood plain; 2005 aligned as currently shown; 2006 shown as a major collector; advised before that there was no designation for major, it was all minor collectors; major collectors were done throughout town as a part of the transportation plan update in 2006.

Council Member Jensen noted Evans Road goes through wetlands, asking the difficulty and cost. Dalton noted it less difficult and no cost estimate has been done. Stuart Jones reminded Attorney Fordham that the proposed amendment is to take the transportation plan as it exists and remove the section from Evans Road to Holland Road and not proposing to add a residential connector.

Council Member Jensen said he had asked for more maps and didn't know how to solve taking a small piece off or stay on; he heard people talk about the impact on houses to the south if they do that approach; he's having a problem not knowing the whole global approach to the area, not having seen it. Jones responded they had looked at the southern end and roads through that area, are looking at vacant parcels that could be purchased that had development suitability to run roads, trying to avoid costs going through someone's home.

Huegerich added the reasons for the lines for major roads is to ensure connections, if developed with cul-de-sacs, you never get connections and hurts emergency response, if there are fires and crimes, and trash collection becomes more expensive; cul-de-sac takes twice as long to drive as a throughs street. Without the drawn lines, and when the area does develop we don't get roads that would serve the community better as a whole; they can be discussed as the area develops. When we develop areas, we need two points of access for more than 50 homes; second point of access as to be more than 1000 feet away from the first along another road and are looking at providing an access from the west to allow this developed for more than 50 lots. The south access is only 500 feet away; if they acquire more land, then they could get a separation there. They are trying to plan for the future.

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

Council Member Schulze said it comes down to pros and cons and still doesn't understand need for connectivity in traditional transportation planning; there were lots of cons against having this road here, even if downgraded to a minor collector street, although cheaper to develop with driveways; kids play in the streets; he has never liked the idea and are asking for trouble, giving example; Surry Meadows. The fact the town may get stuck with costs of building the road, if it doesn't get built on its own, doubt's they would be making the Lee's property less valuable, noting other things. His point in weighing pros and cons, that there are too many cons having the road there; he's in favor of removing the road from the transportation plan.

**Action:** Council Member Schulze made the motion to remove Milano Avenue from the thoroughfare and collector street plan. Council Member Jones made the second to the motion. Council Member Jones stated for the same reasons, the topography and shape of the undeveloped property; not saying infeasible but would make it costly; from his perspective there has to be connectivity whatever the road is called, connector or residential street; that has to be assured as they prepare for future reviews and site plans; removing it as a major or minor whatever called, having taken some action previously to change that, taking the collector street off the map.



Council Member Schulze would like to see in January somehow Grouse Trail Extension configures as such to relieve need for Milano Avenue, basically take some of the traffic; he doesn't want to hurt this lady either.

Council Member Gossage said he was ok with this; thinks it's important when they are planning; when looking at the macro can draw lines on the map, but when they get down to the micro, looking at something specific, sometimes doesn't work, then have to make an adjustment for that. When they consider the road to the south, his opinion, anything that went down there as a major collector or whatever would only go in areas that's developed, so it wouldn't be put in where current property owners are and where current homeowners are; as the area develops the roads would go in.

Council Member Jensen tried to look at this from a larger viewpoint and could see it not going through simply because Evans Road does connect to Apex Barbecue Road and can also go over to US1; if this road goes through, the ultimate point it gets you to is Apex Barbecue or US 1, either way you're the same distance. He's troubled if it should become a residential connector; he's seen this at Surry Meadows; you want traffic on major roads and Evans Road is not as major as he would like to see it; he looked at it and decided it couldn't be done, it's too costly; he couldn't go with this.

Council Member Olive went out to see for himself and found the same, having come to a different conclusion found Evans Road was narrow to drive on and doesn't have driveways, not a 55 mph road, maybe 45 in some places maybe 35 where at the curves; to consider it as a major collector was questionable. He was surprised at the 2 mile length of Evans Road, when looking at the map it didn't seem that long. Initial impression from the map was those are redundant east and west connectors, he was certain one of them could be gone and wouldn't miss it. After having looked at it, and having looked at the southern east/west connector and Grouse Trail Extension, his concern was that it seemed to be the least helpful and the northern one, Milano Avenue, the most helpful, partly because there are alignment adjustments that could potentially be made. He did see that it would be a useful road if built, especially if you consider this area when built out, will be about as dense as any neighborhoods around town now. He doesn't know what the total housing units count would be by the time they get out there, but what he sees is Milano Avenue and Evans Road being a major intersection, because of the funneling that has to go there. The reason he will vote against it, when faced with the final choice to remove it or not, he'd like to see the connectivity made, and doesn't think it has to be a major collector, but faced with the binary choice, he would prefer to see something there that at least assures connectivity. His understanding is if they delete this from the map, there's not any way of assuring connectivity from the intersection at Milano Avenue from Evans Road over to Holland Road; again as this gets developed this will become a dense area of homes, just like Surry Meadows and Haddon Hall, the lots are about the same size; he drove through there and that will be what they see when it's all built out. His concern if they delete this, he would prefer to have other options, but basically the option to remove it or not; he's not in favor of removing it.

Council Member Gossage thinks he may not be alone in thinking connectivity is good, maybe preferable, but looking at the practicality of whether or not it will actually get built is where he starts to question whether to or not and at what point will the town build and how much will be paid. Council Member Olive asked how, maybe where, he doesn't know what's going to happen on the east side between Evans Road and Holland Road. Council Member Jensen noted down Evans it was zoned medium to low density and farther out, it's less dense.

Attorney Fordham stated Stuart Jones had pointed out Council might want to modify the motion to include the removal of the specific segment on Milano Avenue.

**Amended Motion:** Council Member Schulze amended his motion to include: remove the segment of Milano Avenue from Evans Road to Holland Road. Council Member Jones made the second on the amended motion. Vote on the motion was 4 in favor and 1 opposed, with Council Member Olive voting no. Motion carried.

End of Public Hearing #01



## **Public Hearing #02**

**Presenter:** June Cowles, Senior Planner

**Review:** Planning Board met September 13, 2010 and unanimously recommended approval of the PUD Plan Rezone and Phase 5 Master Subdivision Plan with conditions: staff recommended approval of the PUD Plan Rezone and Master Subdivision Plan Phase 5 with conditions to comply with Apex Transportation Plan, Hazard Mitigation Plan, and Unified Development Ordinance. Applicant JVI Development, Inc. requested continuance of the October 5, 2010 Public Hearing to October 19, 2010 to allow for additional time for the resolution of current proposed transportation plan amendment; Council voted for continuance of this hearing to this meeting date. Public Notice was given.

**Rezone #10CZ06 Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan:** Continuation of Public Hearing for Rezone #10CZ06 Bella Casa PUD Amendment and Phase 5 Master Subdivision Plan; JVI Development, Inc. applicant/owner seeking to rezone from Rural Residential district to Planned Unit Development Conditional Zoning district, property located at 2709 Evans Road containing 1.025 acres. There is no new material for this item and with the change made to the transportation map; staff will readvertise the public hearing for a future date. No action was necessary by Council.

End of Public Hearing # 02

## **Public Hearing #03**

**Presenter:** Brendie Vega, Principal Planner

**Review:** Planning Board met October 11, 2010 and voted unanimously for approval; staff recommends approval with the conditions noted by the applicant. Public Notice was given.

**Rezone #10CZ12 Mullins Property:** Public Hearing and possible motion: Andy and Susan Mullins, applicant seeking to rezone from Planned Unit Development Conditional Zoning district to Planned Commercial Conditional Zoning district, 6.1 acres located at 1548 E. Williams Street. Staff presented the planning report which is incorporated as a part of the minutes, oriented to the site. Applicant is under the Trinity PUD which requires shared infrastructure for the entire PUD. When Veridea was assembled for rezone, this parcel was left out and will not be developable under Trinity PUD if the remainder properties of the Trinity PUD are rezoned. Permitted uses were noted; all uses except noted in the conditions shall be prohibited. Rezone is consistent with UDO and 2025 Land Use Plan. Applicant conducted a neighborhood meeting September 29, 2010 and no one attended; no changes were made to the rezone request. Planning Board met October 11, 2010 and voted unanimously for approval; staff recommends approval with conditions noted by applicant.

Mayor Weatherly opened the public hearing at 8:04 p.m. Stuart Jones, Jones and Clossen, 221 N. Salem Street, spoke in favor of the rezone reiterating staffs comments, noted stream and pipeline easements and would be a standalone parcel for commercial development and was never a part of Trinity. No one spoke in opposition. Mayor Weatherly closed the public hearing and referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve Rezone #10CZ12 as recommended. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

## **Public Hearing #04**

**Presenter:** Reed Huegerich, Transportation Planner

**Review:** Planning Board October 11, 2010 and voted 6-0 for approval of the amendment. Public Notice was given,

**Apex Transportation Plan/Transit Plan Amendment:** Public Hearing and possible motion regarding a proposed change to the Apex Transportation Plan/Transit Plan Amendment: "Future Regional Light Rail Corridor" to "Possible Light Rail Corridor" to the Transit Plan legend. Staff stated request came from Council Member Schulze, asking to revise the designation, as it was not made as part of the former motion, and is not a definite plan, and so far out, for the property owners, he would like to change the legend. Mayor Weatherly opened the public hearing at 8:06 p.m. and with no one addressing this item, closed the public hearing and referred the matter to Council.

**Action:** Council Member Schulze made the motion to revise the designation on the Transit Plan to possible light rail corridor. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04



## **Public Hearing #05**

**Presenter:** June Cowles, Senior Planner

**Review:** The Town of Apex Hazard Mitigation Plan Update outlines community goals and objectives and describes the plan to reduce the Town's vulnerability to the effects of natural hazards. Planning Board met October 11, 2010 and voted for approval; staff recommends approval. Public Notice was given.

**Town of Apex Hazard Mitigation Plan Update:** Public Hearing and possible motion to adopt a Resolution approving Town of Apex Hazard Mitigation Plan Update. Staff stated the plan was approved and adopted September 7, 2004, approved by FEMA November 7, 2004 and requires an update every 5 years. Plan Update 2009-2014 is complete and designed to protect the community, mitigating disaster. Action Plan is the core of the Hazard Mitigation Plan. Town must submit an adopted resolution that shows the public meeting occurred. Upon submittal the State and FEMA will issue formal approval of the Town's Plan. Attention was called to the map and the more environmentally sensitive areas west to include Jordan Lake, Town's water supply. Attention was called to the Harris plan and storage of spent fuels, noting importance of road connectivity. Planning Board met October 11, 2010 and unanimously approved the plan. Staff recommends approval; Fire and Police Departments are a part of the Hazard Mitigation Plan team. Council Member Jones expressed appreciation to these members for their attentiveness in dealing with these issues, recognizing events could take place in the town. Mayor Weatherly opened the public hearing at 8:15 p.m. and with no one addressing the Plan Update, closed the public hearing and referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the Town of Apex Hazard Mitigation Plan Update. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 05

## **Public Hearing #06**

**Presenter:** Brendie Vega, Principal Planner

**Review:** Planning Board met October 11, 2010 and voted unanimously for approval; staff recommends approval. Public Notice was given.

**Amendments to the Unified Development Ordinance:** Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance:

- Sections 8.7.1(A)(1) Awning Signs and 8.7.7 Central Business District, Small Town Character and Planned Development District Signs to change awning regulations.
- New Section 8.2.6(B)(5)(g) American Tobacco Trail Corridor to add a required 50' Type "A" Buffer.
- Amend Section 7.5.4(C)(2)(b) Sidewalks to amend pedestrian connectivity and maintain an easement rather than dedication to the Town.

Staff presented a summary of the proposed amendments, with the staff report incorporated as a part of the minutes. None of the development projects currently under review would be affected by the proposed. Planning Board met October 11, 2010 and unanimously voted for approval. Staff recommends approval. In discussion of the amendment related to sidewalks, and pedestrian connectivity and maintenance of the easement, a revision will be made to delete a portion of the language. Staff will make the correction. Mayor Weatherly opened the public hearing at 8:20 p.m. and with no one addressing these items, the public hearing was closed and the matter referred to Council.

**Action:** Council Member Jones made the motion to approve the UDO amendments with the correction to the language in section 7.5.4 Streets C.2.b with staff making the correction. Council Member Jensen making the second to the motion. Motion carried unanimously.

End of Public Hearing #06  
End of Public Hearings



## OLD BUSINESS

### Old Business # 01

**Presenter:** Lee Smiley, Director of Finance

**Review:** Staff received proposals on October 14, 2010 for Town's refinancing of debt; staff will make a recommendation regarding the proposals to Council during the meeting.

***Bank Proposal for Town Refinancing of \$8.2 million Debt relating to Police and Public Safety facilities.***

Staff presented proposals from banks interested in Town's refinancing of debt. A bid summary was presented, and accepted October 14, 2010 with recommendation to award SunTrust, to provide the sufficient level of savings at 3.48% or approximately \$700,000. Adoption of a Resolution is in order. Town's installment purchase contract is with SunTrust and simpler process to refinance with SunTrust, as other legal fees would bring other bids higher than SunTrust. Questions were answered and comparisons made between SunTrust and Bank of America. Apex's request will be presented to the Local Government Commission in November. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to adopt the Resolution accepting the bank proposal of SunTrust for refinancing of debt related to the Police and Public Safety facilities. Council Member Jensen made the second to the motion. Motion carried unanimously.

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.  
Your comments must be limited to 3 minutes to allow others opportunity to speak.  
No one spoke during public forum.**

## NEW BUSINESS

### New Business # 01

**Presenter:** Lee Smiley, Director of Finance

**Review of Town's 1st Quarter Financial Summary** revealed benchmark for first quarter financial performance was 25% for revenues and expenditures. Significant variances were noted. No sales tax or franchise tax has been received. Utility fund revenues were up due to increased consumption. The report was accepted by Council.

End of New Business # 01

### New Business # 02

**Presenter:** Kent Jackson, Director of Construction Management

**Review:** Staff recommends approval; current approved Phasing Plan requires Laura Duncan Road frontage widening and sidewalk to be completed prior to the first certificate of occupancy for the subdivision.

**Request by Lennar Carolinas, LLC for Amendment to Approved Phasing Plan for Ellington Place (formerly Laurel Park II):** to allow ten single family residential certificates of occupancy to be issued prior to completion of required Laura Duncan Road frontage widening and sidewalk. Staff recommended approval based on the following: underground utility conflicts, materials have been delivered to the site to start road construction and shows their willingness to perform the work, revised drawings have been prepared, NCDOT is in receipt of the performance bond to guarantee the widening and sidewalk, and approving the amendment to the phasing plan will not impact the Town's budget or traffic safety in the vicinity of the project, stated the 10 COs and number of presales drives the timing. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve the request. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 02



## **New Business # 03**

**Presenter:** Tim Donnelly, Director of Public Works

**Review:** Public Works and Utilities Department recommends approval of all four addenda; also recommended and approved by the Western Wake Partners Policy Advisory Committee.

**Update Site 14 Water and Sewer Extension Policy:** Staff asked approval of proposed addendum and stated approval by Western Wake Partners Policy Advisory Committee.

Addendum for the Town of Apex Site 14 Water and Sewer Extension Policy previously adopted by the Apex Town Council on August 4, 2009. The Addenda were drafted by members of the Town of Apex and Town of Cary staff in response to public comments and community concerns regarding the implementation of the Policy; improving the community with water and sewer.

Addendum No. 1- Census block 534.03-1053 is bounded by railroad tracks to the north, New Hill-Holleman Road to the East, US Highway 1 to the south, and Shearon Harris Road to the west.

Discussion: The adopted W&S Policy specified census block 534.03-1053 as the area covered by the policy and provides an accurate map of the census block, but in Section 1.0 of the policy the northern boundary of the census block is incorrectly described as Old Highway 1. The correct northern boundary is the railroad.

Addendum No. 2- Payment for on-site service lines will be provided directly by the Town of Apex to the plumbing services contractor if prearranged.

Discussion: Section 7.0 of the W&S Policy indicated property owners will be responsible for paying contractors before reimbursement by the Town of Apex. A number of property owners have indicated they may not have the funds to pay the plumber for connections and wait for reimbursement. They don't have to take the service.

Addendum No. 3- There will be no \$3,000 aggregate limit for on-site service line cost reimbursement as described in Section 7.3 of the Town of Apex Site 14 Water and Sewer Extension Policy.

Discussion: The \$3,000 aggregate limit was based on an estimated average cost for service. The partners' intent has always been to cover all costs associated with property owners receiving service under the W&S Policy. However, as has been stated in the W&S Policy and in the Final EIS, costs associated with replacing existing deteriorated pipe or due to sub-standard plumbing conditions within a home are the responsibility of the property owner and will not be reimbursed.

Addendum No. 4- The costs of a backflow prevention device, a pressure relief mechanism (such as an expansion tank), and a pressure reducer, as required by Town of Apex Code, are reimbursable.

Discussion: The requirements for these items are discussed in detail in Section 4.3 of the W&S Policy, and the Partners did not intend to require the property owner to incur these expenses.

The Public Works and Utilities Department recommends approval of all four Addenda as recommended by the Policy Advisory Committee, noting it improves the community, and the partners will participate in the costs; potential 40 homes. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jones made the motion to approve the addendum for the Town of Apex Site 14 Water and Sewer Extension Policy. Council Member Schulze made the second to the motion. Motion carried unanimously.

**End of New Business #03**



## **New Business # 04**

Presenter: Tim Donnelly, Director of Public Works

**Review:** Public Works and Utilities Department recommends authorizing Town Manager to make minor revisions and execute the Interlocal Agreement, and recommended by the Western Wake Partners Policy Advisory Committee for Implementation of Site 14 Water and Sewer Extension Policy; also, Public Works and Utilities Department recommends adoption of Budget Ordinance Amendment No. 04 with Capital Project Ordinance Amendment.

### ***Interlocal Agreement for Implementation of Site 14 Water and Sewer Extension Policy, and Budget Ordinance Amendment No. 04 and with Capital Project Ordinance Amendment:***

Possible motion to: 1) Authorize Town Manager to make minor revisions and execute an Interlocal Agreement for Construction of the Water Distribution System and Sewage Collection System required by the Site 14 Water and Sewer Extension Policy; and 2) Adopt Budget Ordinance Amendment No. 04 with Capital Project Ordinance Amendment.

Staff recommended execution of an Interlocal Agreement between the Towns of Cary and Apex for implementation of the Site 14 Water and Sewer Extension Policy. The draft agreement provides for construction of the project lines by the Town of Apex with reimbursement for 73.1% of authorizing the Town Manager to execute the attached agreement with authority by the Town of Cary. Public Works and Utilities Department recommends minor revisions. Agreement would allow for over sizing solely at the Town's cost.

In addition, PW&UD recommended adoption of Budget Ordinance Amendment No. 04 with Capital Project Ordinance Amendment. The initial \$600,000 budget authorization will provide for engineering, land acquisition, legal services and other associated items required to initiate the project.

The entire project budget is estimated to be \$3 million with the other project partners contributing 73.1% of the \$3 million. This percentage could change if Holly Springs withdrawal impacts Holly Spring's obligation to participate in the costs.

Attorney Fordham presented that adopting a Resolution approving the Interlocal Agreement would be in order. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to adopt the Resolution approving the Interlocal Agreement for Implementation of Site 14 Water and Sewer Extension Policy, and Budget Ordinance Amendment No. 04 and with Capital Project Ordinance Amendment. Council Member Jones made the second to the motion, motion carried unanimously.

End of New Business # 04

## **New Business # 05**

Presenter: Tim Donnelly, Director of Public Works

**Review:** Council will consider request by Apex First Development for refund of prepaid capacity fees; request was presented to Council on October 5, 2010.

**Request by Apex First Development for a refund of prepaid capacity fees:** Staff said Apex First Development LLC had requested refund of prepaid sewer capacity fees. Stated prepaid capacity fees have been allowed for approximately 20 years with various mechanisms to prepay and at one time required a bond to develop in Apex for the value of the capacity; stressed importance with proposed development. Under Town's ordinance property owners are allowed to prepay for capacity fees; allows as much as practical, certainty of remaining capacity, for property owners that have gone through the process of site or subdivision plan approval, to be there at the time of need; his job is to track the need and developers elect how much to prepay.



Stated conditions to refund capacity fees are determined: cause based and non-cause based. Cause based example: may get 30 lots with an approved site plan, pay for 30 lots but with construction details there's 29 lots, so then the Town would refund fees for the one lot at the end of development or perhaps even when it's apparent you don't need 30, only 29.

The second cause based: there could be a block for regulatory reasons, example: State of North Carolina can put the Town on moratorium at any time and Town would not issue any more permits when the wastewater treatment plant isn't performing; the definition "actions beyond the cause of the developers makings," and something to consider during deliberation.

Donnelly continued non-cause based: to refund prepaid fees would require prepaid fees to be on deposit with Town for at least six months and must not do financial harm to the Town or to the fund into which the fees were paid. Ordinance allowed Town Manager to make the decision on non-cause based and now Council makes the decision. Donnelly said, his determination is Apex First Development \$76,000 request is non-cause based. Reported Town received a \$283,500 request from Comstock Homes which Manager Radford elected not to pay because of the hardship on the Town. He stated for every dollar refunded, the more that would have to be financed when the water reclamation facility is built.

Donnelly responded to questions regarding interpretation of the developer's letter was that Apex First Development was asking for a refund. In response to Council Member Jensen, Donnelly answered, regarding implementation for prepay had been that it runs with the land within the subdivision that has been approved and as long as it's in the same development and you have other lots that has not been prepaid, and reasonable expectation you would have use for these, you can move those around to other lots; example: Ordinance allows 30,000 gallons prepay and to keep someone from buying all the capacity and speculate, they would be shared vs. one for all; example: if you had a subdivision that needed 90,000 gallons, you could prepay 30,000 gallons allowed by ordinance; or you could shift it around on various phases, as long as it's tied to that subdivision; it's no problem as long as you have lots that are not prepaid, you can do that; he explained the way the ordinance had been treated in the past: if you don't have any more lots, than you can't do that because you are holding the capacity and no one would ever use it.

In response to Council Member Gossage understanding allocation was tied to specific lots, Donnelly said in their case, they have prepaid for all the lots there and have identified those lots that they would like to get the money back and in effect couldn't do what Council Member Jensen had suggested. He was not aware of any other lots in that subdivision that they could apply them to and if mistaken, he would be glad to correct that. Council Member Gossage asked how about when the doubled the homes in that one section; Donnelly responded that was not in that subdivision.

Council Member Jensen asked could they apply a certain number of them from one subdivision to another. Donnelly responded that's not how it's been implemented and not the only time the question had come up, if one could move them to another piece of land. He said Council had been consistent in saying no; it runs with the land and within the subdivision they were bought and would be a change in policy. Council Member Schulze asked the philosophy behind the rule. Donnelly responded that was what was enforced by Council when previously asked: you don't want it to be a bid commodity, plus, it messes up the collection system and you start moving it around, you being the developer vs. the Town. Staff has taken policy that Council didn't want it to be a bid commodity, wanted it to run with the land in the subdivision, didn't want people speculating or managing it, wanted them to buy what they needed, it's prepaid and applied.

Council Member Schulze understood allocation for a certain pump station and that he didn't want it moved around as it would mess up the system and in effect that it would all go to the same place he understands, he's trying to understand the commodity issue. Donnelly stated in all decisions made, they must consider similar situated parcels. His interpretation was Apex First Development has paid for all the lots out there; if they have other lots within that subdivision they can apply them to, he's unaware of them.



Attorney Fordham asked clarity of Donnelly, when he was referring to the subdivision, was he referring to the entire PUD, asking did they prepay for the PUD. Donnelly responded: Ole Mill Village and North Village. Attorney Fordham asked if it were possible those two were different: Old Mill Village a subdivision and Trackside, a PUD. Donnelly responded those were two separate parcels of land. Attorney Fordham added in relationship to the number of prepaid lots, the number of lots may be different on those two. He stated Mike Howington was present and his attorney was here as well. Attorney Fordham continued, his impression with respect to Old Mill Village, was each lot in Old Mill Village had been prepaid for a sufficient amount and prepaid to cover all the lots there.

Howington stated those were two separate neighborhoods: Villages of Apex and Old Mill Village. He counted 34 lots with 12 in Old Mill Village. He said he didn't want a refund and had never said they wanted a refund and didn't know where that came from; all they wanted to do was to make sure they were not giving them away to people unjustly. He said he does have parcels that has not come before Council; has a one acre tract on the Peakway and could apply some fees to that one; he has the lot which was for the condo project they started with, then scrapped; he has ability to transfer in that neighborhood these 12 lots; it was not like they are lot specific because they are condo's or apartments, whichever he chooses to bring before Council, so they are transferable in the neighborhood. He continued when they go to the north, the 37 lots and the rest of them, he saw parcels they haven't done there, as well as the south; noted north and south are the same, one PUD; he still has the ability and when he purchased these, purchased them for condos and apartments. With the apartment complex, he bought 378 because he thought that was what they were going to do; he was approved for 208 and has 170 left. He's not asking for the 170 back, he will use them somewhere; he just didn't want them to be given to people because of a bank foreclosure. He gave the example in foreclosure, what's happening was the way they are being counted; these guys get the benefit of his sewer allotment unjustly; they didn't pay for them, they were never attached to their specific lots and all he's saying is it's an accounting thing, he can still transfer them, as Donnelly said, he can transfer them in the neighborhood and he can still do that; he said he doesn't want a refund, he just wants to be able to use them on his lots, not somebody else's.

Council Member Jensen clarified he wanted them detached from specific lots so he could apply them to the lots, with Howington responding they never attached them to a lot. Donnelly added absolutely, if looking at the history of running the policy, if they direct them to apply them somewhere else, as long as it's within the named subdivision, they can do that. It sounded like Apex First did have some other places they can apply them, which he wasn't aware of, they can do that and is done all the time.

Attorney Fordham asked for clarity, if a PUD is total, are there fewer prepaid than for the total lots in the PUD. Howington answered there are fewer prepaid, yes. Donnelly continued then the expectation of how much demand he would need; the other thing is it's actually not lots, its gallons, but you could look at them almost the same. One of the things that could happen, example: if you had an approval that in one form took 300 gallons a lot, then another form took 10,000 gallons a lot, you still just bought gallons in that subdivision and so it could be worked out.

Mayor Weatherly asked if he were saying there is capacity in there and room to move them all, all that they've got? He continued this could be done administratively and you don't need Council action. Donnelly responded if for these lots, if Apex First can show us where they have land within the approved subdivision, that is not prepaid for some expectation for what you think will be there, just reasonable, you can't say we are going to put a 10 million gallon need and it's not there and they direct us to not apply them here and apply them there, we do that all the time and will be glad to do it here as long as they can show us that. He was unaware they had a little more than they had prepaid. Howington stated because there are only 12 of them in Old Mill Village, it's very easy to do it because they have empty parcels. They will come to them one day and will want to do this; then you may say, no you can only do this, then they might have extra which is the case for his apartments where he bought 378; for now, the majority of these lots are in the north which he has tons of empty lots out there, he has land all over the place; he can certainly shift that area. The 12 that are in Old Mill Village, he has the corner lot that he had the condo project; they've tanked that and he could become back and use 12 there.



Mayor Weatherly stated to avoid setting a precedent and other issues Donnelly related to, asked they go back and work this out, and they reserved the right to bring it back if he doesn't receive a satisfactory resolution administratively. Howington stated, we don't want the money back we just want ... with Mayor Weatherly interjecting, let them do the shifting and if he needed to come back to them, he could.

End of New Business #05  
End of New Business

### CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 9:00 p.m. for the following:

- 1) Receive legal advice from the Town Attorney regarding potential condemnation litigation.
- 2) Receive legal advice from the Town Attorney regarding potential construction litigation.

**Action:** Council Member Jones made the motion to move into closed session. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately.

**Action:** Council Member Schulze made the motion to move from Closed Session into Regular Session at 9:25 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

With Council having moved back into Regular Session Mayor Weatherly called for a motion:

**Action:** Council Member Jones made the motion to adopt a Resolution to approve condemnation of Maintenance easements to allow for maintenance of street culverts in Buckingham Subdivision. Council Member Olive made the second to the motion. Vote on the motion was 4 in favor and 1 opposed with Council Member Gossage voting no. Motion carried.

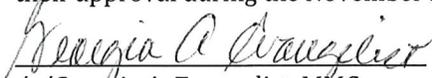
### WORK SESSION

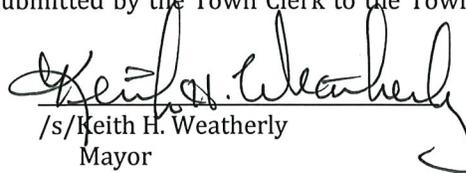
No Work Session was scheduled.

### ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:25 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The October 19, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the November 2, 2010 meeting.

  
/s/Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
/s/Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for November 2, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 2, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



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

Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance, and extended a welcome to those in attendance.

## 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 on the following items. The consent agenda was amended: 1 - Minutes revised: Public Hearing 1 in all instances Grouse Trail Extension vs. Goose Trail Extension. 4 - Set Public Hearing for UDO amendments: remove Section 7.3.4(A). 9 - Amend Encroachment and Maintenance Agreement with JVI to revise insurance limits. **Action:** Council Member Jones made the motion to approve the consent agenda with the changes stated. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Town Council October 19, 2010 meeting minutes.
2. Town Council October 19, 2010 Closed Session minutes (separate cover).
3. Annexation Petition #455: Michael F. Burbidge, Roman Catholic Diocese of Raleigh, petitioning to annex 6.305 acres located at 3031 Holland Road; 1) Resolution directing Clerk to Investigate Petition; 2) Sufficiency of Petition by Clerk; 3) Resolution setting date of Public Hearing November 16, 2010.
4. Set Public Hearing November 16, 2010 for Rezone #10CZ13, Tom Colhoun, applicant, seeking to rezone MORR-CU to MORR-CZ to change conditions and add additional uses, for properties located at 201, 203 & 305 S. Salem Street and 207 W. Chatham Street, and approximately 1.29 acres.
5. Set Public Hearing November 16, 2010; Apex First Development, applicant, Old Mill Village Lot 3 PUD Amendment and Rezone #10CZ14, and located at 500-526 Mill Hopper Lane containing 5.737 acres.
6. Set Public Hearing November 16, 2010 for various amendments to the Unified Development Ordinance.
7. Capital Project Ordinance Amendment for various street and sidewalk projects.
8. Resolution Authorizing Condemnation of maintenance easements to allow for maintenance of street culverts in Buckingham Subdivision.
9. Encroachment and Maintenance Agreement with JVI Construction, Inc. for Lot 20 The Manors and Cottages at Bella Casa Phase 1A.

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 to the Agenda and it was set.

## PUBLIC HEARINGS

There were no scheduled Public Hearings.

## OLD BUSINESS

### Old Business # 01

Presenter: Attorney Hank Fordham

Review: Pursuant to NC Session law 1009-403 on or before January 1, 2010, Council must complete 2 hours of ethics education.

**Ethics Education:** Attorney Fordham advised a current webinar is available for Council until November 7, 2010 in order for Council members to complete the requirement to obtain 2 hours of ethics education on or before January 1, 2011. A link will be mailed to the Council that will be available for 60 days.

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.  
Your comments must be limited to 3 minutes to allow others opportunity to speak.  
No one spoke during public forum.

## NEW BUSINESS

There were No New Business Items to be considered.

## CLOSED SESSION

There were no Closed Session items to be discussed.

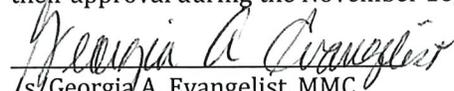
## WORK SESSION

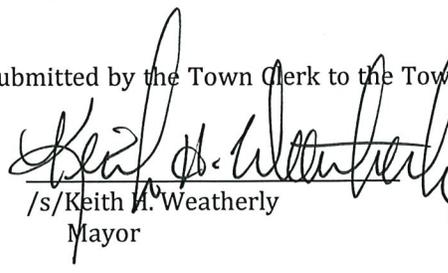
No Work Session was scheduled.

## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:04 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously.

The November 2, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the November 16, 2010 meeting.

  
/s/ Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
/s/ Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Worksession Minutes of November 04, 2010 Apex Town Council and Apex Planning Board

The Apex Town Council and the Apex Planning Board held a Worksession regarding the proposed Veridea project on Thursday, November 04, 2010 at 6:00 p.m. in the Apex Town Hall, 3<sup>rd</sup> Floor Training Center. Those present are listed as follows:

### Council:

Keith Weatherly, Mayor  
Bryan Gossage, Mayor Pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Eugene Schulze

### Planning Board:

Sheryl Bynum  
Tom Colhoun, ETJ  
Lisa Carley  
David Hooks  
Margo Bills  
Terry Rowe

### Apex Staff:

Bruce Radford, Town Manager  
Mike Wilson, Assistant Town Manager  
Hank Fordham, Town Attorney  
Georgia Evangelist, Town Clerk  
Dianne Khin, Planning Director  
Brendie Vega, Principal Planner  
John Brown, Director of PR&CR  
Jack Lewis, Chief of Police  
Mark Haraway, Chief of Fire Dept  
Karl Huegerich, Fire Marshall

### Others:

Brenda Steen, Apex Chamber of Commerce  
Shawn Daily, Apex Herald  
Jordan Cooke, Cary News

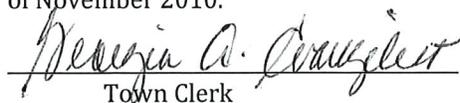
### Veridea Team:

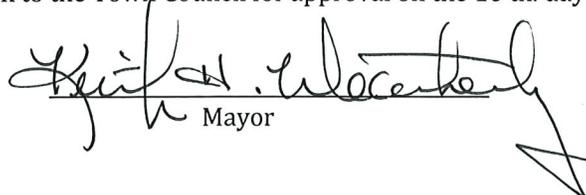
Tom Hendrickson, Lookout Ventures, Inc.  
John Martin, Lookout Ventures, Inc.  
Alan Maness, BBM & Associates  
Lacy Reaves, Smith Anderson et al  
Jo Anne Sanford, Veridea Advisory on Utilities

Mayor Weatherly began the work session at 6:00 p.m. regarding proposed Veridea. Request from Lookout Ventures is to rezone 1011 acres to Sustainable Development Conditional Rezoning. Applicant submittals: SD Plan, SDP Tables and UDO Amendments, all incorporated as a part of the minutes by reference. Purpose of the work session was to discuss areas specific to Police, Fire, and Parks Recreation and Cultural Resources. Outstanding Issues and Veridea responses are incorporated as a part of the minutes by reference.

Jack Lewis, Chief of Police; Mark Haraway, Fire Chief and John Brown, Director of Parks, Recreation and Cultural Resources addressed items in their staff reports. Tom Hendrickson, Lookout Ventures, Inc. and Veridea Developer responded to the items. Final questions and comments completed the Work Session. Site plan review will address all issues: additional public safety facility, staffing and equipment; parking plan; transportation plan: note: Veridea will be dependent upon light rail to function without having impacts on traffic on NC55; utilization of reclaimed water for fire suppression water source; economic and benefits analysis to relieve concern of financing; parks master plan; include public safety check points in SD Plan vs. developer agreement. Discussion: phasing, demographics and density- noted thresholds will be in place; assurance future councils would not be bound by decisions where corrections could not be made to future situations. Next steps: discuss financing plan; send SD Plan revisions, outstanding issues and UDO amendments to Planning Board in December and public hearing before Council in January 2011.

With no further business, Mayor Weatherly adjourned the Work Session at 9:00 p.m. The minutes were submitted by the Town Clerk to the Town Council for approval on the 16 th. day of November 2010.

  
Town Clerk

  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for November 16, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 16, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



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

Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

## COMMENCEMENT

Mayor Weatherly called the meeting to order, Scouts from Troop 210 led the Pledge of Allegiance. Mayor Weatherly recognized guests Mayor Weinbrecht and Cary staff, and extended a welcome to those in attendance. Council Member Jones gave the Invocation.

## 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 on the following items. There were no amendments to the consent agenda. **Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Town Council November 2, 2010 meeting minutes.
2. Town Council November 4, 2010 work session minutes.
3. Resolution No. 2010-1116-21 naming review officers for Town of Apex and to be approved by the Wake County Board of Commissioners.
4. Amendment No. 2 to 2006 South Wake Landfill Partnership Interlocal Agreement.
5. Budget Amendment No. 5 and Capital Project Ordinance Amendment to reimburse for improvements To Kelly Road.
6. Resolution authorizing execution of amendment to installment financing contract with SunTrust for Police and Fire/EMS facilities.
7. Tax Report for Town of Apex and approved by Wake County Board of Commissioners.

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 to the meeting agenda, and it was set.

## PUBLIC HEARINGS

### **Public Hearing #01**

Presenter: Planner Lauren Simmons

Review: [Public Notice](#)

Planning Board met November 8, 2010 and voted 5-1 for approval; staff recommends approval with conditions noted.

#### ***Rezone #10CZ13 Tom Colhoun, Applicant***

Public Hearing and possible motion regarding Rezone #10CZ13, Tom Colhoun, applicant, seeking to rezone from Mixed Office Residential Retail-Conditional Use to Mixed Office Residential Retail – Conditional Zoning; to change conditions and add additional uses, for properties located at 201, 203 & 305 S. Salem Street and 207 W. Chatham Street, and contains approximately 1.29 acres. Staff presented the planning report and addendum, both incorporated by reference as a part of the minutes; stated current zoning and applicant's request, consistent with 2025 Land Use Plan; proposed uses restrictions/conditions, and definition of Personal Service were stated. Note: Applicant addressed concerns of neighbors relative to restaurants, any retail and some personal services, by agreeing to reduce allowed square footage of restaurants, eliminate book store and tailor shop, and has placed additional restrictions on personal services; and has added prohibition of outdoor sales, storage and display. Properties were rezoned from O&I in 2004/05: all uses except bookstores and tailor shops are consistent with O&I. Small Town Character Overlay District provided standards for commercial infill, redevelopment and preservation of downtown character; Council adopted rewrite of ordinance with Adaptive Reuse to ensure historic residences and their character remain intact and are maintained with conversion into business; inclusive was rezone of Seymour property; signage must conform with UDO and development plan must be submitted for each conversion; demolition disincentive ordinance protects properties converted to commercial. Staff recommends approval with conditions noted. Planning Board met November 8, 2010 and voted 5-1 for approval. Noted: 207 W. Chatham Street property owner has agreed to eliminate bookstores and tailor shops uses; and has agreed to additional limitations in respect to adjacent properties. Noted: 30% of square footage for Restaurant General would most likely be accessory use to the main business.

Attorney Fordham reported the zoning protest petition submitted was valid with respect to 207 W. Chatham Street; however was not valid with respect to 201, 203 and 305 S. Salem Street; suggested separate votes for each parcel. A valid protest petition requires three-fourths super-majority vote of the Council.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Those speaking in favor of the applicant's request to rezone: proposed uses are consistent with permitted uses in O&I; add uses enhance leasing opportunities in residential homes still maintaining residences and integrity of Apex and aid/improve downtown.

#### Business Owners and Operators:

- Ann Holland - Hollands Jewelers, owner of 301/302/305 S. Salem Street
- Paul Bitner co-owner 201 S. Salem Street
- Dr. Anne Marie Turnia co-owner 201 S. Salem Street
- Cari Case - Chiropractic, owner 207 W. Chatham Street (shared parking agreement)
- Tuss Kincade - Massage Therapy
- Dr. Nancy Rodra - Massage Therapy
- Marshall Barnes, owner 103 S. Salem Street



Those speaking in opposition to the applicant's request to rezone expressed concerns: signage, leasing homes, increased traffic, economic conditions, diminishing residential appearance, insuring residential character is maintained, that residences remain homes, not expanding the commercial side, not jeopardizing homes, preservation/value of historic homes, searching for resources to restore homes, restricting uses; residential and retail incompatibility, non-conforming uses, existing contributions of business to the community, unnecessary to rezone noting massage therapy is allowed in O&I:

- Penny McGuire, 210 W. Chatham Street, resident and teacher, and speaking for neighboring residents
- Mack Thorp, President of Apex Historic Society and Board of Directors, and business owner
- Molly Weston, 101 Pearson Street, resident
- Laura Grimes, 210 S. Salem Street, resident
- Don Grimes, 210 S. Salem Street, resident
- Anna's Pizza, Yuri Rojas, owner, Chatham/Salem Street

Discussion/responses: parking requirements/parking agreements; adaptive reuse to lessen impacts on residential properties; restaurant space reduction/ventilation; expanding uses at 207 W. Chatham Street - defined personal services lists licensed therapeutic massage studios, would need to change definition, as well as office and professional definition; sign requirements/restrictions.

Mayor Weatherly closed the public hearing at 8:40 p.m. Council comments: Council Member Jones saw merit in all sides; agrees massage therapy should qualify as professional service and perhaps could deal with it in 207 W. Chatham Street; has concern with loss of residential character in this portion of downtown, and less concerned for 305 S. Salem as its surrounded by B1, B2 and O&I and what's across the street that is zoned for these uses; has reservations with the other three properties. Council Member Gossage agrees; noted location of the bank and office space and felt 305 S. Salem reasonable; more concerned with 201 and 203; asked where to stop and makes some sense to stop at 207 W. Chatham Street. Council Member Schulze agrees, opposes retail in residential area just as they wouldn't want retail in any other residential area noting impacts. Noted: Applicant was willing to remove the three retail uses not allowed at the Seymour property: bookstores, tailor shops, newsstand or gift shops. Council Member Schulze felt it a mistake to allow restaurants in this general area, understands deli, but not ovens and ventilation systems. Noted: O&I zoning allows restaurants at 30% and considered compatible with O&I and what the request tried to mirror. Council Member Jensen felt they should restrict ovens because of the fire hazard; felt 305 S. Salem was unique; 201 and 203 S. Salem is fine as they are; 207 W. Chatham Street he thinks should allow massage therapy and chiropractic at least for the individual that is there now for use in the upstairs.

Mayor Weatherly referred to Council for separate motions:

**Action:** Council Member Jones made the motion to approve rezone for 305 S. Salem Street with conditions as proposed and amended to remove bookstore, tailor shops, news stand/gift shop. Council Member Gossage made the second to the motion. Motion carried 4 -1 with Council Member Schulze voting no.

**Action:** Council Member Jensen made the motion to deny 201 S. Salem Street leaving it with no change. Council Member Schulze made the second to the motion. Noted: Applicant removed restaurant out of 201 and 203 S. Salem Street. Motion carried 5-0.

**Action:** Council Member Schulze made the motion to deny 203 S. Salem Street leaving it with no change. Council Member Jensen made the second to the motion. Motion carried 5-0.



Mayor Weatherly asked if there were a motion to be made for 207 W. Chatham Street: Member Jensen felt massage therapy should be allowed at 207 W. Chatham Street, as chiropractic was there. Director of Planning stated uses at 207 W. Chatham Street: single family, office, business or professional and bed and breakfast with special use permit; as talked, add medical/dental office or clinic because that's where the chiropractor belongs; they are there but needs to add medical; also need to add personal service for therapeutic massage; if this is ok with Dr. Case, the applicant. Staff stated bed and breakfast are by special use permit; other uses by right; that chiropractic use where it currently is, was non-conforming use, however did receive a permit based on office/professional, but are specifically listed in medical office. Also mention similar situation in 201 or 203 S. Salem Street a psychiatrist in the sociologist office, and need medical office as well, and you actually denied 201 S. Salem Street; will have to request this or council would have to reconsider.

**Action:** Council Member Jensen made the motion to approve 207 W. Chatham Street to allow for uses related to medical/dental/office or clinic and personal service with restrictions stated. Council Member Jones made the second to the motion. Council Member Jones felt there were questions still unanswered regarding 207 W. Chatham Street and offered perhaps Council should table this for two weeks. Mayor Weatherly asked if Council would like to table the decision regarding 207 W. Chatham Street for two weeks or December 7, 2010 meeting.

**Action:** Council Member Jones made the motion to table the item until December 7, 2010. Council Member Schulze made the second to the motion. Motion carried. Council Member Jensen asked if they were willing to reconsider action taken for 201 S. Salem Street and 203 S. Salem to table as well. All voted on the prevailing side except for Council Member Schulze and he couldn't make the motion. Mayor Weatherly asked if there were a motion to reconsider.

**Action:** Council Member Jensen made the motion to rescind the vote, noting there is a psychiatrist there in 201 S. Salem, and needs definition of medical as well. Council Member Jones rescinded his second. Motion carried. Mayor Weatherly stated debate recurs on previous action taken on 201 and 203 S. Salem Street, with Director of Planning stating just on 201 S. Salem Street.

**Action:** Council Member Jensen made the motion to table the item for two weeks or December 7, 2010. Council Member Jones made a second to the motion. Motion carried.

Public Hearing # 01 concluded and decision was made for 203 S. Salem Street and 305 S. Salem Street; with continuation of decision to December 7, 2010 for 207 W. Chatham Street and 201 S. Salem Street.

## **Public Hearing #02**

Presenter: Senior Planner June Cowles

Review: [Public Notice](#)

Planning Board met November 8, 2010 and voted unanimously for approval; staff recommends approval.

### ***Rezone #10CZ14 Apex First Development, owner, and Jones & Cnossen Engineering, LLC, Applicant***

Public Hearing and possible motion regarding Rezone #10CZ14, Apex First Development, owner, Jones & Cnossen Engineering LLC, applicant, seeking rezone of Old Mill Village Lot 3, Planned Unit Development Conditional Use district to Planned Unit Development Conditional Zoning district, for single family homes, and located on Mill Hopper Lane, containing 5.737 acres. Staff presented the report which is incorporated by reference as a part of the minutes; stated current zoning and applicant's request for a rezone amendment to the PUD Plan for Lot 3 to revise the side setback from 5 feet to 3 feet, and finalizes the PUD Plan. Planning Board met November 8, 2010 and voted unanimously for approval; staff recommends approval.

Mayor Weatherly opened the public hearing at 9:06 p.m. and speaking in favor was Pete Cnossen, Jones & Cnossen Engineering LLC, agreeing with staff's report. With no one opposing, Mayor Weatherly closed the public hearing at 9:07 p.m. and referred the matter to Council.

**Action:** Council Member Jones made the motion to approve rezone #10CZ14. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02



### **Public Hearing #03**

Presenter: Senior Planner June Cowles

Review: [Public Notice](#)

Planning Board met November 8, 2010 and voted unanimously for approval; staff recommends approval.

***Quasi-judicial Public Hearing: all persons addressing this item were administered an oath by the Town Clerk prior to giving sworn testimony related to the major site plan.***

***Major Site Plan: Western Wake Regional Water Reclamation Facility, Western Wake Partners, owner, and Arcadis G&M of North Carolina Inc., Applicant***

Public Hearing and possible motion regarding Western Wake Regional Water Reclamation Facility major site plan; Western Wake Partners, owner, Town of Cary, 316 N. Academy Street, Cary, NC 27512 and Arcadis G&M of North Carolina Inc., Applicant, 801 Corporate Center Drive, Suite 300, Raleigh, NC 27607; property location, 4101 Shearon Harris Road, containing 207.28 acres.

Attorney Fordham stated perimeters of the Quasi-judicial hearing, an evidentiary hearing where Council will listen to the facts by witnesses, and where witnesses are sworn, and give sworn testimony; Council will decide on the facts and the evidence presented and will then apply the standards that's in the agenda item and in the Unified Development Ordinance and determine whether to deny or approve the proposed site plan. Witnesses are subject to cross examination by other interested persons. One unique factor, because of the statute, pertains to site plan quasi-judicial hearings, is that lay witnesses are not permitted to testify about things they do not have expertise in; there are certain subjects that only expert witnesses should testify about. An expert witness is somebody that has more knowledge than the average person would have about a subject because of their education, training, or experience. In particular, the statute points out that a lay person shouldn't testify about how a particular use would affect the value of property; a person with some expertise in real estate values would need to give that type testimony; also, lay witnesses are not permitted to testify about how an increase in vehicular traffic might or might not cause danger to public safety. Council members act as judges, not as legislators, which is the usual case in zonings, etc. Attorney Fordham advised if any Council member had been contacted outside this hearing, it would be appropriate to disclose that and state whether or not they had an opinion already formed about whether to deny or approve the site plan.

Staff Planner June Cowles, stated her credentials and presented the staff report which is incorporated as a part of the minutes and referred to by reference; and presented the site plan application; stated current land use: Industrial; Current Zoning: Residential Agricultural; site contains open fields, woods, ponds, streams, and two old homes. Site rendering: Old U.S. Hwy 1, CSX railroad line; Shearon Harris Road: entrance to the site; emergency access proposed from existing two homes off Old US 1 and over the CSX railroad line. Proposed project includes 12 buildings (administrative, operation and maintenance buildings), pump stations, and stormwater ponds: total square footage 59,470. Landscape Plan includes a 200 foot perimeter buffer and stream and pond buffers. Site requires 25 percent of RCA; project includes 27.9 percent of RCA. Applicant held two neighborhood meetings on August 12 and August 31, 2010 (notes contained in the Council packets). Planning Board met November 8, 2010 and voted unanimously for approval of the major site plan; staff recommends approval.

#### Opening statement:

Harold Weinbrecht, Town of Cary, North Carolina Mayor, Member of the Policy Advisory Committee, Western Wake Partners, and on behalf of the Committee and communities they represent, thanked Council for the opportunity to open the presentation, and speaking in favor of the site plan for the Western Wake Regional Water Management Facility which will serve 370,000 businesses and residents in Western Wake County and Eastern Chatham County. State of North Carolina is requiring the community to return water to the Cape Fear River Basin, a primary driver of the plant site location. With the site plan presentation and exhausted analysis the Partners have done in co-operation with the US Army Corp of Engineers and State, they are confident the site as planned will not significantly impact adjacent property owners, in fact, the project will provide dozens of plant site neighbors with safe, reliable and affordable water and sewer services. They believe the proposed site plan meets or exceeds all relevant regulations, and he's personally satisfied with the project and the project the Partners are representing for consideration. He expressed appreciation to Council for allowing him to be here and to be heard.



Attorney T.C. Morphis, Brough Law Firm, Chapel Hill, North Carolina, was asked to work with Western Wake Partners as they go through the site plan approval process. In the Quasi-judicial context, their biggest challenge had been to take thousands of pages of documentation and get it down to a nice distinct presentation. Their goal was to give all the information needed to make an informed decision based on substantial confident evidence; all those were sworn to answer any questions. Two CD's were entered into evidence: Final EIS & Appendices, Apex Neighborhood Meeting Comments, Water & Sewer Extension Policy, Record of Decision and Appendices, Final Engineering Report & Appendices, Resumes of Speakers at November 8, 2010 Planning meeting and November 16, 2010 Town Council Meeting. One minor legal issue solely to preserve the issue in the event site plan approval is granted, then later appealed in the courts, stated: he had conversation with Attorney Fordham about this earlier and he and Attorney Fordham respectfully disagree; it has no bearing on the project or council's consideration, but raised solely if need to raise them later in an a culet situation. In his research before the Planning Board hearing, he found a line of cases that seems to indicate that public enterprise facilities such as this are not subject to zoning approval. He and Attorney Fordham disagree about the interpretation of those cases, but he wanted to make sure this is in the record and that's preserved. The other issue is G.S. 160.392 generally applies zoning to government buildings; they think for a lot of reasons, it doesn't apply in this case. He emphasized they were excited to be here and think this is a good process, and allows Council to make substantive decisions and allows the public to see detailed information about an important part of the project.

He introduced the folks that would be giving information:

Tim Bailey, Director of Engineering for the Town of Cary, North Carolina; is a qualified expert in a number of areas of engineering, including traffic, mechanical, and will talk about the actual physical plan of the plant and how it relates to the community; the biggest criteria being looked at, "Is the proposed use compatible with the surrounding land uses." He thinks Bailey will more than adequately show that it is.

Ingrid Kennedy, President of PEQ, an urban planning consulting firm, Georgia, and has been working with the Partners for years on community outreach. She will show how the Partners worked very hard to respond to the needs and concerns of the community; again working to make this even more compatible with the surrounding land uses.

They have two reports prepared: one by Greenbush Group, Seattle Washington, sound and vibration consulting firm; have done noise modeling to show what the likely level of sound will be at the property perimeters. Because they are out of state, they are not here to speak. Tim Bailey will talk more about the report, and is included on the CD's.

Rich Kirkland, MAI Certified Appraiser, to look at the question of what would be the likely impact on property values of the surrounding areas, or areas surrounding the use; he was here, but in the interest of brevity was not going to speak, but if there are questions, ask him. Bailey read into the record, Kirkland's conclusion: "The market study shows that the surrounding land uses will not be negatively impacted by the proposed Western Wake Water Reclamation Facility. Most of the surrounding land will benefit from access to public utilities, especially in light of the severe limitations the surrounding soils have for sanitary septic use. The proximity to the proposed facility therefore has a net positive impact on the surrounding properties as detailed later in this analysis." There were printed copies of this and the noise report.

Tim Bailey, Director of Engineering, Town of Cary, North Carolina, represented the Western Wake Partners on this site plan, stating he had 23 years of local government experience, was a registered professional engineer in the State of North Carolina, experienced in utility projects, stormwater projects, transportation and traffic related issues. The slides he showed would reiterate the fact that the site plan meets the ordinances, and have been through a thorough process through the environmental impact statement and a record of decision was issued on this project; believe the project is safe and slides will explain that. Project slide presentation is incorporated as a part of the minutes and referred to by reference. Verbal presentation was given; more detail was given related to odor control requested by Council Member Gossage. Bailey stated the critical components of the facilities, with very little odor at treatment plants; many treatment plants have no odor control facilities; would react with odor and breaks down compounds; second stage activates carbons on those locations and



further control odor, getting anything that got by the first step; a two stage process that will greatly minimize or nearly eliminate any odor from the site; can be a very rare less than 1% outbreak and may need to adjust for a short period of time and manage. At the north and south Cary wastewater treatment plants, they have recently added these devices at the head works and have great success at both locations. There is a residential development immediately adjacent to the south Cary wastewater treatment plant head works, the most critical location, and since they installed the device, the neighbors are satisfied with odor issue. Feels they have done a good job with the new project, using current technology to control odor. He expanded head works and bio-solids facilities for Council Member Schulze: stated the head works facilities are not in a building so much, but the tanks are covered with a plate and has air drawn off them that goes through the odor control devices; Bio-solids will be in a building, odor will be routed into the odor control facility; there are two alternatives for bio-solids, either case, it's housed within a building.

Ingrid Kennedy, President of Planners Environmental Quality, Union City, Georgia, an urban planning consulting firm and provides environmental land use and transportation services as well as public involvement and outreach on planning, architectural and engineering projects, conducted in the state of Georgia and throughout the southeast. She's worked with the Partners on this project since 2006, community outreach and public involvement, and an integral part of the process, and will continue to be, working with the community of New Hill. She presented the Community Outreach portion of the presentation and is incorporated in the minutes and referred to by reference: Partners Outreach (giving information, receiving information, providing written information, and feedback; website is primary source of outreach); Environment Impact Statement Outreach (community representative served on Project Development Team and significantly influenced decisions; negotiated water/sewer policy offered access to residents around the site; identified noise, lighting, odor control, and traffic issues during construction, operations, and routing), and Partners Commitment to Ongoing Outreach (prepared Community Outreach Plan moving forward through all phases, with door to door contact as primary way to work with community and written document, and on the website: 2 neighborhood meetings, all were phoned announcing the site plan meeting, ensure they were receiving communication, updating communication, and offering additional information; several were unable to attend and visited those at their homes and took information to them, received feedback and made them aware of the 2<sup>nd</sup> meeting and that they could give comment without attending); and noted discussion about water and sewer with resident's revealed concerns (was a big issue to the unincorporated portion of Wake County where the majority are either on failing wells, sewer or septic and costly to upgrade and replace and interested in water/sewer access; there was no planned service to them relative to this project and waiting over time for development to occur was going to put them at a disadvantage in terms of being able to receive the service; they requested service for no cost. Water/Sewer Extension Policy (this is a process that has been on the table - the policy tweaked and worked with over the years and Partners is proud to be able to work with the benefit to them that will greatly improve their property). Outreach will be ongoing for the next several years: having visited 105 homes in the half mile radius; during the environmental impact statement process, a mile radius, well into the 200's, answering Council Member Gossage. Percentage of people who approved, answering Council Member Jensen: they never conducted a survey as such, their role was to provide information and get feedback; obviously people expressed opposition, and people that expressed support.

Attorney Morphis stated this was the end of the presentation. Again the standard is compatibility with surrounding land uses. He would answer any further questions. He thanked Council for their time. Council Member Jensen noted an article regarding residue from the plant, asking if there would be an incinerator. Bailey noted two options: digest bio-solids, dewater and take to a compost facility, a higher long-term cost solution; an alternate solution would dry bio-solids, similar to belt conveyor oven system, bio-solids are thickened paste or cake form, dries and comes out the other side; to fuel the drying source, they combust the bio-solids, and create their own energy needs, the heat routed back and dries the product; they do not believe it's an incinerator - it's a furnace used to create energy and they reuse that; a green renewable type of energy source, where otherwise this product would be going to other places, potentially landfills, composting, many places; that's the facility they do have. Their engineer was present that is working on the alternative design. Council Member Jensen asked if it takes additional energy to keep the process going: Bailey responded, it's close to being balanced, it depends on the actual wastewater they are treating, they



have used estimates from the plant currently in service and thinks it would be close, it does take natural gas to get start the heat up and get it to a point; there are problems with using natural gas for a heat source to dry the product; have the options to avoid the driers and go the compost; its good they have many ways to manage sludge with the alternative design and provide options; they are hoping they are close, and if they do not have enough, energy in the dried bio-solids, they have pellets they could supplement from their south plant that they could bring and provides an option and have no natural gas required, except for startup. Council Member Jensen asked if they had considered injecting it into landfills, they could get 30% more methane from landfills, they could co-ordinate with Wake County. Bailey responded their goal through any option was to get a Class A bio-solids product without going through some type of anaerobic digestion process, injecting it the way he was talking about would not be normally done; their goal is Class A and thinks there's where the rigs' are going and to be in compliant long term so they are looking at either composting or drying method to achieve that; they have a dryer at the south plant; they have good results and are cost effective there; they believe they have the lowest method to treat bio-solids that treats that Class A sludge product and will continue to use that; they helped Apex when in a jam for land apply and brought bio-solids to their plant for drying to get Class A product; they really did not look at that in detail for those reasons.

Mayor Weatherly commented the project will be bid for construction both ways with or without and the decision which one will be made when we get ready to award the contract which is the most cost effective. Bailey responded correct, the bio-solids options are bid alternate and which method used will be done as part of the bid award. Mayor Weatherly asked he talk about air-quality, state and federal regulations that would restrict anything that we would disburse in the air, a concern for burning.

Bailey responded they have air quality permits required for the project regardless of the bio-solids technology we choose to use; there are emissions associated with the furnace, and many of those are dealt with through treatment on site, scrubbers and other things that would deal with that; they can give lots of details about that; but in general emissions are reasonably in the tolerable ranges compared to highway traffic and some other things in the area, could give reference points if needed. Council Member Schulze asked him with the smokestack how are they emitted; there is a chimney if you want to call it, stack and scrubbers to get out particular matter and to react with some of the by-products, still an air quality permit is required; its approximately the same height as the bio-solids building which is adjacent to it and all falls within the ordinance height limits. The presentation ended.

Mayor Weatherly asked those wishing to testify to come forward:

Shelia Morrison, New Hill, stated she was a lifelong resident of New Hill, and her family for at least four generations; her son the fifth generation of the Morrison-Stewart families in New Hill. Credentials: First, licensed social worker, forced occupation as a spray irrigation operator, because of three failed septic tanks for small businesses owned and operated by her family for 35 years. Their family care home had a failed septic tank; their land didn't support any other system for waste disposal other than straight irrigation; for anybody not familiar with it, it's just erroneous, highly regulated and licensed, and subject to fines of \$10,000 per day for problems, and by WDQ. Her family owns several parcels of land, that's immediately adjacent or abuts the site and where her spray irrigation facility is located, and abuts the facility. The balloon that you could barely see over the tree tops where they would grow taller was taken from her spray irrigation field. She and her family and other minority families that live in the community, strongly support the construction of the wastewater reclamation facility, as described by the presenters. She participated in the outreach described by Ms. Kennedy, and one of the person interviewed. She's aware all of the families on Church Road, and probably closest to the facility, have properties there and is also the location of her property - all are in favor of the construction of the facility. The facility already stated, will provided a very much needed economic development boost to New Hill, and a direct result of clearing, construction and other similar jobs, and will continue until the facility is in full operation. The community outreach plan helps to insure that interested New Hill residents can request needed education and training necessary to qualify to become wastewater treatment plant operators; and she's not interested as she's had that experience. It also means New Hill residents can work at their homes, and do not have to commute to Apex, Cary, Raleigh or neighboring towns, and can actually work in their town they live in. Sewer access will allow previous businesses to reopen, and



enable new enterprises to be established, and halt further deterioration of community buildings due to a lack of infrastructure. The wastewater reclamation facility will help to revitalize the community and ensure that many more generations are able to call New Hill home.

Attorney Morphis asked Morrison to point to the location of her property on the map and describe the location for the minutes. She pointed to Church Road, and a clearing of land, noting this, the property her family owned, noting the waste treatment lagoons and the six acres of land that could be used for no other purpose than spray irrigation; she noted her property line and family property lines. Attorney Morphis asked her if her property was the one closer to the site. Morrison responded absolutely. Attorney Morphis noted she had shown the cleared area, asking if she got water and sewer would she continue to use the spray field area. Morrison responded, no, absolutely not. Attorney Morphis asked if she would give the location address of her home. Morrison responded off US1 and 64, Exit 89; her mother's home: 3116 New Hill Holleman Road; her cousin's home: 3120; her home 3124; the person that does her yard work stays at 3128.

No one else came forward to testify, and with no further questions, Mayor Weatherly closed the public hearing at 9:55 p.m. and referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the water reclamation facility site plan. Council Member Gossage made the second to the motion. Vote on the motion was 4 in favor and 1 opposed, with Council Member Jensen casting the opposing vote. Motion carried.

End of Public Hearing # 03

#### **Public Hearing #04**

Presenter: Principal Planner Brendie Vega

Review: [Public Notice](#)

Planning Board met November 8, 2010 and voted unanimously for approval; staff recommends approval.

#### ***Unified Development Ordinance Amendments***

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance. Staff presented the planning report which is incorporated as a part of the minutes and referred to by reference. Amendments are:

1. Amendments to Section 6.1 *Watershed Protection Overlay Districts* and Section 12.1 *Definitions* to incorporate changes requested by the NC Division of Water Quality (DWQ) and the Environmental Management Commission (EMC) in regards to the Jordan Lake Riparian Buffer Rules.
2. An amendment to Section 11.4.2 *Disapproval of Subsequent Permits and Development Approvals* to clarify who may withhold permits.
3. Sections 8.7.1(A)(2) *Bracket Signs* and 8.7.7 *Central Business District, Small Town Character and Planned Development District Signs* to correct the redundancy of the regulation.

Mayor Weatherly opened the public hearing at 10:00 p.m. No one spoke concerning the amendments. Mayor Weatherly closed the public hearing and referred the matter to Council. There was no discussion,

**Action:** Council Member Olive made the motion to approve the UDO Amendments. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04



## **Public Hearing #05**

Presenter: Director of Planning Dianne Khin

Review: [Public Notice](#)

Applicant petitions to annex non-contiguous property to allow connection to existing waterline for proposed St. Ha-Sang Paul Jung Catholic Church.

### ***Annexation Petition #455 Roman Catholic Diocese of Raleigh, Applicant***

Public Hearing and possible motion regarding Annexation Petition #455: Michael F. Burbidge, Roman Catholic Diocese of Raleigh, owner, petitioning to annex 6.305 acres located at 3031 Holland Road. Staff presented the report which is incorporated as a part of the minutes and referred to by reference; oriented to the site, noting site plan approved for a church and needs water. Staff recommends approval.

Mayor Weatherly opened the public hearing at 10:01 p.m. No one addressed the annexation, and Mayor Weatherly closed the public hearing and referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve Annexation # 455, adopting an ordinance to extend the corporate limits by the said acreage. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 05**

**End of Public Hearings**

## **OLD BUSINESS**

There were no Old Business items to be considered.

## **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.  
Your comments must be limited to 3 minutes to allow others opportunity to speak.**

Joel Fox, resident, stated he had made observations regarding the police department: their searching teen drivers and their vehicles for no reasons; number of patrol vehicles; kids being harassed; need for additional youth activities in Town. He was offered a program guide of recreational activities and also should visit the website for more opportunities.

**End of Public Forum**



## NEW BUSINESS

### **New Business #01**

Presenter: Senior Planner June Cowles

Review: Planning Board met November 8, 2010 and voted unanimously for approval; staff recommends approval with conditions.

#### ***Bella Casa Master Subdivision Plan***

Possible motion regarding Parkside at Bella Casa Master Subdivision Plan within 10.65 acres, located at the northern portion of 2504 Whistling Quail Run.

Staff presented the planning report which is incorporated as a part of the minutes and referred to by reference; oriented to the site, and stated proposed conditions: Milano Avenue may be constructed in two phases with this subdivision approval. Phase I shall be constructed as part of the residential development and will terminate at the approximate location of the existing 20 foot Town public utility easement. Phase II extends to the western property boundary shall be constructed prior to the final Certificate of Occupancy of the subdivision. A performance bond shall be required if Phase 2 of Milano Avenue is not completed prior to the first plat. A map view for 13 lots was shown, noting access, RCA is not required. Planning Board met November 8, 2010 and voted unanimously for approval; staff recommends approval with conditions. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve the Master Subdivision Plan with the condition stated. Council Member Olive made the second to the motion. Motion carried unanimously.

End of New Business #01

### **New Business #02**

Presenter: Mayor Keith Weatherly

#### ***Apex Planning Board and Apex Board of Adjustment***

Mayor Weatherly recommended for Council's consideration, re-appointments to the Apex Planning Board and to the Apex Board of Adjustment.

#### **Mayor Weatherly recommends re-appointments as follows:**

##### **Planning Board member:**

Margo Bills: 3-year term and expires December 2013

##### **Board of Adjustment members:**

Glynn Rodean: 3-year term and expires December 2013

Lou Gregus: 3-year term and expires December 2013

Alternate David Rowland: 3-year term and expires December 2013

##### **Chair and Vice Chair positions:**

**Planning Board Chair:** Graham Wilson 1-year term and expires December 2011

**Planning Board Vice-Chair:** Tommy Morgan 1-year term and expires December 2011

**Board of Adjustment Chair:** Craig Hardee 1-year term and expires December 2011

**Board of Adjustment Vice-Chair:** Glynn Rodean 1-year term and expires December 2011

**Action:** Council Member Jones made the motion to approve the re-appointments as stated. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business #02

End of New Business



## CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following:

- 1) in connection with the Peakway Project, to discuss acquisition of real property related to a portion owned by Brookfield Properties, LLC, a portion owned by Vineyard Station, LLC and portion owned by Shepherd's Vineyard Community Association, Inc. and discussion with the Town Attorney regarding possible eminent domain litigation related thereto, and
- 2) to discuss with the Town Attorney potential eminent domain litigation.

**Action:** Council Member Jones made the motion to move into Closed Session at 10:20 p.m., for the reasons stated. Council Member Schulze made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move from Closed Session back into Regular Session at 11:05 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

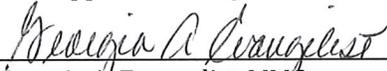
## WORK SESSION

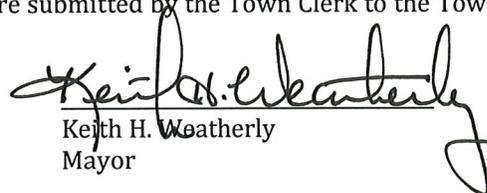
No Work Session was scheduled.

## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 11:05 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The November 16, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the December 7, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for December 7, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 7, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly will preside over the meeting.  
All Council Members were present.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Olive. Scout Troop 222 led the Pledge of Allegiance. Mayor Weatherly extended a welcome to those in attendance.

## PROCLAMATIONS

Mayor Weatherly read a Proclamation recognizing the Apex High School Women's Volleyball as NCHSAA 2010 State 4A Champions; a photo of the team was given to the school; appreciation by Coach Nikki O'Connell.

## 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 on the following items.

**Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Council Meeting Minutes of November 16, 2010.
2. Council Meeting Closed Session Minutes of November 16, 2010 (separate cover).
3. Council Statement and Ordinance for Rezone #09CZ06, Jones & Cnossen Engineering, PLLC, petitioner, for property located at the end of Whistling Quail Run and approved September 21, 2010.
4. Council Statement and Ordinance for Rezone #09CZ07, Chris Pope, Bass, Nixon & Kennedy, Inc., petitioner, for property located at Laura Duncan Road between Old Apex Road and Ramblewood Drive and approved September 21, 2010.
5. Council Statement and Ordinance for Rezone #10CZ10, Kite Realty Peakway @ 55, LLC, petitioner, for property located at Apex Peakway between South Hughes Street and Broadstone Way, and approved September 21, 2010.

Consent agenda continued on page 2



6. Council Statement and Ordinance for Rezone #10CZ11, Percy Koluch Builders, LLC for Calvary Chapel, owner, for property located at 2633 Schieffelin Road and approved September 21, 2010.
7. Set Public Hearing December 21, 2010 Council Meeting for various amendments to the Unified Development Ordinance.
8. Set Public Hearing December 21, 2010 Council Meeting for Bella Casa PUD Amendment Rezone #10CZ06 and Master Residential Subdivision Phase 5; approximately 1.025 acre.
9. Resolution: 2010-1207-22 Declaring Surplus property to be Awarded to Retiring Apex Police Officer, Tim Kerley (his badge and service side arm used by him during his service with Town of Apex) and authorize Town Manager to proceed with procedures as defined in the General Statute.
10. Supplemental Agreement TIP #SR-5000 B & 5001 B to extend deadline of Safe Route to School Demonstration Grant to May 31, 2011, and authorize Town Manager to execute same.
11. Authorize Town of Cary to negotiate an Engineering Contract for Design of the Expansion of the Cary/Apex Water Treatment Plant and Associated Budget Ordinance Amendment No. 6 and Capital Project Ordinance Amendment.
12. Amend Town Code of Ordinances Section 14-17 Discharge of firearms, air rifles, etc., to prohibit the discharge of bows and arrows, compound bows and crossbows within the Town and to clarify shot sizes allowable for vermin control.

End of Consent Agenda

## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

### **Public Hearing 1**

Presenters: Staff Planner Lauren Simmons / Capital Area Preservation Gary Roth

**Designation of Historic Landmark: Harward-Bagley House: 209 East Chatham Street; Owners Doug and Pam Boyette.** Gary Roth Capital Area Preservation presented the recommended designation, approved by the Historic Preservation Committee and Capital Area Preservation, and recommended adoption of the ordinance. Mayor Weatherly opened the Public Hearing at 7:20 p.m.; Owners, Doug and Pam Boyette voiced pride in the historic residence. Public Hearing was closed.

**Action:** Council Member Gossage made the motion to adopt Ordinance No. 2010-1207-10 designating the Harward-Bagley House a historic landmark in Apex. Council Member Jones made the second to the motion. Motion carried unanimously.

End PH1

### **Public Hearing 2**

Presenters: Staff Planner Lauren Simmons / Capital Area Preservation Gary Roth

**Designation of Historic Landmark: W.A. Hinton & Son Hardware Store: 221 - 223 North Salem Street; Owners DTA, II, LLC - Stewart Jones and Doug Meckes.** Gary Roth Capital Area Preservation presented the recommended designation, approved by the Historic Preservation Committee and Capital Area Preservation, and recommended adoption of the ordinance. Mayor Weatherly opened the Public Hearing at 7:27 p.m.; Owner, Stewart Jones voiced pride in the historic commercial building. Public Hearing was closed.

**Action:** Council Member Jones made the motion to adopt Ordinance No. 2010-1207-11 designating the W.A. Hinton & Son Hardware Store a historic landmark in Apex. Council Member Jensen made the second to the motion. Motion carried unanimously.

End PH2

End of Public Hearings



## OLD BUSINESS

### Old Business 1

Presenter: Director of Planning Dianne Khin

Review: Rezone #10CZ13 Public hearing was held November 16, 2010; Council closed the public hearing and voted to table decision regarding properties located at 201 S. Salem Street and 207 W. Chatham Street to this meeting; Planning Board met November 8, 2010 and voted 5-1 to recommend approval of the rezone.

**Council Decision for Rezone #10CZ13 for properties located at 201 S. Salem Street and 207 W. Chatham Street. Staff presented the**

#### **PROJECT SUMMARY:**

This rezoning was heard at a public hearing at the November 16, 2010 Town Council meeting. After closing the public hearing, Town Council continued their decision on these two properties to their December 7, 2010 meeting.

Staff has been in contact with the applicants and the Town Attorney about the options for limiting the uses at these two sites. According to Town Attorney Hank Fordham, single uses rather than use categories can be conditioned into a conditional rezoning. **Therefore, the applicants are proposing to add only the single uses necessary to allow them to continue their existing businesses (behavioral science, psychological and psychiatric services office at 201 S. Salem Street; chiropractic office at 207 W. Chatham Street) and planned business (licensed therapeutic massage therapy office at 207 W. Chatham Street).**

Please note that Planning staff mistakenly permitted both of the businesses in question (Peak Developmental Services, LLC and Case Chiropractic, Inc.). These businesses are included in the definition of "medical offices" under the UDO, rather than under the definition of "professional offices" as staff had categorized them. Staff sincerely regrets this error.

Because the applicants relied on staff's erroneous approvals in setting up their businesses and given that the neighbors testified during the November 16<sup>th</sup> public hearing that psychiatric offices, chiropractic offices, and licensed therapeutic massage therapy offices were appropriate and compatible in these locations, the Planning Board and Planning staff recommend approval of these limited uses.

Staff noted that there have been no complaints from existing businesses; all existing zoning conditions and uses would remain. With no further discussion, Mayor Weatherly referred the matter to Council; the following action was taken.

**Action:** Council Member Jones made the motion to approve Rezone #10CZ13 for 201 S. Salem Street as presented with additional specific uses requested and recommended by staff. Council Member Olive made the second to the motion. Motion carried unanimously.

**Action:** Council Member Jensen made the motion to approve Rezone #10CZ13 for 207 W. Chatham Street as presented with additional specific uses requested and recommended by staff. Council Member Jones made the second to the motion. Motion carried unanimously.

End OB1

## 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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

*No one spoke during public forum.*



## NEW BUSINESS

### New Business 1

Presenter: Director of Finance Lee Smiley / Keith Joyce, Joyce and Company, CPA

#### **Town of Apex Comprehensive Annual Financial Report prepared by Joyce and Company**

Keith Joyce, Joyce and Company, CPA presented the Town of Apex Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2010. Audit Highlights, Management Letter and Governance Letter are incorporated as a part of the minutes. Town received a "Clean" Audit opinion, with audit findings noted and recommendations made. Town received the Certificate of Achievement of Excellence in Financial Report from the Government Association for June 30, 2009 CAFR and has received this award for the past 17 years. Director of Finance noted audit identified software errors and continues to make improvements each year. Council accepted the Report as presented.

End of NB1

### New Business 2

Presenter: Transportation Engineer Russell Dalton

#### **NCDOT Supplemental Agreement for TIP Project U-5118 AB, Realignment of Lufkin Road**

Staff presented a Supplemental Agreement between Town and NCDOT for TIP Project U-5118 AB, Realignment of Lufkin Road, recommending approval and asked authorization for the Town Manager to execute same. Agreement would authorize up to \$1,480,000 in federal funds through STP-DA Program to construct realignment of Lufkin Road across from the northbound US1 ramp/loop and the Town's obligation to match 20% or project costs estimated to be \$370,000. Concerns by legal department were identified and acknowledged by staff regarding indemnity language however staff requests Council approve the standard agreement to avoid further delay as NCDOT is not receptive to make changes. Mayor Weatherly referred the matter to Council:

**Action:** Council Member Schulze made the motion to approve the supplemental agreement as recommended. Council Member Olive made the second to the motion. Motion carried unanimously.

End of NB2  
End of New Business

## CLOSED SESSION

**Mayor Weatherly called for a motion to move into Closed Session at 7:50 p.m. for the following:**

- 1) to discuss potential eminent domain litigation with legal counsel, and
- 2) in accordance with NCGS 143-318.11(4) to discuss matters relating to location or expansion of industries or other businesses including agreement on a tentative list of economic development incentives that may be offered by the Town, and 3) to discuss a personnel matter.

**Action:** Council Member Schulze made the motion to move into Closed Session for the reasons stated. Council Member Jensen made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Gossage made the motion to move out of Closed Session and back into Regular Session at 9:45 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

## WORK SESSION

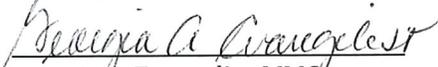
No Work Session was scheduled.

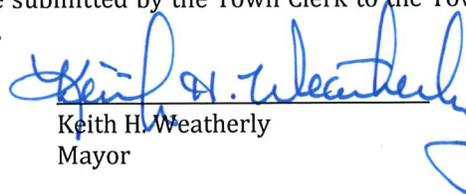


## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 10:29 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Schulze made the second to the motion. Motion carried unanimously.

The December 7, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the December 21, 2010 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for December 21, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 21, 2010, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:  
Keith H. Weatherly



Council:  
Bryan Gossage,  
Mayor pro tempore  
Bill Jensen  
Mike Jones  
Lance Olive  
Gene Schulze

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

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

## PRESENTATIONS

### **Presentations: December 2010 Appearance Awards**

Presenter: Planner Lauren Simmons and Mayor Keith Weatherly

**Residential Award:** Owners: Christopher & Barbara Phillips, 605 Longton Hall Court -Amherst Subdivision

**Commercial Award:** Blue Tiger, 219 N. Salem Street; Owner, Lynn Willis

## 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 on the following items.**

**Action:** Council Member Jones made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes for December 7, 2010 Council Meeting; Closed Session (recorded separately).
2. Minutes of December 10, 2010 Personnel Committee meeting.
3. Council Statement and Ordinance: Rezone #10CZ12, Andy and Susan Mullins, petitioner for property located at 1648 E. Williams Street; approved October 19, 2010.
4. Council Statement and Ordinance: Rezone #10CZ13, Tom Colhoun, petitioner, for properties located at 207 W. Chatham Street and 201, 203 and 305 S. Salem Street; approved 11/16 and 12/7.
5. Council Statement and Ordinance: Rezone #10CZ14, Apex First Development, petitioner, for property located at 500-526 Mill Hopper Lane; November 16, 2010.
6. Set Public Hearing January 18, 2011: Rezone #09RZ07 Veridea, Lookout Ventures, Inc., petitioner seeking to 1) make amendments to the Unified Development Ordinance, 2) Rezone 1,011 acres from Planned Unit Development Conditional Zoning, Rural Residential and Light Industrial to Sustainable Development Conditional Zoning with Sustainable Development Plan, and 3) amend 2025 Land Use Plan; property bound by US1, E. Williams Street (NC55) and Future NC540 Corridor.

7. Budget Ordinance Amendment: Fire Department grant and refinancing of SunTrust debt.
8. 2010 Annual Certification of Firemen and State Certification Roster.
9. White Goods Grant Program Agreement with Wake County; authorize Manager to sign.
10. Award Construction Contract for Apex Peakway Traffic Signals (2):05-2347, SR1011 (N. Salem Street) at Apex Peakway and 05-2358, SR1308 (Laura Duncan Road) at Apex Peakway; authorize Manager to sign.
11. Revisions to Town Standard Specifications and Standard Details; update Town Website.
12. Personnel recommendations presented in December 10, 2010 Committee meeting.
13. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in their regular session of December 6, 2010.

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 to the agenda and it was set.

## PUBLIC HEARINGS

### Public Hearing 1

Presenter: Principal Planner Brendie Vega

Review: [Public Notice](#) Planning Board on December 13, 2010 voted unanimously to approve; staff recommends approval.

**Quasi-judicial Public Hearing: all persons giving sworn testimony related to the major site plan must be administered an oath by the Town Clerk. Town Clerk administered oaths to those speaking.**

**Major Site Plan Hendrick Toyota of Apex: Hendrick Automotive Group, Applicant:** Quasi-judicial Public Hearing and possible motion regarding Major Site Plan for Hendrick Toyota of Apex; Applicant seeks to add a car wash to the current site under construction at Laura Village (Laura Duncan Road and US64 Hwy).

Vega stated her qualifications, presented the staff report which is incorporated as a part of the minutes and gave the review noted above. Applicant seeks to add a car wash for vehicles sold and serviced by Toyota of Apex only, not for public use; applicant would like to add this element while site is under construction; will be placed in new vehicle parking storage lot. RCA is not being reduced or increased with the addition; applicant will provide new construction plans reflecting adequate storm drainage; no phasing plan has been proposed; applicant agreed to use same materials and colors on car wash of those being used on main building; no reduction in parking. Plan is consistent with 2025 Land Use Plan for commercial; meets UDO standards.

Mayor Weatherly opened the public hearing at 7:05 p.m. Greg Hartley, EMHT, representing Hendrick Automotive Group stated this had been a part of the basic plan; will provide new construction plans reflecting adequate storm drainage; efficient system recycling 70% of the water; carwash is not open to public. No one spoke in opposition. Randy Clark, 1919 Laura Duncan Road addressed the site plan; stated this was the first notice he had received about the meeting; first concern was light reflection from the property; noted calculations made were for a particular type lamp directed downward; non-giving light reflects on properties with all lamps; lot elevation would be high, light would spread out and reflect from the property. Second concern was the property barrier; he doesn't see it on the plan but sees the original tree barrier which is thin and with winter the leaves are gone; asked this be addressed. Mayor Weatherly assured it would be addressed. Vega noted a Type A Buffer with supplement of evergreens. Greg Hartley responded shown on the previous plan are adding landscape; continual buffer will be added: evergreen trees and a considerable amount in the front. Lights will be shoebox style, 250 watt maximum, down light and not as bright as you would normally see. Council Member Jensen wanted to assure a follow up and may come back to them. Mayor Weatherly closed the public hearing at 7:16 p.m. **Action:** Council Member Gossage made the motion to approve the site plan carwash addition. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing 1

## **Public Hearing 2**

Presenter: Senior Planner June Cowles

Review: **Public Notice** Planning Board on December 13, 2010 voted unanimously to approve with conditions; staff recommends approval with conditions.

**Bella Casa PUD Amendment-Rezone #10CZ06 and Phase 5 Master Subdivision Plan; JVI Construction, Applicant/Owner:** Public Hearing and possible motion regarding Bella Casa PUD Amendment-Rezone #10CZ06 and Phase 5 Master Subdivision Plan and includes 19 single family lots and 1 stormwater pond on 1.025 acres located on Evans Road south of Apex Nature Park off Apex Barbeque Road. Staff gave background information regarding the proposed, noted adjacent zoning and land uses, and presented the staff report which is incorporated as a part of the minutes. Neighborhood meeting was held; RCA is not required; is consistent with the transportation plan. Review as stated includes conditions: 1) applicant/developer shall include a 20 foot wide greenway easement between stormwater pond and lot 124. Greenway easement shall not be within private lot 124; 2) A tree protection fence shall be required to be installed 10 feet from rear property line at a minimum on each lot prior to grading or building of individual lots. Mayor Weatherly opened the public hearing at 7:20 p.m. Stuart Jones, Jones & Cnossen spoke in favor stating they had achieved the layout wanted and agree to both conditions. No one spoke in opposition. Mayor Weatherly closed the public hearing at 7:21 p.m. **Action:** Council Member Gossage made the motion to approve Bella Casa PUD Amendment-Rezone #10CZ06 and Phase 5 Master Subdivision Plan. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing 2

## **Public Hearing 3**

Presenter: Principal Planner Brendie Vega

Review: **Public Notice** Planning Board on December 13, 2010 voted unanimously to approve; staff recommends approval.

**Amendments to the Town of Apex Unified Development Ordinance:** Public Hearing and possible motion.

Vega presented the staff summary:

### Requested by Staff

1. Section 8.7.1(A)(8)(b) to allow LED changeable copy gas price signs on gas canopies or ground signs (not both).
2. Section 7.3 PARK, RECREATION AND OPEN SPACE SITES to amend standards and procedures for land dedication for parks and recreation sites.
3. Sections 2.3.6 and 2.3.7 to extend the expiration dates of Site Plans and Subdivision Plans to June 30, 2014.
4. Section 7.5.1(B) REQUIRED IMPROVEMENTS, Exemptions to add that subdivisions of 4 or fewer lots are exempt from public road frontage improvements and new location public road construction.
5. Table 8.3-1 to change "Assembly, nonprofit" to "Assembly hall, nonprofit" and 8.2.6(B)(4) Buffering: Land Use Classes to add "Assembly hall, for-profit" as a Class 4 Use and to correct "Assembly, nonprofit" to "Assembly hall, nonprofit".

### Requested by Resident

6. Section 2.3.5 Special Use to include reference to Temporary Use Permits when issued under a Special Use Permit.
7. New Section 4.6.1 (C)(7) to include Temporary Use Permits issued under a Special Use Permit. Renumber current Section 4.6.1(C)(7) to 4.6.1(C)(8).
8. Table 4.2.2 to add "S" under RA and RR districts to allow "Assembly hall, nonprofit" and "Assembly hall, for profit" with a Special Use Permit in the Residential Agricultural and Rural Residential zoning districts.

### Requested by Council Member

9. Section 6.3 Small Town Character Overlay District to exempt properties that currently have vinyl siding on their structures so that new additions, exterior renovations, and accessory structures are allowed to use vinyl provided it is on the same property. Vacant property or newly subdivided lots would not be exempt.

At their regular meeting held December 13, 2010, Planning Board unanimously recommended approval of the UDO Amendments. Staff recommends approval. Clarity was given to 1 and 9 with minimal discussion. Mayor Weatherly opened the public hearing at 7:30 p.m. Wade Baker, 603 Hillcrest Road, noted his home was mostly covered in vinyl siding and with plans for an addition wants to use vinyl siding and avoid paint. Mayor Weatherly closed the public hearing at 7:35 p.m. **Action:** Council Member Jensen made the motion to approve the UDO amendments. Council Member Olive made the second to the motion. Motion carried unanimously.

End of Public Hearing 3

## OLD BUSINESS

There were no Old Business Items to be considered.

## 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.**  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*  
*No one spoke during Public Forum*

## NEW BUSINESS

### New Business 1

Presenter: Town Manager Bruce Radford

**Council Meeting of January 4, 2011:** Manager Radford stated staff had informed him there were no agenda items to come before Council the first meeting in January 2011 and he recommended cancellation of the meeting, with the next regular meeting scheduled for January 18, 2011. **Action:** Council Member Gossage made the motion to cancel the January 4, 2011 meeting. Council Member Olive made the second to the motion. Motion carried unanimously.

End of New Business

## CLOSED SESSION

There were no Closed Session items to be discussed.

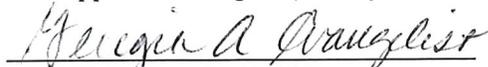
## WORK SESSION

No Work Session was scheduled.

## ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:35 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The December 21, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the January 18, 2011 meeting.

  
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Georgia A. Evangelist, MMC  
Town Clerk, Apex, North Carolina

  
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Keith H. Weatherly  
Mayor