

TOWN OF APEX, NORTH CAROLINA
Minutes of the January 6, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 6, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

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

PRESENTATIONS

Introduction of Presenter: Manager Bruce Radford

Presentation # 01 - Triangle Transit

Presentation and discussion by David King, General Manager, Triangle Transit regarding a future Wake County Transit Plan regarding proposed action plan for public transportation in Wake County for rail transit and express bus service and expansion. Ed Johnson Wake County gave a review of the long range plan process. King answered questions regarding funding sources for this major transit investment in the Triangle over the next 25 to 30 years to recommending .5 cent sales tax and increase in vehicle registration to expand both regional and local bus service, add high frequency circulators, and build five segments of rail totaling 56 miles; noted park and ride opportunities where buses would feed the rail transit; noted growth as the shaping mechanism and adding value to this regional proposal (presentation materials are attached). 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 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 to approve.

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 and General Account of December 16, 2008 Council meeting.
2. Minutes and General Account of December 16, 2008 Closed Session relative to Public Hearing # 4 UDO: Use Table Sec. 4.2.2. (separate cover).
3. Minutes and General Account of December 16, 2008 Closed Session (separate cover).
4. Set Public Hearing January 20, 2009 for Rezoning 308RZ13, from Residential Agricultural to Rural Residential, Elizabeth Chappell and Jacquelyn Burgess, applicants; 11.593 acres located at 1201, 1207 and N. Salem Street.
5. Set Public Hearing January 20, 2009 for rezoning for Peakway @ 55 PUD-CZ #08CZ14.
6. Set Public Hearing January 20, 2009 for various amendments to the Unified Development Ordinance.
7. Ordinance regarding Unified Development Ordinance amendments approved by Council December 16, 2008, for items 1 – 7. End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Attorney Fordham asked to include a Closed Session to discuss taxes relative to a real estate contract. Mayor Weatherly stated under Old Business Item # 1, Council may want to receive legal advice from the Town Attorney in closed session prior to Council acting on this item. **Action:** Council Member Schulze made the motion to set the agenda as modified. Council Member Sutton made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

There were no scheduled Public Hearings.

OLD BUSINESS

Presenter: Town Manager Bruce Radford

Old Business item # 01 - UDO Use Table Amendment

Possible motion to reconsider one or more votes on the UDO Amendments approved at the December 16, 2008 Town Council meeting.

Mayor Weatherly stated Planning Board Chairman Tommy Morgan had indicated his interest in addressing the Council regarding this matter. Tommy Morgan, Chair of the Planning Board gave clarity to the planning process by the Planning Board in consideration of the UDO Use Table, having met December 8, 2008 to discuss the 76 proposed changes to the Use Table, expressing their concern with so many items that would have definite impacts. Planning Board had wanted time to review the proposed changes and send comments to staff before December 16, 2008 with four members having done so, in order to formulate a recommendation and in order to give their input to Council; Planning Board had continued the proposed changes that had not been addressed during their December 12, 2008 meeting. He noted he had called a special meeting on December 16, 2008 at 6:00 p.m. to consider the proposed changes that had not been addressed, noting most of the proposed changes had been addressed and Council did receive a recommendation from Planning Board on those, however, had only one hour to consider the remaining proposed six use changes prior to the Council meeting at 7:00 p.m. and did not finish review of those six and thus voted for the use table for those six un-discussed items to stay as they currently were in the UDO. He noted Planning Board had only one week prior to their meeting, less than two weeks total, to review the proposed changes and noted it a lot to discuss up to the last minute. Council Member Sutton noted their recommendations were presented in hand written form and noted it dysfunctional looking at 76 items, not blaming Planning Board, having spoken with the Manager, and noted this was not the normal Council process. Manager Radford added that he had spoken to Morgan regarding this matter.

Mayor Weatherly asked for a motion to move into Closed Session. **Action:** Council Member Jones made the motion to move into closed session at 7:45 p.m. to receive legal advice from the Town Attorney. Council Member Jones made the second to the motion. Motion carried unanimously. **Action:** Council Member Schulze made the motion to move back into regular session at 8:10 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly restated the item: to reconsider one or more votes on the UDO Use Table amendments approved by Council on December 16, 2008. Correspondence from Lacy Reaves, Attorney representing AAA Carolinas, had been received, and he asked Attorney Reaves to elaborate on this and any changes he wished to address relative to the site plan. Attorney Reaves, 150 Fayetteville Street, Raleigh, NC, introduced Dave Parsons, President and CEO, AAA Carolinas and developer Brad Murr, Carolinas Group. Attorney Reaves stated November 08 there was a submittal of an application for a site plan for a mixed use facility "AAA Carolinas" on a parcel zoned B1 behind the shopping center and on Apex Peakway, next to the lake from Haddon Hall community, 400 or 500 feet from this facility. During the administrative site plan proceedings they were advised mid November of a proposal made to amend the ordinance in certain ways which would adversely affect the ability to operate the automotive service function that would be a part of this facility that would combine an insurance office, a travel agency and light automotive service facility. He had discussed with staff what their options might be in the face of this proposed ordinance change and came forward with a number of proposals that would have modifications to the site plan that had been submitted, and based on what they understood were the policy consideration behind the decision that was under consideration to remove automotive service as an allowable use in the B1 district. He understood the concerns were impacts to the neighborhood: visual aspect, noise aspect, and how the uses might be buffered and similar considerations. As they communicated with them, they have proposed to modify this site plan and proposed the following:



Old Business # 01 continued

- 1) proposes change: orientation of the service bays of the light automotive service operation to locate all those service bays on the face of the building facing the back of the shopping center to the south; no service bays will be on any façade of the building visual from the residential neighborhood to the north, Haddon Hall
- 2) proposes change: an installation of a landscape buffer and are prepared to work with staff to design this buffer along the entire northern periphery of this site which forms half of a "U" and arch between the site, there's the greenway and the lake and across the lake, the neighborhood; proposes: will plant an evergreen screen of plants of sufficient size at the time they are planted and sufficient planting scale to create an opaque buffer between this facility and the residential neighborhood so that after four or five years this simply would not be visible; this is a one story facility and not a multi-story facility.
- 3) proposes change: there would be no overnight parking of vehicles; the overnight parking of vehicles is something that normally does not occur given the light nature of the service and the brief service periods they are dealing with here; in the event there were vehicles parked on the site overnight, would agree as a condition of site plan approval these vehicles would not be placed in the parking area included within the facility on the side of the site closest to the Haddon Hall neighborhood or in the parking lot area along the Peakway; only leaves one smaller parking area which is on the side of the facility between the facility and the shopping center and would be the only area where vehicles could be parked overnight that were awaiting service

Attorney Reaves continued, he wanted to clarify a couple of things he didn't mention in the letter he sent; all the service functions performed at this facility would be performed indoors; there would be nothing done outside. Along with these other factors that he mentioned, he would suggest if they choose to grandfather this facility that these provisions become conditions of the approval of the site plan. They are also prepared to work with staff as it relates to the street yard landscape along the Peakway, to the extent that the landscape could be enhanced further in perhaps a denser planting scale, planting mode that would otherwise be required by the ordinance and could work with staff as to the types of species of plants that were planted in that street yard.

He pointed out that in terms of any stormwater run-off from this facility or introduction of any type of petroleum products from this facility into the environment, whether into the sewer system or any other stormwater system, there are no floor drains associated with this facility, all petroleum products drained from vehicles as part of the service functions on this facility would be captured; in the event anything was spilled, would be removed with some type of particle removal system that is used for this function; would consider and discuss with staff other potential stormwater or water quality enhancement features for this development to the extent they may be deemed appropriate. They are prepared as he stated to offer each of these proposals, each of these as conditions of the actual site plan approval if they choose to grandfather this use. He stated he, Parsons or Murr would be glad to answer any questions.

Mayor Weatherly wanted to clarify what he had just said. He continued, if the Council chooses to consider tonight a motion to reconsider, asked him, that he was committing for the record, that his site plan would then be bound by these conditions that he had offered tonight, both in the letter and the additional ones verbally. Attorney Reaves responded yes sir. Mayor Weatherly turned to the Town Attorney to see if he agreed. Attorney Fordham responded yes. Mayor Weatherly then turned to Council to see if there was anything they would like to offer or ask questions.

Council Member Jensen addressed buffering along the Peakway, noting there is a B buffer requirement such as other facilities naming the gas station SR1010 agreed to, and asking if they were willing to have a B buffer along 80% of front end; it's semi-opaque and not opaque and still have the streetscape buffer of 20% so people would see it, and this station he referred to has a pedestal type sign out front which gives folks the knowledge that they are there; if staff wanted up to 80% would he be willing to commit to that and then could work with staff; he would like to get it before codified asking if staff would suggest that. Dianne Khin Director of Planning stated yes, that would definitely enhance the screening along the Peakway and they would be allowed to have a ground mounted sign. Attorney Reaves responded, he would agree to this.



Old Business # 01 continued

Manager Radford noted on occasions, he had mentioned the shopping center asking which he were referring to; Attorney Reaves didn't know the name, with Khin responding it was Peakway Market Square. Manager Radford noted in reality that puts the bay doors facing onto the Peakway asking if this were correct. Attorney Reaves responded no, with AAA representative pointing to the location on the map, the shopping center and the building orientation. Manager Radford confirmed the total square footage of the building at 7200 square feet with AAA representative noting 60% used as light mechanical of the 7200 square feet. Manager Radford asked if pneumatic equipment would be used to change tires, remove lug nuts, etc. AAA representative responded current pneumatic equipment that is on the market generates a lower decimal rating; today's equipment generates about an 80 decimal and he's talking about a 60 decimal and would be talking about 20 decimals more than this conversation. Mayor Weatherly confirmed that would be only inside the facility, and just said none of the repair or removal of tires or any of the normal minor stuff would not be done outside the building, asking if that were correct. AAA representative responded everything is internal and the 80 decimal depreciates to about 50 decimals when you get 24 feet from the source. Manager Radford clarified that bouncing off the back of the shopping center, bouncing across the lake over to Golders Green, clarifying he thinks it is not a problem? AAA representative responded by the time it leaves the shopping center, it would be nearly inaudible; it has to go through a tree buffer and at least 100 feet from that.

Mayor Weatherly recognized Mr. Ferrantino, HOA President of Haddon Hall, and having received communication from him today, stating he had reservations, asking if he were clear on what they were presenting tonight to mitigate the issues that maybe they had all understood previously. Ferrantino stated the noise had been a concern and the run-off; his question was concerning tree buffer height. Mayor Weatherly turned to Khin for explanation of the buffer: opaque would be Type A buffer, all evergreens, from a ground height of 6', additional evergreen of deciduous trees with a height of 6'. Ferrantino added that it wouldn't cover the building at all. Khin responded they would be planted at 6', with Mayor Weatherly adding that in a couple of years would be..... with AAA representative interjecting and showing the site map location, showing the building elevations, and positions of one story buildings from the neighborhood. The second photo elevation would be the one that would be exposed to Haddon Hall with no service bays. Attorney Reaves noted you could see the elevation visible from Haddon Hall, and there are no bays just windows, no service bays. AAA representative stated to see the bays you would have to back around of the shopping center. Mayor Weatherly clarified the view that would be seen by the Haddon Hall residents, with no bays, and obvious the sound would be eliminated. AAA representative noted there is a site plan for another 4000 square foot commercial office building on the right hand side. Mayor Weatherly understands that would be permitted under our amendments adopted last time.

Council Member Jensen addressed the buffer and when working with staff to put those opaque evergreens as high on the hill as they can, he thinks would help; lob lolly pines grow a couple of feet a year; if they did this with southern magnolias and Japanese type Leyland cypress would get a buffer more quickly. Ferrantino stated based on these things, it looks a lot better what he had heard. Mayor Weatherly responded he certainly shared his concern and he told the petitioners of the bad example in town and intends to be a good neighbor with their facility external to their building; he shares his concern in that regard but he hopes he understands that the Council is very attentive to the homeowners that they bought their homes and were not expecting the intrusions that could be possible with an auto repair facility. Ferrantino responded the Golders Green community would be.

Mayor Weatherly recognized Raymond Sanchez, HOA Vice President Golders Green, and stated he had been exchanging emails before the new year and impact just before the holidays; showed that his unit sits on the lake; noted the walking trail around lake making a complete circle around the lake, paved black top, wooden dock, trail, and another part of the trail and where families walk; noting the trail on their property is a part of their property; noted Haddon Hall improved the area around the clubhouse, pool and tennis courts, left of the pond, and the area is now more widely used by residents. AAA folks stated they had recently done modifications to the lake area. Sanchez stated now that area attracts residents weekends and evenings where before there was no reason because there was no completed path around the lake and now is complete and is a nice and peaceful place to go, and are very concerned about the type business that the developers want to put there and how it will impact the residents around that.



Old Business # 01 continued

Several other concerns were environmental impacts, the noise of 80 decibels and the fact that it's a 24-hour service center, granted its light work but will still have tow trucks coming in to delivery the vehicles to the facility, and those type things; they are concerned and are at the point they are organizing and talking to each other; the residents in the community do not know about this as he got the email a couple of days before new years and have not gotten the word out and communicated this; had a couple of emails between the board members but their initial view from what they know is that they are very concerned with this possible grandfathering because of the type of facility. The other businesses in that area serve the public: places to eat, to get a tan, get your nails clipped, hair done, that kind of thing, in walking distance; this type business just doesn't look – they will not benefit from it and if anything else it is going to diminish the livelihood of the people that go out there and not something you would want to go out and join the residents.... with Mayor Weatherly interjecting he would agree with him if it were going to be a standard auto repair facility and asked him if he didn't think the conditions they had offered tonight mitigate any of the concerns he and his fellow residents may have, noting the view they would see would be the middle picture.

Ferrantino addressed the bays, their openings and noise. Mayor Weatherly noted those were not bays, but windows and what would be seen from his house if you can see across the lake, the office building from that side, with Council Member Jones noting them from the office area, with Sanchez verifying they would not open up. AAA representative noted only one side of the bays would open up. Sanchez noted this more acceptable addressing the operation hours. AAA representative noted they are closed Sundays and open Monday – Saturday and close at 6:00 p.m. and are not open 24 hours; noting others would have longer hours including restaurants and doesn't think closing at 6 would be an impact on the environment. Sanchez responded this was the information that he had was 24 hours and clarified there would not be vehicles delivered there after hours for work the next day. They had tried to satisfy this with the condition that no vehicle would be parked there at night in certain areas to alleviate that concern with the Mayor indicating not on his side, nothing could be parked on his side that could be visible from his house or his neighbors house; would be a clean view of the building, with buffering. Representative noted typically the tow vehicles would be two a week, breakdowns; may get two a week towed and would be put on the side. Manager Radford confirmed there is a tow truck coming in there after regular open hours, loading and unloading vehicles; AAA representative responding unloading only. Attorney Reaves added it would be unloading a vehicle on the opposite side of the facility from the neighborhood.

Council Member Jensen clarified the path around their property, or on their property, asking if there was a greenway easement; response was, there is an easement. Council Member Jones confirmed on the site plan this remains in tact, with Attorney Reaves responding yes; the evergreen buffer they are proposing to install is between the path and the building; you would have the lake, the pathway, and the buffer and building. Council Member Jones added to the casual observer it would appear the path is not on their property, but belongs to whoever owns the lake, with Attorney Reaves responding yes. AAA representative noted a 12 to 16 foot rise with some existing natural landscape there. Attorney Reaves added they are not proposing any changes in the existing greenway path.

Manager Radford suggested he take the conditions submitted and the verbal ones from tonight and redo a site plan accordingly to match those requirements and resubmit that. Mayor Weatherly added they would not be considering their site plan tonight, but they have already committed that their site plan would be consistent; as of tonight their site plan would contain the conditions. Attorney Reaves added they have made these undertakings on the record, with Mayor Weatherly agreeing and continuing that their entertainment of the grandfathering clause then would assume the grandfathering of a plan that may include, the one we are talking about, with the conditions so stated, with Attorney Reaves responding yes sir.

Mayor Weatherly asked if there were any other questions before moving forward. Council Member Jensen confirmed they would work with staff regarding the stormwater run-off concerns and work with staff to assure no oil droppings occurs. AAA representative noted the stormwater run-off would be less; looking at the number of parking spaces and in looking at the shopping center, noted the flows into there; there's far less pervious surface there. Council Member Jensen noted with this type facility, where a car may sit and oil drip and thinks it's a concern and sure they would work this out, with Attorney Reaves responding they will.



Old Business # 01 continued

Mayor Weatherly in speaking to Sanchez noted all of us are in this together to make sure the facility is appropriate, understanding property rights, etc. trying to balance those, noting most of the initial concerns he had, asked were they elevated from what he had heard. Sanchez was still concerned with the type business planned for that area; the erosion is one thing they have battled on the other side of the lake; with a project over the summer the homeowners association paid a lot of money and combined it with Haddon Hall to improve erosion and have improvements made to the property; half of the lake is natural now and the other half is the construction where the town homes are and has been an apparent erosion problem since the beginning of Golders Green – they have had an erosion issue; his concern is now that problem is going to be transferred to the other side of the lake; you go in and develop and cut trees, put in foundations, change the landscape, now instead of an erosion problem where the residents buildings are, will now be on the business side of lake as well for the whole area.

Mayor Weather responded to be fair to the petitioner, that would be the case whether they put anything; that not's endemic to an auto building we are talking about, grading...with Sanchez interjecting absolutely he agrees with him. AAA representative stated the site is already improved with curb and gutter and graded. Council Member Jones asked if they would have to re-grade. The representative responded they would have to cut out some of the existing asphalt, but no cutting of any trees; parking lot, the building pad is there now, it would be modified within the existing curb line. Mayor Weatherly noted the additional trees that would be planted in between and shouldn't be any erosion. Attorney Reaves added they were not going to disturb the existing path in anyway and do not show any disturbance on the site plan. AAA representative stated they are going to extend the retaining wall around the back of the property so you don't have quite the slope for erosion to occur on; resurface to building wall and down to lake level.

Council Member Jensen noted town had passed better sedimentation control requirements than in the past and thinks this should alleviate any storm water concerns. Council Member Gossage asked the number of people this facility would employ: 15 employees; he felt the concern that a facility like this would have no benefit to the community, but 15 jobs in an economy like this is certainly a plus. Sanchez was coming from a standpoint of more of a leisure consumer asking what if the 15 people live in Raleigh, it would not benefit us in that case. He felt a restaurant, pet place, hair cuts, or frozen treats as there is now; those are the type businesses they wanted there and this is different. Council Member Jensen added that he thought all of them had rather see a restaurant there; he had talked with a real estate person who couldn't find one to come in and like Mayor Weatherly had said, they are trying to balance the property rights of ownership. Council Member Jones added, believe it or not, they do hear restaurant complaints from the neighbors consistently, late hours, odors and dumpsters.

Mayor Weatherly turned to the Attorney Fordham asking if there were any further guidance before they move farther, with Attorney Fordham replying no. Mayor Weatherly asked if there were a motion to be made.

Action: Council Member Jones made the motion to reconsider the vote taken December 16, 2008... with Attorney Fordham interjecting and asking if there were some consideration to be made in finding out whether the applicant was willing to hold the status quo... with Council Member Jones responding yes. Council Member Jones asked if Council were to consider a grandfathering clause and enact that grandfathering clause tonight specific to any site plan that had been submitted prior to Council's action on December 16, 2008, asking Attorney Reaves, if they would be willing to suspend the process in the mean time while they work out the details of all of this. Attorney Reaves responded yes, assuming with Attorney Fordham interjecting that he was thinking the status quo, that he would want to hold for some reason, that Council didn't act on the motion to reconsider tonight; that the status quo could be held until Council finished acting upon it, in effect that it carried over to the next meeting. Council Member Jones stated that is basically what he was asking. Attorney Reaves responded, yes, assuming this is ok with the property owner, because they were the contract purchaser at this point and stated if Mr. Neal indicated so, yes that's fine turning to Mr. Neal and Mr. Neal agreed. Council Member Jones then continued to make his motion.

Action: Council Member Jones moved to reconsider the vote and the motion taken on December 16, 2008 specific to Use Type: vehicle for repair and service, for the changes to the UDO Use Table: vehicle repair and service.



Old Business # 01 continued

Attorney Fordham stated he didn't hear all the motion and Council Member Jones repeated the motion and before doing so Attorney Fordham then advised he would want to make the motion to reconsider the vote that was taken that excluded this use. Council Member Jones added to his motion: the vote that was taken relative to the UDO Use Table revisions specific to vehicle repair and maintenance section on December 16, 2008. Council Member Jensen made the second to the motion. Mayor Weatherly asked if there were discussion on the motion.

Mayor Weatherly stated that during the two weeks they have had to consider this, he noted this to be a unique facility and with the modifications made as conditions presented to us tonight, he clearly has a problem with auto repair facilities backed up to residential subdivision, residents have to contend with that as he has one in his neighborhood; he believes this will be a unique facility as they have multiple businesses in the same facility; a junk yard frankly in their parking lot would pretty much kill off any member services AAA would try to offer the members or the public, so it would be counter productive for them not to have an attractive facility that would encourage people to avail themselves to other uses and primary to his position on this. He can appreciate the conditions that mitigate, that had been offered tonight, thinks it fairly represents the concerns he heard from Council the last time, and the concerns they heard tonight and he appreciates they way they had worked with them on this and would hope that the motion is to adopt this so they can consider the grandfathering portion of their action last time.

Council Member Jones stated his reason for a motion to reconsider was the uniqueness of this particular application. Council Member Jensen asked in this motion, was he going to carry the agreement for the buffering. Council Member Jones stated if there was a subsequent motion, as this motion was to reconsider the action taken on December 16, 2008. Mayor Weatherly asked if there were any further discussion on the motion to reconsider. There being none, the vote on the motion was taken, the motion carried unanimously.

Mayor Weatherly stated this motion allows them to proceed with any other motion Council would like to make. **Action:** Council Member Sutton made the motion to grandfather the site plan as modified tonight and the agreed too conditions and stipulated tonight, because it was submitted before the UDO changes, and the motion is to grandfather.

Attorney Fordham requested Council Member Sutton consider inclusion in his motion the specific grandfathering in more generic form, which he was willing to read. Mayor Weatherly asked he read the specific language. Attorney Fordham began: a motion to basically adopt what was done last time, subject to a grandfathering provision of the pending site plan applications in the B1 district subject to the conditions that 1) all site boundaries facing residential developments shall be buffered with evergreen vegetation to a type A level to create an opaque buffer; the buffer will be interior to the existing greenway, 2) no automotive service bays shall be permitted facing residential development or the Peakway, 3) no overnight parking of vehicles shall be allowed in the parking areas on the sides of buildings facing residential development or the Apex Peakway 4) no automotive service shall be provided outside the buildings, 5) street landscaping shall be provided along the Peakway to a type B buffer level for 80% of the street yard, and 6) no service drains shall provided in the floor. Attorney Reaves advised there would be no floor drains.

Action continued by: Council Member Sutton was in agreement with the language as stated by the Attorney, and made the motion as stated. Council Member Gossage made the second to the motion.

Mayor Weatherly asked if the motion was fairly stated in regards to what was talked about tonight. Manager Radford asked for clarity regarding the hours of operation. Mayor Weatherly stated they had offered no later than 6:00 p.m. and assumed it to be a formal stipulation. Khin stated she wanted to clarify the way its worded, facing residential districts was part of the problem staff was having with the application; they are actually proposing to subdivide the property, so the side of the automotive building faces east, actually doesn't face a residential district, it faces their office building, she wants to make it clear that even though it doesn't directly face residential district, they are talking about the east side of the vehicle service building.



Old Business # 01 continued

Attorney Fordham advised if there's a better way to word what he had said...with Khin interjecting all present knows what is being said, but she almost promises in three years, they will be parking along the side because the Manager will not know about this discussion and when you go back and look at it, it will say face residential and they will say, its not next to residential and wanting to make it clear that's it's the east side of the vehicle service building would not have parking. Council Member Jones stated there was a site plan with a subdivision of this property and asked if it were still their intent to subdivide this into two parcels. AAA representative responded yes and intent to create flexibility. Council Member Jones continued, he agreed to Khin's point that he doesn't have a side facing the residential area if the subdivision goes forward. AAA representative responded, if they elevate the facility, would it satisfy their concern. If they don't park on the east side of the building and agree to no bays on the east side of the building, then she's ok with this. Attorney Fordham advised that he was trying to put it in language that was more generic, but it's difficult and we are in uncharted territory to say that a grandfathering provision is connected to a specific site plan, asking Khin if there's a way to word it that she's comfortable with that protects in the direction that she is talking about, advising Council could make a motion to amend the existing motion to change it from the side facing residential.....Khin spoke with Attorney Reaves. Mayor Weatherly asked Khin if she had any insight for assurance for subsequent interpretation of these conditions that they would be misconstrued.

Attorney Fordham asked if there were a document that reflects all the conditions. Khin responded there was not; they have presented things to Council and the Planning Board but there has never been anything submitted to staff showing the conditions, with Attorney Fordham confirming there was no document reflecting these conditions. Khin responded she has the original submittal, but it does not have any other conditions placed on it. Attorney Reaves added they submitted those orally tonight, and expressed some in writing early to Council. He noted the Attorney's summary captured them all, with Attorney Fordham advising except for this one ambiguity, with Attorney Reaves adding except they haven't characterized which side of the building the bays would be on. Khin responded she was not that worried about the bays, because once the building is built, the likelihood that they try to tear them out to put in more bays is not that high, but the parking on side felt could be a real issue in the future. Attorney Fordham inquired about the buffers and the parking on the side were ambiguous, asking Khin if she was satisfied with the wording regarding buffers. Khin asked if he had mentioned the front buffer, with Council Member Jensen stating 80%.

Council Member Sutton stated he wanted to expand the motion to include parking only on the side where the bays are. Council Member Gossage had made the second to the motion and agreed to the extended motion.

Attorney Fordham added if they wanted to accept the motion as modified, he wanted to read the part about buffers to assure Khin was comfortable with the wording: all site boundaries facing residential developments shall be buffered with evergreen vegetation to a type A level to create an opaque buffer; the buffer will be interior to the existing greenway asking if this directional component would work; he noted the buffer would be to the building side of the greenway, with Khin agreeing. Mayor Weatherly asked if this would tighten up future interpretation, with Khin responding like building the building, she doesn't think anyone ...like will plant the plants and they will be there. She noted parking, they have over and over, with people standing there promising they would not do and did do it over and over, so this was her most concern, with Mayor Weatherly feeling this was the most egregious other than the bays.

Mayor Weatherly felt all was clear on the motion, and the called for the vote on the motion. Motion carried unanimously.

End of Old Business # 01

Presenter: Principal Planner Brendie VegaMkhwanazi
Old Business item # 02 - UDO Use Table Sec. 4.2.2

Khin presented UDO Amendments approved at the December 16, 2008 Town Council meeting, and being presented for adoption. The Use Table amendments are correct, however the Ordinance must be revised to include the action taken by Council in the previous item and will be brought back to Council on the January 20, 2009 agenda for approval.

End of Old Business # 02



Old Business # 01 continued

Presenter: Town Attorney Hank Fordham

Old Business item # 03 - Mutual Aid Agreement

Attorney Fordham presented the finalized Agreement between Cary and Durham Respecting Mutual Aid for Water Supply and Delineating Water and Sewer Service Areas (the "Cary-Durham Agreement") and authorize Town Manager to sign the consent. With no additional information needed, Mayor Weatherly called for a motion to approve.

Action: Council Member Jensen made the motion to approve the Mutual Aid Agreement as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

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.*

Dr. Ashley Anasara owns property at Old US 1 and Apex Barbecue Road, and is currently zoned O&I and will seek opportunity to rezone it to B1. He has spoken to the Director of Planning and understands the restrictive situation to accommodate development with sewer; he noted the improved development at NC55/US64 and noted US1 has not caught up, but has the property and money to develop in Apex and asked when and noted the need for sewer.

End of Public Forum

NEW BUSINESS

Presenter: Brendie VegaMkhwanazi, Principal Planner

New Business # 01 – Plan Development, LLC – Laurel Park II

Possible motion to allow Plan Development, LLC to re-phase in order to bond roadway improvements on Laura Duncan Road for Phase 1 of Laurel Park II.

Staff presented the applicants request to re-phase in order to bond roadway improvements along Laura Duncan Road to all them to plat lots relative to Phase 1 of Laurel Park II, noting council has the authority to approve a phasing plan that would allow the developer to complete their road improvements at another phase. Staff asked if approved, ask the improvements be completed prior to the 1st certificate of occupancy in the subdivision. Improvements were noted and are consistent with TIA and drawings in file received 2008. Construction Management Director expanded on the road improvement requirements. Robert Bell, BNK, stated his request noting they have the manpower to build the roadway, but weather has delayed the grading and must bet the map recorded to satisfy the financial restraints. Council Member Sutton voiced his disagreement with allowing the delay to build out the road improvements; with Construction Management Director agreeing with Bell. Bell expanded on the road improvements and the delay with NCDOT regarding a restriping plan, with a new restriping plan now approved. Jackson stated he felt this was a reasonable proposal and to approve would keep the project moving, and if not approved, the project would fail. A performance bond of 125% is being offered and it was noted, should the developer fail to complete the roadway improvements, the money bond would be in hand. Mayor Weatherly called for a motion.

Action: Council Member Gossage made the motion to approve the request as requested with the acceptance of the performance bond. Council Member Jones made the second to the motion. Discussion regarding the performance bond, the responsibility for the road improvements would still be there just in a different way and before the first certificate of occupancy, and the fact that this would help the developer during a difficult economic situation. Vote on the motion was unanimous; the motion carried.

End of New Business # 01



New Business continued

Presenter: Mayor Weatherly

New Business # 02- Apex Board of Adjustment

Mayor Weatherly asked Council to consider an appointment to the Apex Board of Adjustment, recommendation for Amanda Stokes to fill an alternate position for a three year term that would expire December 31, 2011.

Action: Council Member Gossage made the motion to approve the recommendation as stated. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 02

Presenter: Mayor Weatherly

New Business # 03- Apex Parks, Recreation & Cultural Resources Advisory Commission

Mayor Weatherly asked Council consider an appointment to the Apex Parks, Recreation & Cultural Resources Advisory Commission, recommendation for Jeff Roach, to fill an unexpired term for two years that would expire May 31, 2010.

Action: Council Member Jones made the motion to approve the recommendation as stated. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02

End of New Business

WORKSESSION

There are no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss the purchase of real property a portion of which is the former Wachovia Bank property off Saunders Street; to discuss taxes relative to real estate contract, and to discuss personnel.

Action: Council Member Gossage made the motion to move into Closed Session for the purposes stated at 9:15 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jensen made the motion to move back into Regular Session at 9:44 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Closed Session

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

Action: Council Member Jones made the motion to agree to the pro-ration of the payment of Town of Apex property taxes only by NCII, LLP & Apex First Development, at closing and based on the calendar year, and associated with the Villages of Apex, the property to be conveyed to the Town of Apex for future public park adjoining Ambergate Station Road, for 14 acres and with NCII, LLP & Apex First Development paying their share of the property taxes for the time they owned it. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn.

Action: Council Member Jensen made the motion to adjourn at 9:46 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the January 6, 2009 meeting were submitted by the Town Clerk for approval at the January 20, 2009 Council meeting.

Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the January 20, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 20, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

Mayor Weatherly called the meeting to order, led 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 to approve the following items. With no amendments to the consent agenda, Mayor Weatherly called for a motion to approve the Consent Agenda as presented. **Action:** Council Member Jones made the motion to approve the consent agenda. Council Member Gossage made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of January 06, 2009 Council meeting.
2. Minutes and General Account of January 06, 2009 Closed Session relative to Old Business #01: Use Table Sec. 4.2.2. (Separate cover).
3. Minutes and General Account of January 06, 2009 Closed Session (separate cover).
4. Minutes and General Account of January 12, 2009 Finance Committee meeting relative to Financial participation in the Milano Drive Project with Parkside Development.
5. Ordinance regarding Unified Development Ordinance amendments approved by Council January 06, 2009.
6. Resolution # 09-0120-01 of Support Endorsing the Application to the North Carolina Recreational Trails Grant Program for the Construction of Phase 1C of the Beaver Creek Greenway.
7. Authorize staff to submit and Mayor to sign all documents related to \$75,000 grant request to NC Recreational Trails Program to complete Phase 1 of Beaver Creek Greenway with final phase connection to Jaycee Park.
8. Conservation Declaration of restrictions on Nature Park property in order to qualify for offsets to Army Corp mitigation costs associated with Evans Road Extension.
9. Revisions to Town Standard Specifications and Standard Details.
10. Amend Sec. 20-100 Speed Limits, Subsection (6) of the Town of Apex Code of Ordinances.

End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. With no amendments to the Regular Meeting Agenda, it was set as presented.

PUBLIC HEARINGS

Presenter: Town Manager Bruce Radford

Public Hearing # 01 – Preparation of Proposed Annual Budget

Public hearing to receive citizen input regarding the formulation of the Fiscal Year 2009-2010 Annual Budget. Due to inclement weather, Mayor Weatherly gave opening comments regarding budget process, and opened the public hearing and with no one addressing the proposed budget, asked if Council would like to continue this hearing to the February 3, 2009 and called for a motion to do so.

Action: Council Member Gossage made the motion to continue the hearing to February 3, 2009. Council Member Sutton made the second to the motion. Motion carried unanimously.

Public hearing # 01 continued to February 3, 2009

Presenter: Brendie VegaMkhwanazi, Principal Planner

Public Hearing # 02 - Rezone Case and PD Plan for Westford PUD #08CZ09

Review: Planning Board met January 12, 2009 and voted unanimously to recommend approval with applicant agreeing to condition change of the PD Plan; staff recommends approval; staff had recommended this hearing be continued from December 16, 2008 Council meeting to this meeting date.

Public hearing and possible motion regarding the Westford PUD Plan Rezone #08CZ09, to rezone from Residential Agricultural to Planned Unit Development Conditional Zoning, approximately 109 acres located near the intersections of Jenks Road and US Hwy 64.

Dianne Khin Director of Planning presented Rezone Case and Westford PUD # 08CZ09 (staff report attached and incorporated as a part of the official minutes); oriented to the location of 108.92 acres and presented proposed uses for the PUD-CZ. The 2025 Land Use Plan designates this area as Mixed Use consisting of High Density Residential, Office and Institutional and Commercial. Applicant's request would be in keeping with 2025 Land Use Plan. The proposed Westford PUD is in compliance with UDO standards. Applicant is seeking a 2% reduction in Resource Conservation Area; if NCDOT right of way is required to build a ramp off Jenks Road, and if granted, applicant would not have to come back to Council. Four neighborhood meetings were held and have addressed concerns in regards to big box retailers and not wanting Sunset Meadow Drive to extend into the development and US64.

Parks and Recreation Advisory Committee recommended approval of Westford Planned Unit Development as proposed with the understanding that a public park land dedication is preferred either on site or in close proximity to the proposed site with the possibility of adding additional acreage in the future. Furthermore, the land must be suitable for development as a public park, with the Town targeting a minimum of 50 usable acres in the general area that can be used for active recreation. The amount of acreage associated with the Westford PUD shall be at least 12.54 acres based on an estimated 620 units. This recommendation is contingent on the understanding by all parties that the particulars of the land dedication must be resolved to the satisfaction of the Town prior to the approval of a residential site plan for the project. Planning Board met January 12, 2009 and voted unanimously to recommend approval of Westford PUD with the change to Zoning Condition #3 on page 17 of the PD Plan as recommended by staff, which was to remove the last sentence; there is some discussion about the future ramp at the interchange at US64 and Jenks Road; the last sentence was inadvertently included that talks about the reservation for future interchange and should be deleted because Applicant is offering to dedicate that area. Staff recommends approval of proposed PUD with the change to Zoning Condition #3 on page 17 of the PD Plan to remove the last sentence. Westford PUD Plan is attached and page 17 details proposed zoning conditions of the plan. Council Member Sutton asked if it was their intent to not allow for a big box store, asking if this were a condition and was it in writing, asking how strong this was

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

JW Shearin, IDS, Owner/Developer stated they had worked with staff and area residents for six months to bring forth plans for a Class A project for Apex and thinks this project will deliver their vision for what they have planned for this area; their structure in this document is not to allow big boxes. They have a mixed use community that will provide congregate care, multi-family, townhomes, office buildings, and vertical commercial project. They are not looking to put big boxes here. May ask why they are here today because of the sewer situation, they think because of the land use plan, time is right with I-540 construction, think its appropriate to come now and set the vision and doing so other properties that sets east of this site that goes toward I-540 hopefully will replicate same.



Request for 2% reduction: currently are meeting the ordinance; right of way issue is at Jenks Road where there is a proposed ramp, should it be done, an open space area is being reserved to accommodate that; could be fifteen years out, and will save it and if they want the area would provide it for them and will dedicate it; if done it will encroach on the open space. In the future if it does come up, they will not have to come back before Council. Residential neighborhood east of this site is probably the most interested party, and have provided a 100' buffer along the whole western side of their tract, provided a pedestrian access from there into this property, and stubbed to properties east and south of this to US64 where they would have pedestrian, water, sewer, and street access so there would be no further cuts on US64. Mike Horne worked strategically with NCDOT to work with right of way access, and they agree with what's proposed; staff and engineers agree with that, and they will work with the plan as they move forward to be in sink with that.

Council Member Sutton thinks this is an excellent project the way they have presented it; understands their intent, and asked on the big box, could this be made a condition of the rezone. Attorney Fordham advised they can and it's important not to rely on representations that are not made a specific condition when making a decision. Council Member Sutton asked if they were willing to make this a specific condition. Shearin responded that he thinks what they may have to do with a big box is, that they foresee a grocery store potentially in the retail area, but some of the big boxes they may see is like a Wal Mart or something, representing in excess of 100,000 square feet and maybe the best way to address that is to condition their document that no structure, no single tenant would have more than 75,000 or 80,000 square feet and that way you would know you are not going to have a Wal Mart or K Mart in there and know you can still support a grocery or retailer that limits to that situation; if ok with that they are willing to condition the document as such that no one tenant would exceed a certain amount of square footage. Attorney Fordham advised Council this would be a lawful condition if they propose it and Council chooses to agree to it. Shearin asked if it were acceptable to say 75,000 square foot which keeps it in the grocery store range but not in your high end big box. A typical grocery like Kroger, or anyone like that would be 50,000 to 60,000 square feet; Lowes or Wal Mart anybody in that category would be 100,000 to 120,000 square feet; so he's trying to capture the middle part to not exclude some leverage, not knowing what the market will be in five years, but protect their interest too, in that you want be getting the big boxes; they adjacent residents do not want that either. They agree with their thought process and want to insure you get what you want on this site. Council Member Sutton asked if he were making this a condition, with Shearin responding absolutely, they would, yes. Attorney Fordham asked if this could be stated specifically again. Shearin restated the condition: they have an allocation of a certain amount of square footage of a retail in the commercial site; in the commercial site no one individual tenant would not exceed 75,000 square feet in total floor area.

Council Member Schulze questioned the reduction, asking if NCDOT does not need that space for right of way, asked if they would agree to not using the 2% reduction, with Shearin responding absolutely; they have dedicated it to the town's resource conservation area and will forever be that, they only event that you would loose that is if NCDOT wants it for their ramp construction for that improvement. Council Member Jensen asked if the 100' buffer on the east side is a part of the resource conservation area with Shearin responding yes it is.

Council Member Jensen had a concern and discussed some time ago, with item two on page 13, they indicate a multi-family residential of 366 units maximum and his concern is what they are going to be, because below there you talk about townhomes and single family residential so he assumed the 366 units would be apartments and something they are trying to drive away from; had 400 apartments installed in the last two years at Olive Chapel and Kelly; he would like to get that codified, as sometime ago he voiced his concern and believe the Mayor also voiced his concern, not wanting to put words in the Mayor's mouth (Mayor stated it was accurate) but is a concern and would like to have this codified as to what this is before they vote on this. Shearin responded that is listed and probably multi-family and at this point in the market do not know whether that will be condos or apartments, but they do know the plan is suggesting a true mixed use and to do a mixed use project need density, and to do that they need some attached product there; they are providing townhomes and congregate care which is senior housing, office and retail, and vertical mixed use retail and in addition to that single family; they have 110 acres there and you try to put all those uses on that site and to create the vibrant uses you have, think that multi-family is a strategic part of that and doing that would not be garden style apartments you typically may see, these will be independent and when you put them in a mix of uses like that you are going to see an urban project where the buildings will be pulled to the street with parking in the rear, may be two or three story structures, but will not be a strip deal with garden style, but will be something that fits. If you are going to do a Class A product, you can't do garden style typical urban apartments, and he may agree with him where Apex is in its multi-family, but in five or six years when they are looking at this, and when I-540 is there, it is strategically located in an urban environment and probably will be best fit for this project to be more townhomes, condos or multi-family whichever works best.



Council Member Jensen was in agreement with that and condos he thinks are fine, but his concern is transit type housing and we need some, but at one point he believed was above the percentage good for us and he didn't want to see us get up there again, and to ensure that for the 366 thinks it needs to be broken down as to what you folks intend and to put a maximum on the number of apartments; condos will be lived in by people that are going to be here and apartments, and you do need certain number of apartments, but the concern is not to have too many and why he would like to see that codified as far as numbers. Mayor Weatherly agreed this was a high number and thinks and the total in the other development talked about is the same number 300 or 400. Shearin continued if they think about this as Khin had presented, its 110 acre site, realizing those units sound large, you've probably seen 366 units on 25 acres, if you look at it acre by density, it is not that dense and will look at a mix of uses here; they truly understand their concern about but really does not believe that this site is going to deliver something that is not the class they would expect in Apex. He continued he really understood their concern for multi-family, but if their vision is going to be creative, they cannot create something that does not deliver a first class product there; its something they need the mix to create it, and is very important to it; he can see where they are going and can understand the concerns but they really do need the density to make the project work. Council Member Jensen added it wasn't the density he was arguing about it's the type of density; rental units vs. condos with Mayor Weatherly agreeing, stating that's what they all say, the last one that came in with a very high number of rental units, top of the line product that would only attract the rental demands would be very high and assured us, but, not saying they are going to be tenements but over time rental units tend to – this year people look for that top of the line, and five years down the road, there's always something on the market and overtime, we are left with a rental unit. He agrees with Council Member Jensen's remark and thought they had asked staff to come up with something; that mixed use almost always attracts the rental units being a primary component, and you are doing what the plan would require and what he thinks the market would dictate but he thought they were going to tighten up with something that would allow staff to have a bit more leverage in working with the plan when presented so they wouldn't get where they got a mixed use with 366 units in it, not really caring about the acreage involved. He asked the Manager if he were misunderstanding, he thought last time that they were going to work forward towards a change in our ordinance that allowed developers to know that they had a concern in that regard. Manager Radford responded that he didn't believe they had direction to put that in paper. Council Member Jensen recalls the did have a discussion on this specific item regarding apartments and the drive to get the apartments down to the hundred range and not the 366 range or half of that 200 range, but 366 when you look at what went in at Olive Chapel, tends to be large for this situation out there. His feel is that he's talking five years down the line; if you commit to this board for one thing, you can always come back and ask for a change if the market drives to that, but he would feel much better if this was codified as half and half; half condos and half apartments.

Shearin continued if it were a number that is a concern to him, obviously they would work with them whatever way necessary, but in the apartment community there is a threshold, for an apartment community to be viable. Condos and townhomes you can build 150 units for sale and you have homeowners associations; you have an apartment community, then there's a threshold for that about 250 that's viable for a developer to come in and build something and the economics work. Recently he funded a project in Cary and the number they resolved at – they were at 350 and ended with 278; it was a very classic project, and if you think the number is a little high, they can work with them on that, but can't take it so low that you would exclude it. If you take out the viability of a rental product, you restrict your market and mix use categories, but they will be open to suggestions on unit restrictions. Council Member Sutton asked if the apartments would be closer to the I-540 interchange. Shearing responded the apartments would be more to the commercial area, more within walking distance in the central part so they can go to the office areas and to the retail to the west; they are centrally located an urban form; pointed out the location for multi-family, and the front end streets of urban form, parking in the rear, office areas, the congregate care, and the location of the retail, the townhomes, they are at the central core of the project; if you drove down US64, there's a 100 foot buffer there and you will not see these units; if you go on Jenks Road he identified the streetscape and urban buffer, only when you are on this site are you going to see these; and most likely would not think they are apartments; they will look like condos when they are constructed, you are going to think they are either townhomes or condos.

Council Member Jones asked what was in this PUD plan to give them that assurance. Shearin responded the urban form they represented schematically in addition to the conditions that they create, that gives you the basis of the land use plan, and Khin can confirm that, and they are going vertical with this, two and three stories and are not garden style; he can not take that acreage and give them 366 units with all pads; he's putting them in larger buildings fronting the streets that are vertical.



Mayor Weatherly directed this to Shearin, that it was unfair to him, for the criticism that he has; his plan as presented to them is obviously well thought out; his company of investors believe is market driven, and will be an attractive top of the line great project for Apex. His concern is for the community at large in the number, and he will tell him that its unfair to him that he comes to them with something that the ordinance clearly encourages him to come forward with under the PUD category of zoning and then we criticize it because we have too many apartments elsewhere in Apex; so, it's a frustration that he has and thinks they need to focus back on, if they intend as a Council; maybe no one shares this but Council Member Jensen and himself, that our stock is getting at the level that we need to be concerned, not today that they are not first class, but twenty years from now they are still going to be rental units, and all can envision what 20 year old apartments, would not be top of the line product any longer. If we have a Council that is concerned about that then we fix it, but if we don't then we will continue to encourage your development. He knows Council Member Jensen has obviously picked those numbers out and he's exactly right that he is voicing his concern that we have expressed before but it is the totality of our stock the percentages that we are concerned about and he is the latest numbers. Council Member Jensen didn't recall the exact numbers, not thinking they had changed from the original discussion, when they voiced concerns about apartments vs. condos; he doesn't see it, its like, he doesn't think they were heard and the only time to be heard for sure is tonight when they are discussing this and before thy vote on it; had noted 250 was a threshold, and then 278 and looking at 366. Shearin added in that ballpark, and again that's the threshold he's telling him from the economics, and if that's ok is willing to commit on the half of the property owner to reduce that number to help you in consideration; he's saying a 275 number out of 366 is a substantial reduction; he thinks there is a threshold there that they have to stay at, and are willing to make that a condition of the project if that's agreeable. Mayor Weatherly asked if that number then would be changed to townhomes or condos. Shearing responded it would be the multi-family area that would be limited to 275 units. Council Member Jensen added that he didn't mind condos being there up to that size of 366, but he'd rather see 250 plus all the condos up to 366 if that makes it a viable situation because condos bring people that have dedication to their property and dedication to the town than most of those in apartments. Shearin could appreciate that and if it's agreeable would say 366 maximum of a mix of condos and multi-family but not to exceed any apartment units over 275; total of 366 if condos are involved; they are in agreement with that. Mayor Weatherly stated that's a formal condition, with Shearin responding yes it is, with Mayor Weatherly stating they would take that into consideration, asking Attorney Fordham if they could accept that as a formal condition. Attorney Fordham advised yes, he thinks it was stated specifically, as he understood him to say that in regard to the restriction on multi-family residential the 366 units maximum, that the maximum within that number 275 would be the maximum apartments, asking if that was right. Mayor Weatherly commented others on the Council may not share this and didn't want to drive this if there was not a... with Council Member Jensen asking if this number was adequately low; Council Member Gossage saying he would like to see the apartment number come down by 100, thinks this is a nit-pick but the number he had in his head. Council Member Jensen felt this would be a compromise between 250 and 275; 266 had said 250 would be ok. Shearin responded 266 would work, and Council Member Jensen stated he would go with that. Council Member Gossage added taking the apartment number down by 100.

Council Member Jones stated he certainly shares the concern about rental units in general overall in the Town of Apex and thinks they are sitting there debating numbers that we know little about, based on how you feel rather than what the actual impact of the decision they are about to make is going to be without any qualifying evidence. Council Member Gossage stated it was more than a feeling; it was about concrete; a little bit of experience to stand on. Council Member Jensen thinks the feeling with respect to the 350 or 400 that went in at Olive Chapel and Kelly.

Mayor Weatherly noted Council was still in public hearing and asking if there were any further questions of Shearin. Council Member Jensen asked Attorney Fordham if this was codified enough for him, the 266; again asked if the 266 number is adequately stated, with Attorney Fordham responding it's sufficiently stated; specifically stated enough to be legal; the number he didn't have an opinion about. Council Member Jensen asked Attorney Fordham if he wanted to join in on the number with Attorney Fordham responding no.

Mayor Weatherly asked if anyone else wanted to speak in favor of this rezone and planned unit development, then if anyone were opposed, and with no one else speaking, asked Council if there were any further clarifications while the public hearing was still open. Khin asked for clarification in the 366 maximum units if they came in with 266 apartments units asked if they were saying they were ok with an additional 100 condo units, and Council Member Jensen responded that's what they had agreed too. Council Member Jones stated of 366 multi-family which 266 could be minimum, with Khin responding thank you. Council Member Gossage stated the land use and the TIA is for 366 apartments. Mayor Weatherly closed the public hearing and referred the matter to Council, asking if there were further discussion, stating the floor was open for a motion.



Public hearing # 02 continued

Action: Council Member Sutton made a motion to approve Westford PUD-CZ project as presented with the restrictive stipulations as noted on the apartments and the big boxes, with the condition staff and Planning Board had asked for to strike the last sentence under condition # 3 page 17. Council Member Schulze made the second to the motion. Council Member Jones noted one of the conditions was with the 2% reduction in RCA and didn't have to mention that; he's certainly in favor of the project and thinks is what they have in their western area plan and is what they say they want, and thinks they will probably have further discussion on the number and type of multi-family units before they actually get to deal with this, and is ok too. Mayor Weatherly asked if there were further discussion, there being none, called for a vote on the motion. Vote on the motion was unanimous to approve.

Mayor Weatherly asked if he could get a general interest from the Council to have staff prepare a Worksession perhaps for the next time, getting some guidance from staff, giving some ideas and seeing how they could develop a tighter PUD classifications that may satisfy them on these rental units. Manager Radford responded it would either be a Worksession or retreat item, with Mayor Weatherly adding if it were going to be an extensive discussion, maybe the retreat would be better, but he envisions staff can tell them if they have any perimeters there to change our ordinances and we give the go ahead to do it, not thinking they need an extensive discussion, so in his judgment whatever is appropriate.

End of Public hearing # 02

Presenter: Lauren Simmons, Planner

Public Hearing # 03 - Rezone #08RZ13 Chappell and Burgess

Review: Planning Board met January 12, 2009 and recommends approval; staff recommends approval.

Public Hearing and possible motion to approve Rezoning #08RZ13, Elizabeth Chappell and Jacquelyn Burgess, applicants, to rezone from Residential Agricultural to Rural Residential, 11.593 acres, located at 1201 and 1207 N. Salem Street.

Dianne Khin Director of Planning presented Rezone Case # 08RZ13 Chappell and Burgess (staff report attached and incorporated as a part of the official minutes); oriented to the location of the land and presented the applicant would like to rezone the property in order to allow for at least one acre lots to allow for division for heirs who may receive the property. Planning Board met January 12, 2009 and recommends approval. Staff recommends approval.

Mayor Weatherly opened the public hearing at 7:37 p.m. and with no one addressing this rezone request, closed the public hearing and referred the matter to Council.

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

End of Public Hearing # 03

Presenter: Brendie VegaMkhwanazi, Principal Planner

Public Hearing # 04 - Rezone #08CZ14 Peakway@55 PUD

Review: Planning Board met January 12, 2009 and voted unanimously to recommend approval; staff recommends approval of this amendment.

Public Hearing and possible motion regarding Rezoning for Peakway @ 55 PUD-CZ #08CZ14, containing 112.48 acres located in the general area of the Apex Peakway and NC55.

Dianne Khin Director of Planning presented Rezone #08CZ14 Peakway@55 PUD (staff report attached and incorporated as a part of the official minutes); oriented to the location of the land and stated applicant seeks to rezone the PUD in order to propose a congregate care facility, previously listed as a use in the PUD, but the density did not support the use. Site is located in proximity to the Rex Nursing Care, Apex Peakway and Wal-Mart. The request would increase the density for the congregate care to 20 units per acre only for Tract 2B; and change from four stories with anything above the third floor to be stepped back to four stories plus a walk-out basement; project is subject to the conditions found in the PD Plan for Peakway @55 PUD and is in keeping with the 2025 Land Use Plan. Planning Board met January 12, 2009 and unanimously voted to recommend approval for this project. Staff recommends approval of the amendment.



Public hearing # 04 continued

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

Clyde Holt, Attorney for Smith Moore representing Kite Realty and Oliver Development, plans to build a congregate living facility for Tract 2 at Hughes Street and the Peak Way. Having listened to the previous hearing regarding mixed use, noted a similar discussion with this particular site. There were specific conditions placed on the property, recognizing residential appropriate, a transition away from the interchange, and major retail, to provide the density housing wanted, for a mixed use project; approved multi-family adjacent to the industrial park on the Peakway, and approved the townhome project at this particular quadrant, adjacent to Rex Health Care; this is where they would like to construct Cambridge Congregate Care senior living facility, a senior living facility for 55 and older; such facilities have fewer cars, smaller house size, few if any school age children, less demand on infrastructure; a good fit adjacent to the nursing facility; transit stops proposed at that particular location. The specific condition of that rezone was there had to be townhouses; asking permission as an alternative to townhouses, the congregate care facility; this is the only change in the project and are committed to better conditions and look forward to working with staff and council in the future to fulfill promises made when the project was approved: construct the Peak Way, provide eventually for gravity flow sewer south of US1, and other conditions attached. Advised economic conditions has forced the former developer Trimapro to not move forward on this multi-family project at this particular site at this particular time; when they have a renewed commitment from Trimapro or another equally quality prominent developer will move forward on that particular site, but not until then. In answer to Council Member Jensen, Trimapro builds condos, and didn't think they would have to come back; he noted it a challenge to put a residential project next to industrial than on this particular site.

Kendall Oliver was present to answer specific questions. Thinks this is a good use for this particular property and good for Apex. In response to Council Member Jensen, Holt stated the way its written for a congregate care facility, it would increase the density; original approval on this site was for 184 townhomes, if allowed to proceed under current zoning the 184 would go to 284, but again are smaller dwellings, fewer bedrooms, less parking, less rush hour traffic, less demand on infrastructure. Council Member Jensen agreed this would be better for density. Traffic Engineer agreed with the congregate care, there would be less traffic generation from this site. Council Member Sutton noted Wal-Mart had not connected to town utilities, and asked if this project would be served with town utilities. Attorney Holt stated it was a disappointment they could not deliver Wal-Mart as a customer, however has filled out the public works application as an electric customer. Khin confirmed they had submitted the required form and the last time it was not a site plan.

Oliver Kendall, Oliver Development, presented his plans for a congregate care facility, and stated has various Cambridge facilities, with this new independent living project; stated 90% of independent living facilities are full; the economy is not slowing down for him, he has the financing and prepares to move forward with the phase out doing 90 that would serve three meals daily.

With no one speaking in opposition, Mayor Weatherly closed the public hearing and referred the matter to Council. **Action:** Council Member Jensen made the motion to approve Rezoning for Peakway @ 55 PUD-CZ #08CZ14. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

Presenter: Brendie VegaMkhwanazi, Principal Planner

Public Hearing #05 - UDO Amendments

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

The amendments include: a statement that development approval does not guarantee utilities; a change to side yard setback encroachments for unenclosed porches and decks; a change to the high density development option that refers to the submittal of development plans; a reduction in the required road frontage for flag lots from 30 feet to 20 feet; a change to the minimum number of units required for fee-in-lieu to be in line with the new dedication and fee-in-lieu scale; the addition of exemptions to require road frontage improvements; and allowing Town Council to reduce spacing between cross-overs on the Apex Peakway.

Dianne Khin Director of Planning presented the UDO amendments (staff report attached and incorporated as a part of the official minutes). Council Member Jensen questioned the amendment to Section 7.3.3.B Standards for Council's Choice between Dedication and Fee to change the number of dwelling units that shall be required to only provide fee-in-lieu; calling attention to the development on SR1010 that abutted a park, and felt it best to have more acreage added to a park vs. fee-in-lieu. It was noted the ordinance was consistent with the dedication ordinance and hard to put in ordinance form. Attorney Fordham advised additional language could be included if Council chose to do so and could accept in-kind dedication of land adjoining public parks. Khin did not know of any other section where this is made reference.



Council Member Sutton questioned reservation of the provision of utility service, not wanting to approve development projects if they don't have utilities, asking if there could be a statement added that development approval does not guarantee utilities. Public Works Director Tim Donnelly recommended they stay with this condition regarding allocation, reservation or provision of any utility service, noting there's no sewer without a permit. Staff has constantly told developers there is no guarantee.

Mayor Weatherly opened the public hearing at 8:05 p.m. and with no one addressing the UDO amendments, closed the public hearing and referred the matter to Council.

Action: Council Member Jensen made the motion to approve the UDO amendments and will additional language to Section 7.3.3.B of the UDO..... unless the development abuts an existing or planned park. Council Member Gossage made the second to the motion. Motion carried unanimously.

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.

No one spoke during public forum.

NEW BUSINESS

Presenter: Lee Smiley, Director of Finance

New Business # 01– FY08-09 Financial Summary

Lee Smiley, Director of Finance gave a review of the 2nd Quarter FY08-09 Financial Summary. Benchmark for second quarter financial performance is 50% for revenues and expenditures. Significant variances were noted. In light of the current economic situation, a comparison of sales tax revenues for the past six months versus 2007 was noted. Budget shortfalls were noted; majority of tax payments have been collected for December and \$583,115 has been reserved for budget shortfalls. Wholesale rates are up due to cost of nuclear fuel. With only three sales tax payments having been received, Smiley is optimistic regarding sales taxes. Council accepted the summary as presented.

End of New Business # 01

Presenter: Dianne Khin, Director of Planning

New Business # 02– Participation in Neighborhood Stabilization Program

Possible motion to adopt a Resolution # 09-0120-02 to participate in the federal government's Neighborhood Stabilization Program through the Wake County consortium.

Dianne Khin, Director of Planning stated Wake County staff has requested a Resolution be adopted by the Town Council requesting Town of Apex be allowed to participate in the federal government's Neighborhood Stabilization Program through the Wake County consortium; Wake County intends to apply for \$5 million from Federal Department of Housing and Urban Development through the State Department of Community Assistance to purchase foreclosed and abandoned homes in destabilized or at-risk neighborhoods throughout the County and rehabilitate the houses where necessary; those that can't be rehabilitated will be demolished, and new housing will be constructed for public purpose; will work closely with town's to identify such neighborhoods. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to adopt the Resolution as presented. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02



New Business continued

Presenter: Tim Donnelly, Director of Public Works

New Business # 03– Location of Cellular Telephone Antenna

Consideration of possible co-location agreement with T-Mobile for the location of cellular telephone antennas on the above ground water tank located on South Salem Street.

Tim Donnelly, Director of Public Works, stated T-Mobile proposes to lease space from Town for location of cellular telephone antennas at town's southern water tank site. Town's present lease with AT&T permits town to lease space on the corral atop the water tank to other carriers. Lease would provide for T-Mobile to lease ground space for its equipment and space on top of the tank for its antennas. Staff recommended Council enter into the lease; the next steps would be to determine whether the lease interest is surplus, and begin the upset bid process for leases lasting longer than 10 years; adopt the Resolution # 09 – 0120 – 03 declaring leasehold interest surplus; adopt the Resolution # 09 – 0120 – 04 starting the upset bid process. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to adopt the Resolution declaring leasehold interest surplus and adopt the Resolution starting the upset bid process. Council Member Jensen made the second to the motion. Motion carried unanimously.

Action: Council Member Gossage made the motion to enter into the Co-location Agreement with T-Mobile as recommended by staff, and allow the Manager and Attorney to make corrections as necessary. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 03

Presenters: Attorney Hank Fordham and Town Manager Bruce Radford

New Business # 04– Town Policies and Amendments Relative to the Town Electric System

Possible motion to adopt a Resolution # 09 – 0120 – 05 amending Town's policies applicable to customer-owned electric generation facility interconnections to Town's electric system: Policies are: 1) Application and Procedures for Interconnecting a Certified Photovoltaic Generating Facility, and 2) Photovoltaic (PV) interface Criteria and 3) Bilateral Metering for Renewable Energy Facilities Credit Rider. Proposed Amendments are: 1) to remove requirement the Town be named as an additional insured on a residential generator's liability policy, and 2) to specify the insurance required by Apex to cover liability arising from the customer-owned facility or the interconnection thereof with Apex's electric system and 3) to amend the Bilateral Credit Rider to allow participating customers more flexibility on the rate they are charged for Apex power.

Attorney Fordham presented this item for consideration in that a residential customer had requested interconnection to the solar array at his residence with the Town's electric system; noted customer's inability to name town as additional insured, and an ongoing problem to name town as additional insured on homeowner's policy. Staff noted it necessary to add language to town's interface criteria to make this policy clearer to the customer. Staff also recommended changes to the bilateral metering for the renewable energy credit rider to allow customers to use any applicable rate for their normal electric service, not just time of use; time of use and off peak periods would still apply to credits for customer generated power.

Mike Couch, Electric Utilities Manager Apex Electric Utilities Division expanded on these recommended changes, asking Council adopt the necessary Resolution amending the Town's policies applicable to customer-owned electric generation facility interconnections to the town's electric system. Mayor Weatherly referred the matter to Council.

Action: Council Member Schulze made the motion to adopt the resolution as recommended by staff. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 04

Presenter: Town Manager Bruce Radford

New Business # 05– Support of Cities Relative to the Federal Stimulus Package

Manager Radford presented Resolution # 09 – 0120 - 06 in support of cities playing a role in the federal stimulus package being offered through the NC Metropolitan Mayors Coalition, releasing a 2.8 billion list ready public infrastructure projects that will immediate put citizens to work in construction, public safety, office and retail jobs. Economic stimulus legislation should make it possible for local funding recipients to access and spend stimulus funds and recommended adoption of the resolution in asking that Apex's fair share be considered for local funding projects: new bridge on North Salem Peakway project, and regional waste water facility.



Mayor and Council discussed the proposed resolution urging Congress to pass the list, and the conditions of the economy, wording of the resolution, the specific 6 bullet points and the eight whereas sections, and thinking the economic stimulus package would pass, made overall comments that noted the projects named by the Manager were critical for this community, as jobs would be created, there would be some shift the burden on the tax payers, agreeing for the need to participate as local governments should be held more accountable to spend more efficiently and the funding of the infrastructure projects would not be wasted, and believes town should ask for their fair share, seeing feds take less money and leaving more to the locals.

Council Member Schulze was not supportive as he would rather give tax cuts, allowing folks to spend the way they want and didn't want to be forced to agree with this and would not vote for. Council then discussed amendments to the Resolution to best serve Apex more directly when deploying these funds to spur local economies rather than partnering as offered with the State as it would be more positive benefit to the citizens. Council Member Gossage suggested a more simplified version, scrapping this resolution and rewriting, that if the economic stimulus package passes, include Apex in these two projects. Council Member Gossage added why couldn't they say, Whereas, the Federal Government is considering a stimulus package and should it pass, here are the two projects we would like to include. Council Member Sutton asked if he wanted to add this to the resolution. Mayor Weatherly referred the matter to Council, assuming this would pass and Apex should have its part.

Action: Council Member Jensen made the motion to adopt the Resolution subject to the two changes offered by Council Member Sutton. Mayor Weatherly continued in the next to the last Whereas, funds be directly distributed to the municipalities and under the Now, therefore be it resolved, Council Member Sutton added what Council Member Gossage was saying to approve the two town named projects, and made the second to the motion. Mayor Weatherly continued trying to restate this part of the motion and turned back to Council Member Jensen to restate his motion.

Council Member Jensen responded that he felt the Mayor had stated the motion adequately, however, began to restate the motion: made the motion to pass the Resolution as is, subject to the two motions made by Council Member Sutton and Council Member Gossage. Mayor Weatherly didn't know how Council Member Gossage's statement would fit into the section therefore be it resolved. At this point, Council Member Gossage withdrew the portion of the motion relative to Council Member Gossage's statement, and continued subject to the condition requested by Council Member Sutton. Mayor Weatherly asked if there were any discussion, with there being none, called for a vote on the motion. Vote on the motion was 3 opposed (Council Members Gossage, Jones and Schulze) to 2 in favor (Council Members Jensen and Sutton). Motion failed.

Mayor Weatherly then turned to Council for another motion. Council Member Jones agreed with the need to have a resolution, that if funds are going to be distributed, we should be a part of that.

Action: Council Member Jones made the motion to adopt the Resolution that's in front of Council, remove the first Whereas altogether; second Whereas can be changed to President Barack Obama, and would advocate to remove To stimulate the economy, remove the third Whereas all together, fourth Whereas all together, and sixth Where As, Academic research, and the seventh Whereas, through existing federal programs adding, directly to local municipalities. He then stated that would be his motion for the resolution.

Manager Radford asked Council Member Jones if he would add to his motion, to strike the final bullet, distribute transportation stimulus funds through the surface transportation program (STP). Council Member Jones asked why he would want to do that. Manager Radford stated it might lend some idea that they are willing for it to be shared with the State, noting the State of North Carolina does share in the STP money.

Action continued: Council Member Jones continued his motion, striking the final bullet under Now therefore be it resolved. Mayor Weatherly added and that would make it subject to the equity formula, noting something the Metropolitan Coalition had been fighting against, and didn't know why they put that in there. Council Member Jones continued that his point is that he's not advocating for the stimulus program, but if there's going to be one, we want to be a part of it, and try to spend the money as efficiently as we can representing our fiduciary responsibility to our tax payers.

Council Member Gossage asked if we wanted to put in the two specific projects. Council Member Jones responded that he felt that is part of what would end up being the second Whereas, the \$2.8 billion list of shovel-ready projects; ours is part of that \$2.8 billion. Mayor Weatherly stated it is part of this that will be attached to this, with Council Member Gossage agreeing.



Manager Radford asked what is being done with the final paragraph, scratching Furthermore be it resolved. Council Member Jones responded no; leave it as it is not knowing the difference in partner or how you define strongly partner with somebody. Manager Radford added that if they wanted to change this dramatically, they would say; recommend that the Federal Government... reiterate what was previously said about the most efficient way to do this, that the funds be sent directly to municipalities.

Action: Council Member Jones agreed, adding,... Furthermore Be it Resolved that the Town of Apex recommends that the funds be, with the Manager adding, directly distributed, and with Council Member Jones continuing his motion; ...directly distributed to cities ... and keeping when deploying these funds.... with Mayor Weatherly agreeing, and calling for a second. Council Member Sutton made the second to the continuing motion. Council Member Sutton felt philosophy is one thing, may feel we are having a recession, maybe don't feel like we are having a recession, however he feels like we do, understanding he may not approve of a stimulus package, but at the same time we are saying we want to get our share of the stimulus package if it comes about; we are looking after the taxpayers and that's what we are elected to do, with Council Member Jones agreeing. Council Member Gossage stated he was going to vote yes for this because they have removed the language that says we support the policy itself, but if the outcome is such a manner that the money is going to be distributed then we are saying include Apex as a town without going the extra step and saying we are doing this so we can be included; he thinks that is a very important distinction. Vote on the motion was four in favor and one opposed (Council Member Schulze casting the opposing vote). Motion carried.

End of New Business # 05

Presenter: Town Manager Bruce Radford

New Business # 06 - Town Council Annual Planning Retreat

Possible motion to set the date for the Town Council's Annual Planning Retreat, recommending Friday, March 6, 2009 beginning at 8:00 a.m. and will be held in the third floor training room of the Apex Town Hall. Mayor Weatherly suggested the Retreat be held on Saturday.

Action: Council Member Jones made the motion to set the Retreat on Saturday March 7, 2009 at the Halle Cultural Arts Center. (will be held in the Town Hall). Council Member Gossage made the second to the motion. Motion carried unanimously

Presenter: Mayor Weatherly

New Business # 07- Apex Planning Board

Mayor Weatherly will request Council consider appointments/re-appointments to the Apex Planning Board.

Mayor Weatherly recommended the following:

Tommy Morgan be re-appointed as a regular member to the Planning Board for a three-year term; term will expire December 31, 2011; also, recommend he be re-appointed Chair for a one-year term; term will expire December 31, 2009.

Lance Olive be re-appointed Vice Chair of the Planning Board for a one-year term; term will expire December 31, 2009.

Tom Colhoun be re-appointed as a regular member to the Planning Board representing the ETJ for a three-year term with concurrence by Wake County Board of Commissioners; term will expire December 31, 2011.

Terry Rowe be appointed as a regular member to the Planning Board for a three-year term; term will expire December 31, 2011.

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

End of New Business # 07



New Business continued

Presenter: Mayor Weatherly

New Business # 08- Apex Board of Adjustment

Mayor Weatherly will request Council consider re-appointments to the Apex Board of Adjustment.

Mayor Weatherly recommends the following:

Craig Hardee be re-appointed as a regular member to the Board of Adjustment for a three-year term; term will expire December 31, 2011; also recommends he be appointed Chair for a one-year term; term will expire 12/31/09.

Amanda Stokes was appointed as an Alternate member to the Board of Adjustment for a three-year term on January 6, 2009. I recommend she be appointed a regular member on the Board of Adjustment for a one-year term, filling the unexpired term of Terry Rowe; term will expire December 31, 2009.

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

End of New Business # 08

End of New Business

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice from the Town Attorney regarding: 1) potential eminent domain action to acquire a temporary construction easement to complete northern segment of sewer line to North Salem Street, and 2) potential litigation.

Action: Council Member Gossage made the motion to move into Closed Session at 9:05 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session were recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 9:20 p.m. Council Member Schulze 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 a Resolution No. 08-0120- 07 Authorizing Eminent Domain Proceedings for a Temporary Construction Easement to Install a Sewer Line as Part of the Apex Sewer System (Timothy M. and Sonja R. Mann, identified Wake County PIN # 0742-67-2754 and 0742-68-7170). Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further action to come before Council, Council Member Gossage made the motion to adjourn at 9:22 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the January 20, 2009 Council meeting was submitted by the Town Clerk to the Town Council for approval at their February 3, 2009 Council meeting.

Georgia A. Crangalis
Town Clerk

Barth W. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the February 03, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 03, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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; special welcome extended to Scout Troop # 224.

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 to approve the following items.

Action: Council Member Jensen asked to give separate consideration to item # 5, and asked for a closed session to receive legal advice from the Town Attorney in respect to how this action would affect them long term. Council Member Schulze made the second to the motion. Motion carried unanimously.

Action: Council Member Schulze made the motion to approve the consent agenda with the modification to consider item # 5 as an Old Business item. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of January 20, 2009 Council meeting.
2. Minutes and General Account of January 20, 2009 Closed Session (separate cover).
3. Budget Ordinance Amendment #06 for land purchase and downtown parking improvements.
4. Rezone Case #08RZ13: Statement of Council's action taken on January 20, 2009 and Ordinance: Elizabeth Chappell and Jacquelyn Burgess, petitioner, for rezone of property located at 0, 1201 and 1207 N. Salem Street from Residential Agricultural to Rural Residential, 11.593 acres.
5. Reconsider vote on PH # 02, Westford PUD Rezone #08CZ09, approved at the January 20, 2009 Town Council meeting, and motion to approve the Westford PUD rezoning on the same terms as approved on January 20, 2009 except that the condition setting a maximum number of apartment/rental units is deleted. (considered under Old Business).



6. Set public hearing date of February 17, 2009 for various amendments to Unified Development Ordinance:
 1. Amend Section 12 to add definitions for bay window and cantilever.
 2. Amend Section 5.2.2.B Setbacks to make changes to setback measurements for cantilevers; remove encroachments into front yard setback for enclosed porches; set a rear lot line limit to rear loaded garages on townhouse lots; and to remove a reference to private alleyways that is no longer applicable.
 3. Amend Table 5.1 to add a standard height for Office, Medical and Dental buildings and Schools.
 4. Amend Sections 4.2.2 Use Table; 4.3.5.H Vehicle Repair and Service; and Section 4.3.5.G Retail Sales and Service in order to move Repair Services, Limited as a category under Vehicle Repair and Service to a new category under Retail Sales and Service.
 5. Amend 4.2.2 Use table and add new Section 4.4.5.H.6, Supplemental Standards for Vehicle sales/rental, light.
 6. Amend Sections 4.2.2 Use Table and 4.4.5.C to add new section for supplemental standards to Restaurant, drive-through in B1 district.
 7. New Section 4.4.5.G.14 Upholstery Shop and amend 4.2.2 Use Table to add supplemental standards to Upholstery Shop in B1 district.

7. Wake County Board of Commissioners tax report approved/accepted January 12, 2009 for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Attorney Fordham asked to amend the agenda to include a closed session to discuss potential condemnation litigation.

Action: Council Member Jones made the motion to set the regular agenda with the amendment for a closed session item as requested by the Attorney. Council Member Schulze made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Mayor Keith Weatherly
Public Hearing # 01 – Preparation of Proposed Annual Budget
Review: Continuation from January 20, 2009 meeting

Mayor Weatherly stated this was a continuation of Public hearing to receive citizen input regarding the formulation of the Fiscal Year 2009-2010 Annual Budget. With no one coming forward to address the proposed budget, Mayor Weatherly noted the public hearing closed.

End of Public Hearings

**OLD BUSINESS****Consent Agenda # 05: (moved to Old Business for separate consideration)**

Reconsider vote on PH # 02, Westford PUD Rezone #08CZ09, approved at the January 20, 2009 Town Council meeting, and motion to approve the Westford PUD rezoning on the same terms as approved on January 20, 2009 except that the condition setting a maximum number of apartment/rental units is deleted.

Mayor Weatherly introduced this item and noted Council would move into closed session as requested at 7:07 p.m. No action was taken during Closed Session. Closed Session minutes are recorded separately. **Action:** Council Member Jensen made the motion to move back into Regular Session at 7:10 p.m. Motion carried unanimously. **Action:** Council Member Jones made the motion to reconsider the vote on PH # 02, Westford PUD Rezone #08CZ09, approved at the January 20, 2009 Town Council meeting. Council Member Gossage made the second to the motion. Motion carried unanimously. **Action:** Council Member Jones made the motion to approve the Westford PUD rezoning on the same terms as approved on January 20, 2009 except for the condition setting the maximum number of apartment/rental units. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Consent Agenda item # 05

Presenter: Attorney Hank Fordham

Old Business # 01 - Electric Meter Reading System

Review: Council met October 21, 2008 and unanimously agreed to approve the Elster Electricity Agreement in concept and for the staff and Town Attorney to proceed work on a finalized contract and it be brought back to Council for approval; staff recommends approval of the final contract and proceeding with the project.

Possible motion to approve a contract between the Town and Elster Electricity detailing a relationship where the Town obtains assistance and large discounts from Elster to set up a two-way commercial electric meter reading system in exchange for the Town providing assistance to Elster with a test system in the Town for Elster's research and development purposes.

Attorney Fordham presented the finalized contract which has been modified to suit the needs of the Town, expanding on terms of the contract. Mike Couch Electric Department expanded on the remote meter reading capability expanding on discounts and technical assistance Town would receive from Elster Electricity in exchange for helping Elster set up a test system for their research and development purposes in Apex. Town will spend \$12,500 for start-up equipment. Expected cost for entire project is \$375,000; payback would be hard to determine at this time.

Action: Council Member Gossage made the motion to approve the contract between the Town and Elster Electricity. Council Member Schulze 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**

Presenter: Principal Planner Brendie VegaMkhwanazi

New Business # 01 – Kite Realty – Request to Phase Broadstone Way

Review: Town Council has authority to approve a phasing plan that would allow the developer to complete their road improvements at another phase; Planning, Fire, Public Works and Construction Management have all reviewed the request; Staff recommends approval of the proposed request.

Possible motion to allow Kite Realty to re-phase in order to move one section of their roadway to a different phase for the project at Broadstone Station.

Staff oriented to the site location, and a part of the Peakway and NC55 PUD; separate site plans – 1) Wal-Mart and 2) Broadstone Station. Connection of Broadstone Way is shown on the site plan to be constructed to the pump station; it was not a requirement of site plan – site plan requires they construct the roadway to the property line; connection is being made to allow for all connections necessary for Wal-Mart, however, applicant requests they be allowed to construct a 20 foot wide path of stone to the lift station because there are no tenants for Broadstone Station shops and may come back with different site plan to reconfigure this site; when retailers are obtained and construction of this portion of the site commences, the remainder of Broadstone Way will be completed; applicant will eventually live up to the obligation. Staff recommends approval. Brief discussion followed.

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

End of New Business # 01

Presenter: Town Manager Bruce Radford

New Business # 02 – Wake County Board of Elections

Possible motion regarding Town of Apex to fund the operation of an additional early voting location for Wake County Board of Elections.

Manager Radford presented for Council's consideration a request from Wake County Board of Elections regarding the funding of an early voting location, noting the traditional location had been in space provided in the community center and with town paying the associated costs for the voting location; noted all Wake County voters are eligible to vote at any early voting location. **Action:** Council Member Jones made the motion to support an early voting site as described in the game room in the community center for the November 3, 2009 election. Council Member Gossage made the second to the motion. Motion carried unanimously. Discussion followed regarding the early voting options, the costs and number voting at the Apex location during the last election and possible option to ask for the site location for only the November election and not the October elections as outlined. Council decision was to have the Manager Radford check with WC BOE regarding their offer, options and associated costs, and voter turnout in this location from the prior election, before moving forward. Manager Radford will bring this back to Council at an upcoming meeting. Council Member Jones and Council Member Gossage withdrew their original motion.

End of New Business # 02

Presenter: Town Manager Bruce Radford

New Business # 03 – 2009 Legislative Agenda

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

Manager Radford offered a copy of the 2008 Legislative Agenda; Council should consider and discuss any matter or potential legislation they would desire the General Assembly to consider during current session. Mayor Weatherly began by giving the purpose of a legislative agenda. Discussion evolved on the first item: change manner in which Wake County Board of Education members are elected – 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 (at-large vs. districts, accountability, better representation, higher turnout, benefit to citizens, message being sent for change). Discussion evolved on the second item: eliminate or increase the present cap on the number of Charter Schools authorized for the State of North Carolina (alleviates burden on taxpayers *construction and renovation*, raise cap vs. limit the cap, curriculum and innovation, accountability, alternative for quality education over public or private schools, no tuition required).



New Business continued

Discussion evolved on the third item: gap funding has been provided and feels construction of I-540 will move forward after bonds are sold (elimination of light rail service a way to the future).

Mayor Weatherly gave his support for the adoption of the first two items and deletion of third item from 2008 Legislative Agenda. With all Council members having stated their position, the matter was referred to Council for possible action.

Action: Council Member Gossage made a motion to adopt the 2009 Legislative Agenda and containing items #1 and #2 from the 2008 Legislative Agenda. Council Member Jones made the second to the motion. Vote on the motion was 4 in favor and 1 opposed (Council Member Sutton voting in opposition).

Council Member Jensen offered a thought relative to zoning authority relative to multiple units: percentages relative to residential vs. rental. There was no action taken relative to Council Member Jensen's thoughts. Attorney Fordham offered Police Chief Lewis was having difficulty with parking on Townside Drive. Advised Raleigh had received local legislative authority to use wheel locks to deter illegal parking, and offered a request could be made to allow Apex to be added to a local bill that would help deter illegal parking; this legislative authority would give the Police Chief more tools to work with in this situation, and could state that wheel locks may be used after three unpaid parking tickets had been issued; approval by the legislature would require adoption of a local ordinance to become an Apex law.

Action: Council Member Schulze made a motion to add this as item # 3 to the 2009 Legislative Agenda and that a local ordinance be modeled after the City of Raleigh's that would allow adding a boot to a car after three unpaid parking tickets. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of New Business # 3
End of New Business

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session regarding pending litigation condemnation.

Action: Council Member Gossage made the motion to move into Closed Session at 7:50 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 into Regular Session at 8:04p.m. Council Member Sutton 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 to adopt a Resolution No. 09-0203- 08 Authorizing Eminent Domain Proceedings for a Right of Way and Temporary Construction Easement to Install Streets: Eddie Nelson Clark and Susan T. Clark WC PIN # 0721-96-3687. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further action to come before Council, Council Member Jones made the motion to adjourn at 8:05 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the February 03, 2009 Council meeting was submitted by the Town Clerk to the Town Council for approval at their February 17, 2009 Council meeting.

Georgia A. Cravens
Town Clerk

Mark A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the February 17, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 17, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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

Presentation No. 1 – Appearance Awards

Mayor Keith Weatherly presented Appearance Awards for Residential and Commercial properties as follows:

- Marvin & Wendy Allen, 304 W. Chatham St., Apex, NC for "A home that blends seamlessly with the surrounding natural features and is in keeping with the character of downtown Apex."
- Leland Builders (Lee and Gretchen Williams), 10048 Fountain, Chapel Hill NC, the builders of 304 W. Chatham Street, Apex, NC house for "Design and construction of a home that blends seamlessly with the natural features on the lot and is in keeping with the character of downtown Apex."
- Yury Rojas, 405 Hanson Walk Lane Apex, NC, "Anna's Pizzeria located at 100 N. Salem Street, Apex, NC for "Restoration of a historic building that maintains the character while providing refreshing charm to downtown Apex"

Presentation No. 2 – 4-H Projects

Community Service Leader Justin Judge: Apex Robocats/**4-H Projects** announced the 4-H Club would be planting 1200 trees at the Jaycee Park, Apex, NC, and while bringing beauty and heritage to the Community would help in protecting the environment, providing shade, better air quality and absorbing water run-off. The trees were donated by the Town of Apex and the NC Forest Association and will be planted in memory of Matthew Silliman.

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 to approve the following items.

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

1. Minutes and General Account of February 3, 2009 Council meeting.
2. Minutes and General Account of February 3, 2009 Closed Session (separate cover).
3. Minutes and General Account of February 10, 2009 Personnel Committee meeting.
4. Annexation Petition # 442, Joromi Properties, LLC, owner/petitioner, petitioning to annex 0.166 acres into the Town's corporate limits and located east of 901 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 March 3, 2009.
5. Possible motion to approve street closings for the 2009 Peak Fest - May 2, 2009, and the 4th. of July Festival - July 4, 2009.
6. Possible motion to authorize Town Manager to complete modifications to/and enter into a Memorandum of Understanding supporting a regional partnership for Water Supply Planning and potential joint use of the B. Everett Jordan Reservoir.
7. Resolution No. 09-0217-09 Accepting Dedication of Public Street and Public Utility Right of Way in Haddon Hall.
8. Wake County Board of Commissioners tax report approved/accepted February 2, 2009 for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was presented to be set prior to taking action on the following items.

Attorney Fordham asked to amend the Agenda to include an Old Business Item relative to Council's action taken relative to Rezone # 08CZ14. Mayor Weatherly asked to include a Closed Session item to receive legal advice from the Town Attorney.

Action: Council Member Gossage made the motion to amend the Regular Meeting Agenda as requested. Council Member Jones made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

**PUBLIC HEARINGS**

Presenter: Brendie Vega Mkhwanazi

Public Hearing # 01 – UDO Amendments

Review: Planning Board met February 9, 2009 and unanimously recommended approval, with recommended changes and those changes are incorporated in the staff report; staff recommends approval.

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

1. Amend Section 12 to add definitions for bay window and cantilever.
2. Amend Section 5.2.2.B Setbacks to make changes to setback measurements for cantilevers; remove encroachments into front yard setback for enclosed porches; set a rear lot line limit to rear loaded garages on townhouse lots; and to remove a reference to private alleyways that is no longer applicable.
3. Amend Table 5.1 to add a standard height for Office, Medical and Dental buildings and Schools.
4. Amend Sections 4.2.2 Use Table; 4.3.5.H Vehicle Repair and Service; and Section 4.3.5.G Retail Sales and Service in order to move Repair Services, Limited as a category under Vehicle Repair and Service to a new category under Retail Sales and Service.
5. Amend 4.2.2 Use table and add new Section 4.4.5.H.6, Supplemental Standards for Vehicle sales/rental, light.
6. Amend Sections 4.2.2 Use Table and 4.4.5.C to add new section for supplemental standards to Restaurant, drive-through in B1 district.
7. New Section 4.4.5.G.14 Upholstery Shop and amend 4.2.2 Use Table to add supplemental standards to Upholstery Shop in B1 district.

Staff reported: At their February 9, 2009 meeting the Planning Board unanimously recommended approval of the proposed UDO Amendments with the following recommended changes:

- To Section 4.4.5.G.14 Upholstery Shop in B1 add, "Deliveries shall be limited to 7am until 7pm".
- To Section 4.2.2 Use Table under Vehicle Sales and rental, light; add "4.4.5.H.6" in standards section.
- In Section 4.4.5.C.1.a, remove "and shall be landscaped to be screened from public view to the maximum extent practicable."

The recommended changes have been incorporated into Town Council's staff report which is attached and incorporated as a part of the official minutes. Staff recommends approval of the proposed UDO Amendments. Mayor Weatherly opened the public hearing at 7:25 p.m. and with no one addressing the proposed amendments, closed the public hearing and referred the matter to Council.

Action: Council Member Gossage made the motion to approve the amendments as presented with the changes recommended by the Planning Board and staff. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Presenter: Brendie Vega Mkhwanazi

Old Business # 01 – Section 4.2.2 Use Table

Review: The Planning Board met February 9, 2009 and found the following uses appeared in the Use Table as permitted by right or by Special Use in the B2 – Downtown Business District, but not permitted in Small Town Character, and would like to make these uses consistent by recommending a UDO amendment to the Use Table. If the Town Council agrees that these changes should be made, the Council could direct staff to take the recommended amendments through the standard UDO amendment process in March.

Planning Board review and recommendation in regard to Section 4.2.2 Use Table of the Unified Development Ordinance:

- Communication tower, camouflage stealth – S in B2; not allowed in STC. (Planning staff recommends removing it from B2).
- Beach bingo – S in B2; not allowed in STC. (Planning staff recommends adding "S" to STC).
- Botanical garden – P in B2; not allowed in STC. (Planning staff recommends adding "P" to STC).
- Bar or nightclub – S in B2; not allowed in STC. (Planning staff recommends removing it from B2).
- Building supplies, retail – P in B2; not allowed in STC. (Planning staff recommends removing it from B2).
- Retail sales, bulky goods – P in B2; not allowed in STC. (Planning staff recommends removing it from B2).



Old Business # 01 continued

Staff reported: At their February 9, 2009 meeting the Planning Board reviewed the Use Table as directed by Town Council. The Planning Board found an inconsistency between uses permitted in the B2 Downtown Business district and the Small Town Character (STC) Overlay District. Because the B2 district lies wholly within the Small Town Character Overlay District, anything that is not permitted in STC would then also not be permitted in B2. The Planning Board found that the following uses appeared in the Use Table as permitted by right or by Special Use in the B2 district, but not permitted in STC:

- Communication tower, camouflage stealth – S in B2; not allowed in STC. Planning staff recommends removing it from B2.
- Beach bingo – S in B2; not allowed in STC. Planning staff recommends adding "S" to STC.
- Botanical garden – P in B2; not allowed in STC. Planning staff recommends adding "P" to STC.
- Bar or nightclub – S in B2; not allowed in STC. Planning staff recommends removing it from B2.
- Building supplies, retail – P in B2; not allowed in STC. Planning staff recommends removing it from B2.
- Retail sales, bulky goods – P in B2; not allowed in STC. Planning staff recommends removing it from B2.

The Planning Board would like to make the uses consistent by recommending a UDO Amendment to the Use Table. If the Town Council agrees that these changes should be made, the Council could direct staff to take the recommended amendments through the standard UDO amendment process in March.

Staff answered Council Member Sutton's questions regarding the amendment process. It was unanimous by Council to direct staff to prepare the staff report and take the recommended amendments through the standard UDO amendment process.

End of Old Business # 01

Presenter: Attorney Hank Fordham

Old Business # 02 – Rezone Case # 08CZ14

Statement of the Apex Town Council and Ordinance for Rezoning Case #08CZ14, Oliver Development, LLC petitioner, for the property located at East Williams Street and US #1, at S. Hughes Street and Apex Peakway.

Attorney Fordham reported this conditional zoning permit was approved at the January 20, 2009 Town Council and the statement addresses the action taken and the ordinance was prepared for adoption.

Action: Council Member Jones made the motion to approve the Statement of the Town Council and adoption of the Ordinance for Rezone Case # 08CZ14. Council Member Gossage made the second to the motion. Motion carried unanimously.

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**

Presenter: Personnel Committee Chair Bryan Gossage

New Business # 01 – Personnel Committee

Possible motion regarding Personnel Committee recommendation to approve 12 fulltime Firefighter positions, and 3 limited service "overhire" Firefighter positions in conjunction with the acceptance of the SAFER grant.

Council Member Gossage presented: At its February 10, 2009 meeting the Personnel Committee recommended creating 12 fulltime firefighter positions and cost sharing funding of these positions through the award of the SAFER grant. It was noted Fire Station # 4 will open in June, and based on other fire department experience who have sponsored academies for fire fighters, it is recommended the hiring of three additional limited service positions (over hires) for 16 weeks, and in the event one or more of the 12 firefighters fail to complete the fire training academy, either the LS positions would fill vacancies or be cut and are not guaranteed a position past the initial training period. Estimated personnel costs are attached. Council adopted a Resolution of support for application of SAFER grant June 2008.

Action: Motion by Council Member Gossage to approve the recommendation of the Personnel Committee as presented. Council Member Schulze made the second to the motion.

Manager Radford gave brief response to firemen's training experience. Council Member Schulze gave his support to the recommendation noting Apex behind and need for a catch up. Council Member Sutton noted six were hired last year and stated his point of view: fire station # 1 downtown should be closed and those fire folks moved to the new station # 4, saving \$2.5 million of tax payers money, and station # 1 could be left for volunteers, and due to the tough economic times, doesn't think they should have to spend this money and could move the people.

Chief Mark Haraway explained station # 1 could not be closed until station # 5 is operational and then those fire folks could go to station # 5. Council Member Gossage noted the Agreement with Volunteer Fire Department doesn't allow station # 1 to close until 2012. Also, Chief Haraway noted the Department of Insurance had inspected the fire stations, and due to the growth of Apex, advised station # 1 can't go away until # 5 is operational, as the stations are overburdened and cover larger expanse as is and to close station #1 Apex would see a change in insurance rates and do not want to see that; they can't reduce the current level of staff, as station # 1 covers the central business district, out Salem Street and east of Town. He further identified the areas that Hunter Street station currently covers which is a larger expanse than should be. Council Member Sutton continued his debate with the Fire Chief and restated his point, with Chief Haraway responding this was his best recommendation as presented, and advised Council it was not in the best interest of the Town to close station # 1 at this time and move those folks.

Council Member Gossage noted Apex fortunate to have federal grant money for 90% the first year and down over the next 4 years, and gave history of the past hiring over the past five years where three were added per truck and the Town has have expanded over the past years and noted the need for all four stations to be staffed. Council Member Gossage then called for the question. Mayor Weatherly called for the vote on the motion. Vote on the motion was four voting in favor of the Personnel Committee recommendation, and one voting against, with Council Member Sutton casting the opposing vote. Motion carried.

End of New Business # 01

Presenter: Assistant Town Manager Mike Wilson

New Business # 02 – Early Voting 2009 Municipal Elections

Possible motion to hold and fund Early Voting for the 2009 Municipal Elections: Wake County Board of Elections offered opportunity for Town to provide site and pay all costs of the operation of an early voting site for 2009 municipal elections. Council discussed this opportunity at its February 3, 2009 meeting and asked staff to provide more information regarding past voting site attendance and costs. 2005 was the last held early voting site at the library and 253 voters cast votes in the municipal election. Correspondence and voting schedule and cost estimates are attached. Discussion followed regarding the cost estimates and location site (game room community center) with four day early voting dates at a total cost of \$22,863. Council felt the cost was pricey and based on the last number of voters felt they should decline the invite.

Action: Council Member Jensen made the motion to decline the invitation of the Wake County Board of Elections. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business # 02



Presenter: Mayor Keith Weatherly

New Business # 03 – Apex Board of Adjustment

Mayor Weatherly will request Council consider appointments to the Apex Board of Adjustment.

Mayor Weatherly recommended Larry Harris be appointed as a regular member of the Board of Adjustment representing the ETJ for a three-year term with concurrence by Wake County Board of Commissioners; term will expire December 31, 2011.

Mayor Weatherly recommended Mr. Perry Cox be appointed as an Alternate member to the Apex Board of Adjustment for a three-year term; term will expire December 31, 2011.

End of New Business

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice about two condemnation issues and to receive legal advice from the Town Attorney.

Action: Council Member Schulze made the motion to move into Closed Session at 7:45 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jensen made the motion to move back into Regular Session at 8:10 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

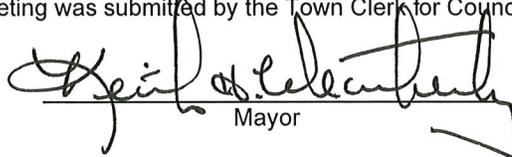
ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 8:12 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 17, 2009 Council meeting was submitted by the Town Clerk for Council approval at their March 3, 2009 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the March 03, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 03, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

Mayor Weatherly called the meeting to order.
Council Member Jones gave the Invocation.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance,
Special welcome extended to Apex High School students who were participating as part of a civic project.

PRESENTATIONS

Council Member Mikes Jones presented the following:

Presentation No. 1 – Parks, Recreation and Cultural Resources Awards

Recognition of Parks, Recreation and Cultural Resources Departments 2008 Volunteers of the Year for their commitment and contributions to the Athletic and Non-Athletic Programs and Events sponsored and co-sponsored by the Parks, Recreation, and Cultural Resources Department and nominated by departmental staff. Council Member Jones presented plaques to Andy Huryn, 2008 Athletic Volunteer of the Year, and Tina Maloch, 2008 Non-Athletic Volunteer of the year.

Presentation No. 2 – 4-H Projects

Mary Silliman, Apex Robocats/4-H Projects, reported on the 4-H Club tree planting projects, over 2363 trees that will bring beauty and heritage to the community, and would help in protecting the environment, provide shade, better air quality and absorb water run-off. Trees were donated by Town of Apex and NC Forest Association; park plantings were both in the Apex Community Park and Jaycee Park, Jaycee Park plantings in memory of Matt Silliman.

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 to approve 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. Minutes and General Account of February 17, 2009 Council meeting.
2. Minutes and General Account of February 17, 2009 Closed Session (separate cover).
3. Budget Ordinance Amendment # 7: refund prepaid capacity fees:
\$52,200 Empire Contractors and \$204,000 to JVI.
4. Set public hearing March 17, 2009: Land Use Plan amendment and Rezone #09CZ01: Land Use Plan amendment from School to Mixed Office & Institutional and Commercial and rezone from Office & Institutional Conditional Zoning to Neighborhood Business-Conditional Zoning, Ashley Ansara, applicant; 2.89 acres located at the southwest corner of Apex Barbecue Road and S. Salem Street.
5. Set public hearing March 17, 2009: Rezone #09CZ02: from Office & Institutional Conditional Zoning to Office & Institutional Conditional Zoning changing conditions of the previous rezoning, Westover Properties, applicant; 1.77 acre site located at 903 Olive Chapel Road; would allow Goddard School to relocate its dumpster to accommodate an addition.
6. Set Public Hearing March 17, 2009 for various amendments to the Unified Development Ordinance.
 1. Amend Section 8.2.7 Fences, Walls and Berms to correct a reference.
 2. Amend Section 8.2.8.B.1 to make opaque doors required on dumpster enclosures metal.
 3. Amend Sections 8.7.9 *Definitions* and 12.2 *Terms Defined* to clear up duplicate and conflicting definitions pertaining to signs.
 4. Amend Table 1 Section 8.2.6 *Landscaping, Buffering, and Screening* to add Tech/Flex as a Zoning District.
 5. Amend Sections 7.2.1 *Streets* and 7.5.4.E *Public Access Requirements*: cross reference.
 6. Amend Use Table Section 4.2.2, remove conflicts from B2-Downtown Business and Small Town Character districts.
 7. Amend Section 2.3.4.L to change the expiration date for PUD Plans.
 8. A new Section 8.1.6.E to regulate the color of retaining structures.
 9. Amend Section 9.2.2 Building Design to state that building features must be proportional and must be compatible with each other.
 10. Amend Section 9.2.4.C to limit the use of Exterior Insulation Finishing System (EIFS) on buildings to trim and features and not as a main material, and to ensure that EIFS is not used at the base of buildings. An amendment to this section also to require a percentage of brick, stone or masonry to be used on all non-residential buildings.
7. Resolution No 09-0303- 10 Declaring (two) Musco Athletic Field Lighting Systems Surplus Property and Authorizing Donation of the Property to the Wake County Public School System: Penny Road and Apex High, Laura Duncan Road.
8. Award construction contract for NC55 Emergency Pre-empt Traffic Signal: Public Safety Station # 4 to Watson Electrical Construction Co. LLC, as lowest responsible bidder: \$31,422.
9. Approval of transaction documents between Town of Apex and Joe Foresta's business entities related to purchase of land and exchange of easements and related matters.
10. Annexation Petition # 443, Town of Apex, NC, owner/petitioner, petitioning to annex 14.699 acres into Town corporate limits, located at 2300 Mt. Zion Church Road, Apex, NC, and adoption of a Resolution No. 09-0303-11 Declaring Town's intent to annex Town-owned property for the location of the proposed electric power distribution site and certification by Town Clerk that said tract of land belongs to Town of Apex, NC, and set date of Public Hearing March 17, 2009.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Attorney Fordham asked to include a Closed Session to discuss: 1) pending litigation regarding the Richardson property, for the proposed electric substation site, and 2) for potential litigation. Council Member Jensen asked to include a Closed Session to receive legal advice from the Town Attorney prior to taking action on Old Business #01 - Closure of Moore Street Rail Crossing. **Action:** Council Member Jones made the motion to set the Regular Meeting Agenda as amended. Council Member Jensen made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Director of Planning Dianne Khin

Public Hearing #01 – Annexation Petition #442

Review: Portion of tract (7,227 square foot) not previously annexed

Public Hearing regarding Annexation Petition #442, Joromi Properties, LLC, owner/petitioner, petitioning to annex 0.166 acres into the Town's corporate limits and located east of 901 E. Williams Street.

Staff oriented to the site, a back portion of a current car express business and a portion of the resource conservation area in the extra territorial jurisdiction; staff recommends approval of the annexation petition. Mayor Weatherly opened the public hearing at 7:15 p.m. and with no one addressing this petition, closed the public hearing and referred the matter to Council.

Action: Council Member Jensen made the motion to adopt the ordinance to extend the corporate limits approving Annexation # 442. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Presenter: Town Attorney Hank Fordham

Old Business Items # 01 - Closure of Moore Street Rail Crossing

Update on the proposed Rail Corridor Master Agreement among CSX, DOT and the Town of Apex and possible motion to approve same and to approve a Resolution No. 09-0303-12 and Order to close Moore St. upon the opening of a new at-grade crossing of the CSX SDS line by the North Apex Peakway.

Mayor Weatherly called for a motion to move into closed session at 7:15 p.m.

Action: Council Member Jensen made the motion to move into Closed Session to receive legal advice from the Town Attorney prior to taking action on this item. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session were recorded separately.

Action: Council Member Jensen made the motion to move back into Regular Session at 7:47 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

Mayor Weatherly called on the Town Attorney to proceed with an update regarding the proposed Rail Corridor Master Agreement among CSX, NCDOT and Town of Apex as it relates to the closing of Moore St. upon the opening of a new at-grade crossing of the CSX SDS line North Apex Peakway.



Old Business Items # 01 continued

Attorney Fordham advised at a previous Council meeting, he and staff had been directed to address several issues with NCDOT and CSX related to the closure of Moore Street, potentially to not close Moore Street crossing until the same time as the new at-grade crossing of the CSX SDS by the North Apex Peakway was opened. Kent Jackson, Director of Construction Management anticipates this action to take place 2010. NCDOT representative Paul Worley has indicated NCDOT's willingness to agree with the terms modifying the Agreement so Moore Street would not be closed until the new at-grade crossing by the North Apex Peakway was opened. CSX has not yet committed to this modification.

He continued, in order to move the process along, it may be worthwhile for Council to approve the Agreement with the modifications and in the Town's best interest to adopt the Resolution and Order of Street Closing as it relates to closure of a portion of East Moore Street to vehicular traffic and pedestrian traffic, effective upon and only upon the opening of the new at-grade crossing by the North Apex Peakway as stated the town would permanently close Moore Street within 24 hours of the opening at the new at grade crossing and barricade according to DOT specifications. If Council approves the Agreement with the terms stated, it would be presented to CSX.

The town's obligations for reimbursement at the Moore Street crossing was discussed with the recommended obligation for reimbursement to not exceed \$20,000 with Council supporting and concurring with the need to close Moore Street and moving forward with future at-grade crossing as discussed. Attorney Fordham advised the railroad is responsible for necessary procurement from Apex First Development Company and Booth Lumber for the closing of all three of the private at-grade crossings serving those properties, effective once the new crossing of the SDS line and North Apex Peakway is completed and open to traffic. Attorney Fordham advised he had spoken with Mark Grambling, Apex First Development Company and that he is in agreement, and does not think there would be a problem with Booth Lumber being in agreement, however has not spoken with Mr. Booth.

Further the Agreement includes NCDOT improvements at Chatham, Center, and Hunter Streets and allows NCDOT to perform the improvements and outlines municipal and NCDOT contributions toward funding the project. Director Jackson advised the overall total improvements is estimated at a total cost of \$300,000 for these upgrades and noted the payment section in the agreement. The reimbursement of costs to the NCDOT and payment dates were discussed and outlined in Section 1 page 3, item 3 and 4. Manager Radford noted no payments would be made until completion and acceptance of the project with dates being moved forward accordingly and subject to approval of the Town prior to the railroad performing the work, and commenting on the Town's responsibilities in completing the projects. Manager Radford also does not anticipate receiving any stimulus funds to help with the costs of this project. Attorney Fordham advised Council could give authority to the Town Manager and himself to co-allocate the dates and inclusion of minor changes to the agreement and the maximum reimbursements by the Town for further improvements.

Further the Agreement addresses the closure and removal of state system Tingen Road (SR 1153) crossing associated with the South Apex Peakway and grade separation of the S line, effective upon the opening of the new at grade crossing; asks for Town resolution of support for the opening of the new at-grade crossing and closure of the Tingen Road crossing by NCDOT upon completion of the South Apex Peakway grade separation of the S line, and notes separate engineering and construction agreements between the Town and the railroad will be required.

Further Paul Worley, NCDOT would like to take this agreement to the transportation board the first meeting in April, and full agreement would be contingent upon CSX response; Worley is willing to assist the Town in acquiring approval with CSX. Director Jackson advised this action has nothing to do with the high speed rail service, and additional length had been added for potential future rail lines.



Old Business Items # 01 continued

Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to adopt the Resolution and Order of Street Closing as it relates to the closure of a portion of East Moore Street. He added it was a hard decision to make, and had been a long time coming, and felt there had been due diligence to minimize damages and impacts to the community and its citizens. Council Member Gossage made the second to the motion. He stated the action predates, and were looking at an entire project, bigger than one section, and was a long term plan and felt it was the right thing to do. Council Member Jensen felt folks recognized this. Motion carried unanimously.

Mayor Weatherly referred the matter to Council regarding the approval of the Agreement with NCDOT and CSX.

Action: Council Member Jensen made the motion to approve the Agreement, authorizing its execution by the Mayor, and giving the Manager and Town Attorney authority to address any additional concerns related to the dates of the reimbursements, adding the reimbursement maximum of \$20,000, and sending the agreement to NCDOT and their forwarding it to CSX for their approval. 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

There were no New Business items to be considered.

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss the following items: 1) pending litigation regarding the Richardson property, for the proposed electric substation site, and 2) for potential litigation. **Action:** Council Member Jensen made the motion to move into Closed Session at 7:17 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Jensen made the motion to move back into Regular Session at p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Closed Session



ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn.

Action: Council Member Jensen made the motion to adjourn at 8:05 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the March 3, 2009 meeting of the Apex Town Council were submitted by the Town Clerk for approval at the March 17, 2009 Council meeting.

Georgia A. Cranzler
Town Clerk

Ken H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes and General Account of the Town Council's 2009 Annual Retreat

The Town Council of Apex, North Carolina held its annual retreat as follows:

Date: Saturday, March 07, 2009

Time: 8:00 a.m.

Location: Apex Town Hall and Town Campus, Training Center 3A, 73 Hunter Street.

Mayor Weatherly extended a welcome to Council and staff. Others attending were Apex Herald's Shawn Daily and Economic Development Director Jim Stella. Manager Radford presented the 2009 Annual Retreat Agenda with staff sharing related comments and answering questions.

Dianne Khin, Director of Planning, Kent Jackson, Director of Construction Management presented growth projections and building and construction forecasts for both residential and commercial projects; noted a 4.32% growth rate and a slowdown in all permits including Wake County's permits, and that growth was dependent upon completion of the regional wastewater reclamation facility. Tax base percentage comparisons were noted for pending development projects for residential 23% and non-residential 77%. Available commercial space in Apex was discussed with Stella commenting on un-occupied warehouse and office space. Projected construction estimated permits for 2009 is 190. (Pg. 2 – 14)

Director of Finance Lee Smiley presented the financial review: General Fund Revenue forecast, expenditure reductions and measures that took place to bring the approved budget back in balance, noted land improvements in the downtown, projected fund balances in operating funds and capital reserve funds and their availability for the fiscal year and noted fund balance deficits. Outstanding bond and non-bond debt were noted. Water/Sewer System Financing Plan to support the Long-Range Capital Improvement Plan was presented, noting debt service coverage, and need for an additional \$1 million in revenue, and outlined key features of the plan. Electric System Financing Plan to support Long Range Capital Improvement Plan was presented, noting debt service coverage, and outlined the key features of the plan: current electric rates are sufficient to provide the needed capital funding; future rate increases will be driven by wholesale electric rate increases from the Power Agency. (Pg. 15 – 28)

Manager Radford presented Long Range Capital Improvements Plan 2008 – 2019, indicating new items, re-scheduled items, and previous scheduled year items for Fire Equipment, Facilities, Parks and Recreation, Transportation, Water, Sewer and Electric projects. Comments by Council were regarding annual revenue and expenditures from the Electric Fund and need of street improvements for current traffic, regardless of development and expression of displeasure with the concrete narrowing being used as road separation. Staff commented on each section: grant money can be used in this fiscal year for the greenway project; support for completion of the North Apex Peakway, supported by sale of existing bonds.

Director of Public Works commented on Tunstall Street improvements and rebuilding of sewer system; water and sewer needs, Interbasin transfer and waterline connections Olive Chapel Road and Apex Barbecue; the Regional Waste Water Reclamation Facility and associated costs that continue to rise with delay time, and concerns with the slowing of capacity fees that has pushed the electric system improvements further out. Comments were shared regarding the odor control system of the current plant vs. new plant, and noted plans to make those improvements as this plant will continue to be used even with the operation of the new plant; Stella gave his support for the improvements in response to some businesses complaints. (Pg. 29 – 35)

Director of Finance presented projected schedule for debt issuance 2009; electric revenue bonds - electric sub-station \$7,200,000; general obligation bonds - streets with plans to borrow by year end \$6,500,000; state revolving loan - Regional Water Reclamation Plant with plans to file application August 09 \$17,500,000. Apex will still qualify as a small issuer acquiring the \$6 million general obligation bonds. Director of Public Works noted a public meeting will be held to talk about the regional wastewater project and current Environmental Impact Statement; noted paying partners Cary, Apex, Morrisville (Morrisville merged with Cary on sewer system however still an obligated partner under the Agreement) and Holly Springs is not an equity partner. (Pg. 36)

Manager Radford commented on the slowdown in the Construction Management, and the reassignment of employees sharing of duties in other departments to more efficiently balance workloads. Planning staff will assist in preparing projects that would normally have been contracted, a cost savings in-house; and noted furlough of employees has not been discussed. Goal is to present a balanced budget without a tax increase for 2009-10. Comments from Council: share planning assistance if necessary to Economic Development Director to assist in bringing new business to Town; Manager Radford will assist if need be; continues to look for certified sites having viewed Tingen Road.

Facilities Expansion Plans Phases I & 2 Public Works Facility, Upchurch Street - John Hitch and Chris Farmer Smith Sinnett, original architects of the facility when there was 22 employees, gave an overview of the proposed expansion plans for the current 6.4 acre site, addressing needs and planning through an immediate needs assessment and feasibility study. Presentation is attached. Changes have been made to the current building and yard usage with the larger portion being used by Purchasing and Inventory. Electric, Environmental Services and Operations share the facility with a current staff of 85, with 58 marked parking spaces, and noted an additional 20,764 square foot is needed in building space and 54,000 square feet (1.25 acres yard space); gravel pad accommodates 20 additional vehicles. Current site can be expanded to 10 acres with the 3.1 acres of frontage on West Williams and the .6 acre Chamber of Commerce site. Crowded conditions of the current facility and site issues were noted, recommending separation of heavy vehicle traffic from staff and visitor personal vehicles; noted a possible right in and right out entry from West Williams Street and proposed changes to Upchurch and West Williams Streets; additional site requirements were noted. Forecasts project the site is not adequate for all needs and anticipation of future staff 166 by 2028 with population growth to 68,177. Recommendations: move a division to accommodate remaining divisions; over half the purchase and inventory in the yard and warehouse is for electric utilities and includes a need for warehousing component, and could be accommodated at Mt. Zion electric Substation site as there is room for expansion; Phase I \$5.1 million - Phase II \$ 8.1 million; Mt. Zion proposed utilities \$3.6 million. Discussion followed: Hwy 55 improvements, respect for the neighborhood and cemetery, design for yard space interior of site. (Pg. 38-42).

Solid Waste and Recycling Options were discussed: Waste Industries is provider of residential curbside recycling and provides 18 gallon bins to recycle at a cost of \$2.16/month; and with an increase in recycling requests, will offer a 65 gallon roll out container \$3.18/month with a required 5-year extension of the service agreement. Pros and cons, and mitigating factors were discussed. Recommendation was presented by Director of Public Works indicates a superior collections program and better deal for the Town, customer and Waste Industries. Mayor and Council made comments regarding the offer and concluded they were not inclined to upgrade the curbside recycling program at this time. Noted Town may want to consider in-house collection at some future time however cost and storage of equipment would be an issue and currently cheaper to contract these services. Council Member Jensen strongly challenged the current bin program, noting complaints received, and encouraged Council to move forward with this offer or an distribution of additional bin(s) and spreading additional costs to all for the curbside recycling; also Fire Chief commented on the County hazardous waste recycle program. (Pg. 44 – 46).

Director of Fleet and Facilities presented the Progress Report: Public Safety Construction and a work summary; estimated completion of the 11,320 square feet Public Safety Station # 4, NC55, is scheduled for June 2009 at a cost just short of \$2.7 million. Expanded 34,645 square feet Police Station, Saunders Street, is scheduled for December 2009, at a cost just short of \$6.3 million. Council Member Jensen questioned re-use of excavated bad soil that was removed and hauled from the Police Department site, and if Town could have used it. Staff response was Town had no use for it, and there was no use for bad soil. (Pg. 48-49)

Fire Department/EMS Merger: EMS has been in operation since October 1971 in Apex; County officials support and are willing to assist with a merger effort to become effective July 09, and with an Interlocal Agreement in place to transfer the County's franchise for medical services from Apex EMS to Town of Apex. Apex EMS budget and supporting revenues would be folded into Town's budget as an EMS Division of the Fire Department. Manager and Fire Chief and EMS Chief Nicky Winstead answered questions, noted benefits of the merger, discussed billing (currently handled by a private company), revenues, current budget, call volume, vehicle use, accommodating space NC55 current facility and Public Safety station # 4, and eleven fulltime employees, potential to share drivers, and the gain of this merger being a benefit to all parties.

Council Members were in agreement with the recommendation for a merger and cost effective over time and there would not be a change to the current County mutual aide arrangements, noting there was steady increase in call volume. Manager Radford will bring an Agreement to a future meeting of the Council for their consideration; staff will prepare an EMS analysis and move forward with plans for inclusion in the 2009 budget. (Pg. 51 and presentation).

12:35 p.m. Manager Radford asked if there were any additional items Mayor and Council would choose to include in the discussion.

Council Member Schulze: Convenience of on-line bill pay. Director of Information Services expressed new software programs were still being written with New World, and discussed further third party billing process, and feels this would be one to two years out. He was in agreement with Council to deal with the issues at hand in the New World conversion over the next six months to a year, before moving forward with E-government programs.

Council Member Sutton: Economy and revenue. Director of Finance and Town Manager will continue to monitor closely the growth, permitting, revenues, sales tax and development numbers and inclusive of the course of events that could happen if Governor chooses to expense cash accounts or challenges Powell Bill money.

Council Member Jensen: Hire Freeze on employees. Manager gave status report on position activity and vacant position at current time, and the utilization of current staff to off-set work load.

Manager Radford stated the CIP items would be included in the 2009 Budget as presented on the CIP schedules unless the budget is not in balance, however anticipates all scheduled in 2009-10 being included.

A review of all CIP items followed with comments from staff and Council. Council Member Schulze would like to see more street repair as the repair situation seems to worsen with time, and if we don't act now will continue to worsen. Director of Public Works noted the repair list gets longer than there is available money to make the repairs; noted the Town does not receive transportation impact fees and Powell Bill money is limited; noted Town does work related repair to NCDOT roads that the Town is not responsible for and this continues to exhaust Town funds.

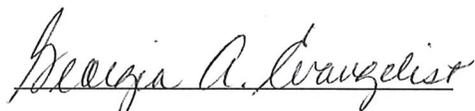
Town will continue to move forward on the odor control devices at the current waste treatment facility.

Town will utilize as much personal assistance on the electric substation project to save as much money as possible.

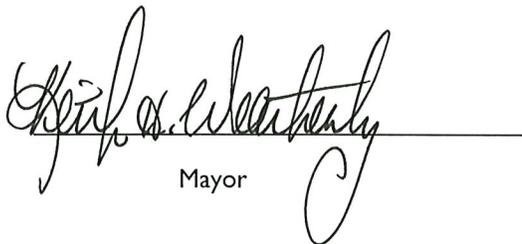
With no further discussion, Mayor Weatherly stated this was not ambitious but substantial planning, with Council Member Jones thinking it's still ambitious, taking necessary action as need be. Manager Radford took all requests and concerns and noted his goal was to consider all the items in the budget planning process, however could shift as need be to balance the proposed budget and further without a tax increase.

Mayor Weatherly expressed appreciation to the Manager and staff for the retreat preparation and adjourned the Retreat at 12:55 p.m.

Minutes of the Planning Retreat were submitted by the Town Clerk for approval of the Town Council at their March 17, 2009 meeting.



Town Clerk



Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the March 17, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 17, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance. Special welcome to former Planning Board ETJ member Doug Poe who served for 10 years.

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 to approve the following items. The Consent Agenda was set with no amendments and the following action was taken.

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

1. Minutes and General Account of March 03, 2009 Council meeting.
2. Minutes and General Account of March 03, 2009 Council Closed Session (separate cover).
3. Minutes and General Account of March 07, 2009 Council Retreat.
4. Minutes and General Account of March 09, 2009 Finance Committee meeting.
5. Revert unpaid lot and plot(s) on reserve in the Apex Town Cemetery back to the Town for resale pursuant to Section 6-63 of the Town Code of Ordinances.
6. Finance Committee recommendation for approval of the Financial Policies for the Town of Apex.
7. Contract with Joyce and Company to perform Audit for Fiscal Year ending June 30, 2009.
8. Resolution No. 09 – 0317 – 13 Naming Review Officers for the Town of Apex to then be approved by Wake County Board of Commissioners.
9. Possible motion to adopt a Resolution No. 09 – 0317 – 14 in Support of the Proposed Jordan Reservoir Water Supply Nutrient Strategy Rules.
10. Wake County Tax Report for the Town of Apex approved by the Wake County Board of Commissioners during the meeting on March 2, 2009.

End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Attorney Fordham asked to add Closed Session items: Pending condemnation litigation and to receive legal advice. **Action:** Council Member Jones made the motion to add the stated Closed Session items. Council Member Schulze made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

Presenter: Lauren Simmons, Planner

Public Hearing #01 – Rezone # 09CZ01 and Land Use Plan Amendment

Review: Planning Board met March 9, 2009 and recommends approval with condition agreed to by the applicant regarding hours of operation and the conditions offered by applicant; staff recommends approval of the Land Use Plan Amendment and the rezone with the same conditions; a protest petition has been filed with the Town Clerk and its validity is to be determined by the Town Attorney and announced to Council.

Public hearing and possible motion regarding Conditional Rezone #09CZ01 and Land Use Plan amendment from School to Mixed Use Commercial and Office & Institutional, and the Rezone from Office & Institutional Conditional Zoning to Neighborhood Business-Conditional Zoning; Ashley Ansara, applicant. The site is 2.89 acres and located at the southwest corner of Apex Barbecue Road and S. Salem Street.

Staff presented the Planning report and is incorporated as a part of the official minutes; oriented to the property location, and to the request for a rezone and amendment to the 2025 Land Use Plan stated in the applicant's proposal. Restrictions and conditions proposed by the applicant are noted (page 3 of the report). Staff recommends approval of the Ansara rezone request and the amendment to the 2025 Land Use Plan with the stated restrictions and conditions and an additional condition: convenient store and gas pumps may only operate from 5:00 a.m. to 11:00 p.m. daily. Rezone would be consistent with the 2025 Land Use Plan when the change requested by the applicant is granted to allow for a land use mix of Office and Institutional and Medium Density Residential. This was the previous suggested site for Elementary School # 32; Wake County purchased land further down Apex Barbecue, closer to the Scotts Mill Subdivision for the school. Staff feels the site is not appropriate for a school, or a residential use, and is best for mixed commercial and office. Other development and land uses in the area were noted; conditions of the current uses were read; petitioner accepts the conditions; proximity to nearest gas station was noted. Planning Board recommends approval of the rezone with the restrictions and conditions stated, and Land Use Plan amendment for the property located on the corner of Apex Barbecue and S. Salem Street based on consistency with the 2025 Land Use Plan, consistency with I-540/S. Salem Street Plan and compatibility of the surrounding land uses.

Mayor Weatherly opened the public hearing at 7:10 p.m. Speaking in favor of the request:

Jeff Roach, Peak Engineering, representing Ashley Ansara, property owner, spoke in support of the petition to rezone and amendment to the land use plan for the property at the corner of Old US1 and Apex Barbecue Road; is in keeping with the I-540/South Salem Street Small Area Plan. The proposed will have first floor retail and 2nd floor office space; noted commercial service will serve the existing residential properties, and there would not be a free standing gas station, and agrees to all conditions recommended.

Discussion occurred regarding minimum percentage of building space and uses on site; shape of the proposed structure 18,000 to 20,000 square feet, with configuration similar to Jenks Road and Davis Drive development; includes landscape buffers; explained parking would drive percentages; site plan will not be submitted until the rezone is approved. Comments on traffic count revealed generation of a traffic study; drive access will be approved by NCDOT; changes could occur with the I-540 construction.



Public Hearing # 01 continued

Speaking in opposition:

John Britt 6260 Apex Barbecue Road stated his residence was 120 feet from the property edge; addressed concerns with traffic, location of the school, the location to I-540 and US1, Salem and Peakway; did not agree a gas station was the best business for this community development; when all is complete residents will deal with the traffic, etc; engineer had stated Apex Barbecue was at its traffic peak.

Doug Poe, 1216 S. Salem Street stated his residence and farm is just beyond this site; ask Council commit to keeping Apex a good place to live; expressed concern with traffic, asking any development of this area be compatible with existing land uses and with any future growth plans; noted the amount of undeveloped land and didn't want small rezones that would impact the area negatively, but asked they look at the larger picture with the coming of I-540, and the school location. He was supportive of mixed use and office, but not a gas station as it would not enhance the community.

Chris Woodrow, Applethorn, White Oak Subdivision, stated his property backs to this site; expressed concern with traffic, Wal-mart construction, and noted other gas stations within one mile; hours of operation; doesn't oppose office, but does oppose gas station; asked denial of the request to allow opportunity to see plans and addressed the spaces for parking and the floor space. Council Member Schulze understood there was no other place to place this gas station on site, with staff stating this was correct.

Attorney Fordham advised a Protest Petition had been received and has been determined to be valid and therefore triggers three-fourths super-majority requirement for approving the rezone. Council Member Jones noted this was the first development plan for this area since the school site had moved. Dianne Khin, Director of Planning stated in response to the debate regarding this land use plan for this corner, noted staff didn't think it was not a good idea to have three schools in this area, and this was the next building request to come forth, and staff does not see it appropriate for residential use nor as a park; noted the land use plan has shown O&I here since 2002, and with no development now felt mixed use retail and office on this small tract was appropriate, and does not see a considerable increase in traffic. She noted the design is similar to the Jenks Road and Davis Drive development and the neighbors there had first expressed concern, however, staff has not received any complaints since its opening. Staff is fine with the proposed, but not a good location for another school. Council Member Jensen expressed concern with the office space commitment vs. commercial; the location of the pumps which was discussed, with staff advising on the proposed placement. Council Member Gossage questioned the traffic patterns and the I-540 completion and its association for the approval of this development project. Khin felt the traffic plan would work best with the I-540, noting this was a smaller plan and the larger plan with the I-540.

Mayor Weatherly closed the hearing and referred the matter to Council.

Action: Council Member Sutton made the motion to approve the request to rezone with the seven conditions stated and the additional one condition by staff, and also for the approval of the amendment to the 2025 Land Use Plan. Council Member Schulze made the second to the motion. Council Member Sutton complimented the plan to serve the neighborhood; other comments by Council: felt this was best development plan for this corner; landscape and buffer would soften the plan; access allows folks convenience without getting on US1; shared some concern with access points and proximity to South Salem and Apex Barbecue; pumps would be located away from the road; most traffic would be drive by and was a smaller development with gas service which believes to be an asset to the area vs. a negative impact to the area; looked into the entire plan long term with I-540 believes would help with the transportation infrastructure; thinks convenient/gas done right would be a good project for the area; doesn't see the traffic as destination traffic except retail/office, not for the gas station, and it would be pass by traffic and noted residents have passed by this site to get to other gas stations and may reduce traffic in other areas; the design similar to Jenks and Davis Roads is nice design; noted any development would have some intrusion on the community as far as construction, noise and lights, but feels overall it's a good project for this particular site, and will visit the site plan when it comes before them. Motion carried unanimously.

End of Public Hearing # 01



Public hearings continued

Presenter: Lauren Simmons, Planner

Public Hearing #02 – Rezone # 09CZ02 Westover Property/Goddard School

Review: Planning Board met March 9, 2009 and unanimously recommends approval with conditions proposed by the applicant; staff recommends approval of the rezone with the same conditions.

Public hearing and possible motion regarding Rezone #09CZ02: rezone from Office & Institutional Conditional Zoning to Office & Institutional Conditional Zoning, Westover Properties, applicant; the site is 1.77 acres, current location of the Goddard School and located at 903 Olive Chapel Road.

Staff presented the Planning report and is incorporated as a part of the official minutes; oriented to the location of the property, for the request to rezone. Objective to remove condition from original rezone (99CU06) that restricted the dumpster's location on the property in order to accommodate an addition to the building. Condition was the dumpster could be no closer than 75" from the adjoining properties. Rezone has no impact on adjacent properties as the adjacent property is developing into a medical office. Staff recommends approval of the rezone because the Hofert property next door is developing and the dumpster condition is no longer valid since the proposed development places their dumpsters right on the Westover side of the property. Staff recommends removal of all lighting restrictions from the original rezone because the UDO now lists those restrictions in the lighting section. The underlying zoning is not changing nor is the use of the property. Planning Board met March 9, 2009 and recommends approval. Staff recommends approval with conditions.

Mayor Weatherly opened the public hearing at 7:40 p.m. Speaking in support: Taylor Blakely, applicant, spoke in support of the rezone and the expansion of the Goddard School. With no one else addressing this rezone request, Mayor Weatherly closed the public hearing at 7:41 p.m. and referred the matter to Council.

Action: Council Member Gossage made the motion to approve the rezone request as recommended. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

Presenter: Brendie Vega

Public Hearing # 03 – UDO Amendments

Review: Planning Board met March 9, 2009 and unanimously recommended approval; staff recommends approval.

Public Hearing for various amendments to the Unified Development Ordinance.

1. Amend Section 8.2.7 Fences, Walls and Berms to correct a reference.
2. Amend Section 8.2.8.B.1 to make the opaque doors required on dumpster enclosures metal.
3. Amend Sections 8.7.9 *Definitions* and 12.2 *Terms Defined* to clear up duplicate and conflicting definitions pertaining to signs.
4. Amend Table 1 in Section 8.2.6 *Landscaping, Buffering, and Screening* to add Tech/Flex as a Zoning District.
5. Amend Sections 7.2.1 *Streets* and 7.5.4.E *Public Access Requirements* to cross reference each other.
6. Amend Use Table Section 4.2.2 to remove conflicts from the B2-Downtown Business and Small Town Character districts.
7. Amend Section 2.3.4.L to change the expiration date for PUD Plans.
8. A new Section 8.1.6.E to regulate the color of retaining structures.
9. Amend Section 9.2.2 Building Design to state that building features must be proportional and must be compatible with each other.
10. Amend Section 9.2.4.C to limit the use of Exterior Insulation Finishing System (EIFS) on buildings to trim and features and not as a main material, and to ensure that EIFS is not used at the base of buildings. An amendment to this section also to require a percentage of brick, stone or masonry to be used on all non-residential buildings.

**Public hearing # 3 continued**

Staff presented the Planning report and is incorporated as a part of the official minutes; stated UDO amendments listed in the advertisement as # 7 and #10 did not go before the Planning Board and are not coming before Council and are not included in the ordinance amendments. Staff and Planning Board unanimously recommended approval of the further proposed UDO amendments. Staff reviewed the additional amendments as stated in the report.

Mayor Weatherly opened the public hearing at 7:46 p.m.

Jim Oxford, Hwy 64 West, expressed concern with continuous and on-going UDO amendments; does not want to live in a cookie-cutter community where everything would look the same; with big box stores – couldn't afford small businesses; opposed placing steel on dumpsters and brick masonry on non-residential buildings; design was not a function of Town Council and had rather see a log pancake house and white clap-board church with steeple and supports old traditional designs; as is, folks have no choices and its all outlined for them; noted the 20% commercial vs. 80% residential development and if Council continues to hammer away with UDO restrictions, felt there would not be more commercial development; commented on developers negative comments made to him regarding Apex inspections; and felt if Council raised taxes people would come to complain and would see what takes place here.

Mayor Weatherly responded to his comments regarding building standards and UDO restrictions; noted it their vision and he does not apologize for the high standards and were in compliance with the NC Building Code laws; stated lesser standards may be fine for other communities until there's a problem with quality, however those that respect that want higher standards for good quality development; if the community doesn't believe that, then there would be a different board sitting there. Staff noted the UDO amendments being considered did not address the churches. Mayor Weatherly closed the public hearing at 7:55 p.m. and referred the matter to Council.

Action: Council Member Schulze made the motion to adopt the UDO amendments as presented. Council Member Jones made the second to the motion. Council Member Jones stated the table amendments appear to clarify or correct; Planning Board discussed these amendments and was Council's intent to support them. Motion carried unanimously.

End of Public Hearing # 03

Presenter: Director of Planning Dianne Khin

Public Hearing #04 – Annexation #443

Review: Future Power of Distribution Site # 3

Public hearing regarding Annexation # 443, Town of Apex, NC, owner/petitioner, petitioning to annex 14.699 acres into the Town's corporate limits and located at 2300 Mt. Zion Church Road, west of Richardson Road, Apex, NC, and possible motion to adopt an Ordinance to extend the corporate limits.

Staff presented the request for annexation of the property for the future power distribution site to be rezoned after annexation. Discussion followed regarding the 10% cap restriction on satellite annexations. Mayor Weatherly commented on a proposed local bill before legislature for consideration of removing the 10% cap; Town is currently at 8.5%; all satellite annexations in the town are voluntary and the property owner has to be the petitioner. Mayor Weatherly opened the public hearing at 7:59 p.m. With no one addressing the request for annexation, the public hearing was closed and the matter referred to Council.

Action: Council Member Gossage made the motion to adopt the ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

End of Public Hearings



Mayor Weatherly felt it was an appropriate time to read an email received from Fulcrum Construction (HH Greg) expressing appreciation and complementing the Town as well as Town Inspector Mike Emig for assistance during the construction project.

OLD BUSINESS

Presenter: Attorney Fordham

Old Business # 01 – Resolution of Support Rail Corridor Master Agreement

Attorney Fordham presented for adoption a Resolution # 09-0317- 15 supporting DOT's closing of the Tingen Road at-grade railroad crossing upon the opening of the South Apex Peakway grade separated crossing of the CSXT S line. This is a follow-up to action taken on March 3, 2009 by Town Council related to the Rail Corridor Master Agreement ("RCMA") among CSX, DOT and the Town of Apex and the Resolution and Order to close Moore St. upon the opening of a new at-grade crossing of the CSX SDS line by the North Apex Peakway. He stated this was a part of the package to CSX supporting NCDOT Tingen Road and South Peakway Project; terms are not affective until the North at-grade Peakway was open; NCDOT determines if all conditions are in place.

Action: Council Member Gossage made the motion to adopt the Resolution supporting the project as stated by the Attorney. Council Member Sutton made the second to the motion. Council Member Jones noted the Now Therefore Clause sums up the action of the Resolution, with the fifth Whereas indicating the town's support as part of the negotiations. Council Member Jensen preferred "Town does not oppose it" over "Town indicates its support." He made a motion to replace the wording, and asked the Attorney what the consequences would be with the change. Attorney Fordham advised the Town did not initiate this and would not be doing this if it hadn't been asked and would need to amend the previously adopted Agreement. Mayor Weatherly noted the Town has NCDOT's support and he's satisfied with the approved Agreement. Council Member Jones noted there had to be a balance for all interest and NCDOT was aware that the terms must be met. Council Member Jensen withdrew his motion. Council Member Sutton clarified the steps in the process regarding the NCDOT Agreement with Attorney Fordham responding. The motion carried unanimously.

End of Old Business # 01

Presenter: Attorney Fordham

Old Business # 02 – Repeal 2005 Resolution

Attorney Fordham presented for adoption a Resolution # 09-0317 - 16 repealing the 24 June 2005 "Resolution of Intent to Close Two At-grade Public Street Crossings of the CSX Transportation, Inc. Rail Line to Vehicular Traffic Within the Corporate Limits of the Town of Apex." The resolution was less favorable, and never acted on by Town Council and is now moot given recent decision by the Town Council; as a matter of housekeeping, recommends repealing the old resolution.

Action: Council Member Gossage made the motion to adopt the Resolution presented to repeal the 2005 Resolution. Council Member Jones made the second to the motion. Motion carried unanimously.

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.

WORKSESSION

There were no Worksession items to be discussed.

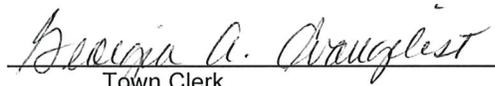
CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 8:10 p.m. to discuss 1) pending condemnation litigation and 2) to receive legal advice from the Town Attorney. **Action:** Council Member Gossage made the motion to move into Closed Session for the reasons stated. 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 back into Regular Session at 8:27 p.m. **Action:** Council Member Gossage 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. **Action:** Council Member Gossage made the motion to adjourn at 8:28 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the March 17, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their April 7, 2009 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the April 7, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 7, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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

Mayor Weatherly presented a Proclamation for "National Donate Life Month" to Amy O'Connell and recognized Kirsten Wright, Community Relations Coordinator for Carolina Donor Services for additional comments. Mayor Weatherly would like to endorse event awareness by placing inserts in utility bills and asked for employee participation.

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 to approve the following items. Council Member Schulze asked to consider # 7 separately. Attorney Fordham asked to amend the Regular Meeting Agenda to include a closed session to discuss condemnation matters.

Action: Council Member Jones made the motion to amend the consent agenda and regular agenda for the reasons stated. Council Member Schulze made the second to the motion. Motion carried unanimously.

Action: Council Member Jones made the motion to approve the consent agenda as amended. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of March 17, 2009 Council meeting.
2. Minutes and General Account of March 17, 2009 Council Closed Session (separate cover).
3. Minutes and General Account of March 24, 2009 Personnel Committee meeting.
4. Statement of Apex Town Council and Ordinance for Rezone #08CZ09 Jim Goldston, petitioner, for property located at US64 between Jenks Road and Sunset Meadows Drive; Westford PUD.



Consent agenda continued

5. Set Public hearing for April 21, 2009: Apex Electric Substation Land Use Amendment and Rezone # 09CZ03 of 14.86 acres, and located at 2300 Mt. Zion Church Road.
6. Set Public hearing for April 21, 2009: Rezone # 09CZ04, Dan Klausner, applicant, to rezone from Office & Institutional Conditional Use to Neighborhood Business Conditional Zoning of 6.02 acres, located at 995 Olive Chapel Road.
7. Exemption from NC General Statute 143-64.31 requirements regarding Procurement of Architectural, Engineering and Surveying Services as allowed by GS 143-64.32 (New Business # 02).
8. Construction contract with Bordeaux Construction for renovation and retrofit of the old concession building at Apex Community Park.
9. Agreement with Power Agency to provide services to comply with renewable energy and energy efficiency portfolio standards legislation.
10. Personnel Committee recommendation to support Police Department COPS Grant application and to add the position of Paralegal to Town Position Classification Plan at Salary Grade 16.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. With the regular meeting agenda amended to include a closed session regarding condemnation matters, Mayor Weatherly asked if there were further amendments to the agenda, and with there being none, the regular meeting 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

Presenter: Director of Finance Lee Smiley

New Business item # 01 – Electric Revenue Bonds

Director of Finance presented for approval a Resolution making certain findings and determinations, authorizing the filing of an application with the Local Government Commission, requesting the LGC to sell bonds at private sale and approving the successful bidder in connection with the issuance of revenue bonds of the town, to finance construction of an electric substation. It was recommended award of bid to the low bidder for the \$7,500,000 bonds, Bank of America, 15 years at 3.620% with no prepayments for seven years, and estimated \$5000 in closing fees; summary of bids attached. Clerk will certify the Resolution for the bond attorney, and the Local Government Commission.

Action: Council Member Schulze made the motion to move into closed session for the reason stated.

Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

Presenter: Director of Construction Management Kent Jackson

New Business item # 02 (Consent Agenda # 7)

Council Member Schulze asked this be considered separately and asked questions regarding: Exemption from NC General Statute 143-64.31 requirements regarding Procurement of Architectural, Engineering and Surveying Services as allowed by GS 143-64.32.

Director of Construction Manager Kent Jackson stated this was a one-time exemption and noted the Town in compliance with the General Statutes.

N.C.G.S. 143-64.31 which requires except in special emergency cases, government units to select firms qualified to provide services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information.

N.C.G.S. 143-64.32 allows written exemption for projects in the case of proposed projects where an estimated professional fee is in an amount less than \$30,000 or other particular projects exempt in the sole discretion of the unit of local government stating the reasons therefore and the circumstances attendant thereto.

Council Member Schulze would like to give opportunity for others to bid; the Town is not required to follow the formal bid process for professional services. In order to ensure a process of open competition as the superior selection method in the best interest of the Town for the most cost-effective project, staff recommends Council exempt all projects where the estimated professional fee is less than \$30,000 and authorize the Town Manager to exempt in writing other particular projects where the estimated professional fee is \$30,000 or more from the provisions of N.C.G.S. 143-64.31 with the reasons and circumstances stated (Purchasing Policy).

Action: Council Member Jones made the motion to approve this item as recommended by staff. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business



WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for condemnation matters.

Action: Council Member Gossage made the motion to move into Closed Session at 7:25 p.m. 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 back into Regular Session at 8:05 p.m. Council Member Gossage 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.

Action: Council Member Jones made the motion to adjourn at 8:20 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the April 7, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their April 21, 2009 meeting.

Georgia A. Cranglist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the April 21, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 21, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.
Present: Council Members Jensen, Jones, Schulze and Sutton.
Absent: Council Member Gossage

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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

Presentation No. 1 – Proposed Western Wake Wastewater Management Facilities

Presentation by Ken Bruce, Brown and Caldwell: Proposed Western Wake Wastewater Management Facilities and supporting engineering report; compiled by Brown and Caldwell and available for public inspection, review and comments. Purpose and need for the action is due to the Interbasin Transfer Requirement, and discharge relocation and population growth that has increased wastewater and disposal; Project and facilities and site # 14, New Hill, NC; Estimated capital costs: \$328 million; Interlocal Agreement has been approved by participating Towns Apex, Cary and Morrisville for the design, construction and cost share and adding Holly Springs Effluent Pump Station and Force Main; Apex share \$87 million or 26.5% of the total cost; Funding sources are State Revenues, General Obligation Bonds, Revenue Bonds, and Local Funds and cash; user charges will repay the funds; project timeline 2013; contact information for further comments closes April 2009. Mr. Bruce answered questions from the Council: costs continue to grow; alternative sites and capital costs A-19 cost \$347 million; B-21 and 23 cost \$340.5 million; C-30 cost \$335 million; completion date of 2017 dependent on the environmental review process and process discharge permit. Engineering report is available for review by the public and located on the Partners website, in the Clerk's office and the Eva Perry Library and other various locations. (Presentation attached).

Mayor Weatherly opened the floor to receive open public comment on the proposed Western Wake Wastewater Management Facility at 7:15 p.m. and no one addressed this item; Notice of the Public meeting was properly given and attached. No action by the Council was necessary. Copy of the minutes will become part of the project record and will be shared with the appropriate state and federal agencies.

Presentation No. 2 – Economic Development Report

Presentation by Jim Stella, Director of Economic Development Apex Chamber of Commerce:
Economic Development Report (attached).

Apex Recognition

Manager Radford stated Relocation Magazine recognized Apex as one of Top 100 Places to re-locate in the Country.
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 to approve the following items.

Action: Motion by Council Member Jones and second by Council Member Jensen to approve the consent agenda. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.

1. Minutes and General Account of April 7, 2009 Council meeting.
2. Minutes and General Account of April 7, 2009 Council Closed Session (separate cover).
3. Budget Ordinance Amendment for equipment rental, street repairs, and land purchase; and Capital Projects Ordinance Amendment for concession-stand improvements.
4. Resolution No. 09-0421- 17 for Planning Staff to participate in the Census 2010 Complete Count Committee of Wake County.
5. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners at their April 6, 2009 regular session.
6. Deed of Easement for greenway and maintenance access purposes containing an indemnity from the Town protecting the landowner conveying the easement without compensation (Jaycee Park; easement BRG Construction Company granted to Town without compensation; Town has been asked to indemnify it if a claim is made against BRG related to the use of the easement; draft easement attached.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda will be set prior to taking action on the following items.

PUBLIC HEARINGS

Presenter: June Cowles, Senior Planner

Public Hearing # 01 - Rezoning Case #09CZ03

Public hearing and possible motion regarding Land Use Plan Amendment and Rezone #09CZ03; Town of Apex Electric Substation site located at 2300 Mt. Zion Church Road containing 14.8 acres.

Staff presented the Planning report that is attached and incorporated as a part of the official minutes. Town of Apex, Applicant requests rezone from Wake County Zoning R-80W to Rural Residential Conditional Zoning and change to the 2025 Land Use Plan from Medium Density to Very Low Density classification for the Apex Electric Substation. Adjacent zoning and land uses were noted; first rezone of this site. Planning Board met April 13, 2009 and unanimously recommends approval; staff recommends approval.

Mayor Weatherly opened the public hearing at 7:22 p.m. With no one addressing this item, Mayor Weatherly closed the public hearing.

Action: Council Member Schulze made the motion to approve the Land Use Plan Amendment and Rezone for the Town of Apex Electric Substation site. Council Member Sutton made the second to the motion. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.

End of Public Hearing # 01



Presenter: Lauren Simmons, Planner

Public Hearing # 02 - Rezoning Case #09CZ04 and Major Site Plan for Peakway Physicians Park

Public hearing and possible motion regarding Rezone # 09CZ04, rezone from (O&I-CU, PUD) Office & Institutional Conditional Use PUD to (B1-CZ, PUD) Neighborhood Business and Major Site Plan for Peakway Physicians Park; Dan Klausner & Jeff Crisp, applicants; site location at the corner of Apex Peakway and Olive Chapel Road or 995 Olive Chapel Road (land owner, Mark and Kathryn Hofert), containing 7.602 acres (6.02 of that to be rezoned).

Staff presented the Planning report that is attached and incorporated as a part of the official minutes. Applicant requests rezone of two parcels - 6.02 acres for 62,634 square foot for high end medical office building, along with a 1.5 acre lot proposed use for a pharmacy or other allowed use. Adjacent zoning and land uses were noted. Rezone request is consistent with the 2025 Land Use Plan; proposed major site plan is consistent with the O&I and Commercial classification.

Restriction and Conditions proposed by applicant:

1. Uses: Restaurant Drive-thru, Restaurant General, Convenience Store, Dry Cleaner, Grocery General, Grocery Specialty, Laundromat and Tailor shop are only allowed in the front 50% of property fronting Olive Chapel Road.
2. All other allowed uses are allowed on the entire property.

Grading plan appears acceptable and site will be brought down significantly. Plan includes a 30 foot wide landscape Type E buffer along Olive Chapel Road and the Peakway, a 20 foot Type A buffer along the Amherst subdivision and the 10 foot type B buffer along the Glen Arbor Townhomes. Applicant requests a 50% street front buffer reduction on the Peakway. Staff recommends change in landscape to provide more screening to residents. Plan is accessed off the Peakway and Olive chapel Road and will line up with existing roadways. Neighborhood meeting was held with 8 property owners attending; property grading, hours of operation and general land uses were discussed; there were no major issues.

Planning Board met April 13, 2009 and unanimously recommended approval of the rezone with conditions and approval of the Peakway Physicians Park and based on consistency with the Apex Transportation Plan and the 2025 Land Use Plan and compatibility of the surrounding land and compliance with the UDO and conditions recommended by staff; staff recommends approval of the rezone with conditions and the Peakway Physicians Park major Site Plan with the condition that the lighting plan be approved during the construction plan phase.

Staff answered questions regarding the request for rezone of the lot intended for other allowed uses; staff referred to the restrictions/conditions as noted previously, and noted the lot was intended for support for a medical office and did not foresee retail, only an accessory to the medical office park and was not conducive to retail; staff allowed flexibility and applicant proposes all medical related uses. Russell Dalton Transportation Engineer, reported on the road access one right-in/right-out driveway is planned on Olive Chapel Road; two full movement driveways are planned on Apex Peakway; the northern most drive on Apex Peakway will be converted to a right-in/right-out drive when Peakway is widened to median-divided roadway, that would be offset by the extending of the existing concrete median island on Olive Chapel Road; there would be no cross traffic; exclusive right turn deceleration lane on Olive Chapel Road starting at the Peakway to serve right-in/right-out; Town will add exclusive right turn lane southbound on Peakway when needed based on traffic conditions (TIA summary is attached and prepared by Dalton).

Staff responded to Council Member Jensen's request for a B Type Buffer to replace the Type E landscape buffer along Olive Chapel Road and the Peakway, and stated that it meets the B Type Buffer as proposed. Restaurant Drive-thru conditions were addressed, thinking it is not a good choice, with staff responding they would remove the use if the applicant agrees, noting it is allowed across the street at Peakway Village, however as currently zoned, is not allowed in O&I. Council Member Jensen addressed the bio-retention area noting lots of impermeable surface, and questioned the adequacy for stormwater run-off.



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

Jeff Crisp, Crowley, Crisp and Associates, addressed the request for reduction of the 30 foot buffer to 15 feet noting it was 695 square feet and across from the commercial area and not the residential area, and agreed to the B Type buffer, however, Director of Planning Dianne Khin advised Council the applicant already meets the B Type buffer. He also addressed the bio-retention area that is adequate for controlling stormwater onsite, with lesser run-off with the 10 year controls; further noted the bio-retention areas will be landscaped and buffered - more evergreens, wax myrtles for hedge. He also addressed the current zoning O&I and the flexibility, having looked at other uses in the area, with Council Member Schulze disagreeing with the use: drive thru restaurant and convenient store.

Dan Klausner, D&K Ventures is the developer of the site and noted with the retail uses, the idea for the flexibility for some retail was to support the medical uses; asking more flexibility in the corner piece having looked at sites opposite the street and the Lowes construction and what is located there; intent is to add medical offices a local franchise, and allowing more flexibility on the back side. Council Member Jensen said not knowing the market, to allow more flexibility than was needed would like to see a reduction as this site could be stuck with this, and would like to tone this down a-bit, as it was moving closer to the subdivision. Klausner responded it was consistent with what was across from the street and Peakway. Staff had looked at the uses and there was discussion regarding the size of the property, with Council Member Sutton sharing the same concerns, not wanting uses that were not consistent with the medical, noting O&I on this side, and Shopping Center on the other side, and did not think drive thru restaurants or convenient stores were appropriate. Klausner indicated willingness to reduce the uses, still desiring flexibility. Mayor Weatherly asked if he would like an additional two weeks time to think about it, with Klausner responding he would. Mayor Weatherly stated then the hearing would be continued to the May 5, 2009 Council meeting. John Frazier, Engineer Crowley, Crisp & Associates, responded to the questions related to stormwater run-off ratios and calculations for Council Member Jensen.

Mayor Weatherly opened the public hearing and allowed those who wanted to speak to do so:

George Lanburg, Peakway Village, 149 Sharp Top Trail, addressed the original zone and uses when the 36 homes were built and any change or increase in commercial uses are undesirable, and not an appropriate zone change; he addressed stormwater run-off from Olive Chapel Road and Peakway and doesn't change with the plan, earth spillway into Cameron Glenn and the impact on the pond would be a serious problem; discussed flows (surge) and controls thru the stormwater system; noted residential owners maintain this for the benefit of the developer, noting the amount of impervious surface; Town should consider take over; addressed the traffic study done only on the Peakway, and the backup traffic at Olive Chapel and Peakway, and cut through traffic thru Thistle Top Trail and Sharp Top Trail, noting 380 parking lot spaces in this plan and the additional traffic that would be generated.

Rick Sharp, 201 Sharp Top Trail, addressed the impact of the rain storm events and design for controls, as the over drain and parking lots would drain into the neighborhood, asking the Town to take over and manage the system; noted Wake Med is advertising additional office space, and there are drugstores on each corner and no need for another; he noted the residential neighborhood and its original design, and not knowing it would be rezoned (staff responded he lived in a mixed use community); he felt the developer should make up the difference if their property values were to fall; office space would sit empty; they were not made aware of the uses, but were told could be a small office complex for doctors on the corner, not where house is, one level; chose Apex.



Public Hearing # 02 continued

Anora McGaha, 133 Sharp Top Trail, addressed the impact, the corner lot use for small office, Sharp Top Trail design, Olive Chapel Road and the Peakway and no desire for a drive thru, noting the Olive Chapel Road beauty, and asked why bring more commerce to impact the residential values of the area, asking conservation and care for of the uses allowed, and noted there is already drugstore overload.

Mark McGaha, 133 Sharp Top Trail, was not aware of the zoning and too was told it would be medical office use, and disagreed with the rezone request, noting the residential 36 homes, kids play on sidewalks, walking, and the roads are single lane, and would impact the value of the neighborhood.

Mark Wyman, Board of Amherst Subdivision, 206 Pike View Lane, lives in the cul-de-sac that abuts the property, and would impact property values as residential due to the Peakway, and this development would make homes difficult to sell, and addressed the access and the congestion with additional traffic.

Gina Caruso, 104 Sharp Top Trail noted this a horse farm and didn't know it would be gutted and built upon; noted O&I less intrusive, and the negative impact if the zoning was changed to BI, additional traffic, the impact to property values, decrease in quality of life, that a zoned pharmacy use could change with different votes and two pharmacies already on each corner are not packed, and another one was not necessary, not crazy about a three story medical building, but can't do much about it, but could deal with O&I, and change to B1 can be any of the uses and didn't feel the applicant should be allowed to zone a part that was not needed, and would do more harm than good.

Michelle Deese, 117 Sharp Top Trail addressed the zoning of O&I, and the commitment to medical retail could go in as an office building, seeing no need for other, may have to flip the property and the other may not be committed; addressed the landscape, noting it would not be considered, however the finishes and esthetics bring high end users, not landscape.

Joel Deese, 117 Sharp Top Trail addressed child safety, increase traffic, cut thru traffic, playground on Kelly Road, and not one in their neighborhood, and kids play in streets and on sidewalks; he encouraged Council to give developer a chance to change and leave open space for residential; loves Apex and wants to slow down and keep it slow.

Joan Dowdy, 1095 Mosstree Drive, Amherst, addressed the safety for the children at the bus stops, churches, parks, and Apex awards being a great place to live, and the proposed would increase traffic, and noted a use if rezoned was entertainment, and didn't want strip clubs or bars, and asked to keep the family values, and think about child safety, and allowing flexibility would be taking a huge risk.

Mayor Weatherly called for a motion to continue the public hearing to May 5, 2009.

Action: Council Member Sutton made the motion to continue the rezoning hearing Case #09CZ04 and Major Site Plan for Peakway Physicians Park to the May 5, 2009 meeting. Council Member Jones made the second to the motion. Motion carried unanimously to continue the hearing. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.

Public Hearing # 02 Rezoning Case #09CZ04 continued to May 5, 2009.



Public hearings continued

Presenter: Brendie Vega, Principal Planner

Public Hearing # 03 - Major Site Plan for Cambridge Village

Public hearing and possible motion regarding a Major Site Plan for Cambridge Village of Apex, Congregate Living Facility at the northwest corner of Apex Peakway and South Hughes proposed for 284 residential units in four phases on 14.6 acres.

Staff presented the Planning report that is attached and incorporated as a part of the official minutes. Current zoning is Planned Unit Development Conditional Zoning; staff recommends approval of the Cambridge Village Major Site Plan with the following conditions:

1. The sewage collection system shall be designed in accordance with Town of Apex Standard Specifications and Details and the final design, location, and method of connection to the Town's existing system may be different from the site plan and must be approved by the Town of Apex Public Works and Utilities Director.
2. The on-site sidewalks shall be a minimum of 5' in width rather than the 4' labeled on the site plan.
3. The Resource Conservation Areas shall be planted to meet the RCA Standards required in the UDO.
4. The lighting plan shall meet the requirements of the UDO.
5. The freestanding wall at the corner of South Hughes and Apex Peakway shall be no taller than 6 feet.
6. The applicant will remove the gates from the site plan or provide a turnaround area on the driveway at the Apex Peakway.

Adjacent zoning and land uses were noted; Planning Board met April 13, 2009 and unanimously recommends approval with conditions recommended by staff. Background information was given on the proposed 284 senior living units (clubhouse and two buildings in first phase, with three additional phases adding two buildings each (total build-out eight buildings); landscape plan includes a 10' Type B buffer on the west side of the property facing Rex Healthcare; a 30' Type E buffer along South Hughes Street and Apex Peakway; and a 20' Type B buffer along the northern property line. The applicant has provided adequate landscaping for the buffers and parking areas. Resource Conservation Areas (RCA) includes the street yard buffers, the pond and riparian buffers. Because of the limited vegetation existing on the site, the applicant will be required to supplement the riparian buffers as well as the pond as a condition of approval; applicant went before the Parks and Recreation Advisory Committee on March 25, 2009. The Commission voted unanimously to recommend a payment of fee- in- lieu for the project. Furthermore, they unanimously recommended to the Town Council that the Council not create a separate category for congregate care and that the Council refer to the existing ordinance (multi-family category) when they review the project.

Access and Circulation: The internal drive on this site will be private and will circulate around the entire site. There will be two public access points to the site as required per the Unified Development Ordinance (UDO). Sidewalks will provide for pedestrian circulation as well as the use of golf carts.

Gates and a gatehouse have been shown on the site plan. The applicant has stated that they intend on removing the gates and possibly removing the gatehouse. If the applicant wishes to reintroduce gates, they will need to provide a turn-around area on the driveway at Apex Peakway; staff does not recommend gates.

A note on the site plan indicated that sidewalks on the site would be 4' wide. Staff is recommending a condition of approval that these sidewalks be a minimum of 5' in width rather than the 4' labeled on the site plan; will be pedestrian friendly by way of golf carts.

Water and sanitary sewer will be provided via extensions of existing Town of Apex utility lines with the following condition of approval: The sewage collection system shall be designed in accordance with Town of Apex Standard Specifications and Details and the final design, location, and method of connection to the Town's existing system may be different from the site plan and must be approved by the Town of Apex Public Works and Utilities Director. The applicant will meet the stormwater requirements set forth by the UDO.



The proposed buildings are a mix of brick and hardiplank with asphalt shingles. The clubhouse will be approximately 26,000 sq feet and will be a two story building with a walk-out basement. The eight residential buildings will comprise of approximately 292,882 square feet and will be four story buildings with a walk-out basement. All walk-out basements will face the pond side of the buildings.

The applicant held a neighborhood meeting on December 18, 2008. The applicant presented the proposed site plan and discussed the use and the transportation improvements along the Apex Peakway and South Hughes. The meeting was not well attended and the applicant followed-up with a letter summarizing the points discussed at the meeting and the contact information for the representatives.

The proposed site plan is consistent with the 2025 Land Use Plan Classification, the Apex Transportation Plan, and UDO with exception of items listed as conditions of approval as stated by staff; applicant agrees to all conditions; Congregate Care was defined independent living, phased units including cafeteria, have kitchen net and those living there would have cars.

Mayor Weatherly opened the public hearing:

Attorney Clyde Holt, Smith Moore Leatherwood LLP, representing the property owners, managers and architects, oriented to the 100 acre PUD site Apex Peakway and South Hughes Street, with Wal-Mart, Peakway Extension and residential to separate retail at Perry Road and Hughes Street. (Presentation attached). PUD-CZ Zoning Amendment January 09 allowed congregate living, higher unit, 20 units per acre; fewer persons per unit creates less impact on infrastructure (traffic trips, size – smaller units, no children, ages 55 and over with an average age of 70). Kendall Oliver, Principal; map shows Cambridge Village Site Plan and front elevation; Phase 1 has 90 units, 27 studio, 53 one bedroom and 10 two bedroom units; defined amenities in a campus setting, and provisions paid by monthly fees; preliminary layout of the plan was provided; floor plans were shown for studio – 456 s.f., one bedroom – 648 s.f., and two bedroom – 824 s.f. Economic contributions were noted especially the project will use Town power (in the presentation); contributions to Tax base were noted with an annual tax contribution to Apex and Wake County - \$480, 700 (in the presentation). Recreation Impact Fees: seeks uniformity; noted guiding principles noted in an Update of park Land Dedication and Fee-in-lieu requirements prepared by Duncan Associates, quoting “no particular developer should have to contribute more than his or her proportionate share” (attached); “related to average household size which varies by housing type and use of 2000 census to determine average household sizes and related to that of a single family detached unit.” Recreation Fee Schedule did not consider Congregate Care (senior living facility) and wasn't asked to (schedule attached); Recreation Fee for Cambridge Village of Apex (284 units x \$1,230.60 cost/unit = \$349,490; suggest fairness and asked consideration be given for Congregate Care proportionate costs on Recreation Fees (1.25 HH Size; EDU 0.42 Cost/Unit \$1,230.60) and stated this was what the consultant and the minutes have said.

Kendall Oliver, Kendall and Oliver Development was asked the plans for the next phase, and responded he wanted to get a good feel 90 units, noting the Jordan Oaks Studio's were popular, and dependent on the economy. Attorney Holt noted more women like the two bedroom – storage; average still 1.2 per unit and senior independent living even if two bedrooms – standards stay the same.

There was discussion regarding the suggested ratio and the ratio the consultant had used in the noted study. Council Member Jones respected that this had been brought up, however was not on the agenda tonight. Attorney Holt stated he would like to move forward and pay the fees over the process, noting the language in from the report regarding proportionate share, and asking consideration be given in regards to accurate estimates. Director of Parks and Recreation John Brown noted if the fee-in-lieu was not approved, the required land area is 5.58 acres. Discussion continued regarding other municipalities calculations for Recreation fees, noting Knightdale with no separate category for congregate living (could check further), Cary no charge for Congregate Living, Chapel Hill looks at a case by case basis, Roxboro, no Congregate Care, but have adopted it concerning traffic and other issues. Attorney Holt responded to Council Member Jones that all conditions are agreed to, as presented.



Council Member Jensen addressed the stormwater requirements: Miller/Player and Associates Randall parks addressed the stormwater requirements, stating overall 25 year rather than 10 year storm event, was in between, but meets the requirements and trying.

Council Member Jensen questioned the buffers wanting to keep the rural look, E Type Buffer didn't make sense, asking commitment for a B Type Buffer (staff stated its close to B Type and could add a few more. Oliver responded he didn't like to promise things, and almost meets; the Architect for the project noted this was a lot of area and was trying to get as much green space as they could. Dianne Khin Director of Planning noted the shrub line missing and could add more continuous shrubs. Council Member Jensen asked their willingness to commit to adding additional shrubs to meet the B Type Buffer requirement. The Architect responded he would.

With no one speaking in opposition to the major site plan Mayor Weatherly closed the public hearing at 8:50 and referred the matter to Council.

Action: Council Member Schulze made the motion to approve the Major Site Plan for Cambridge Village of Apex, Congregate Living Facility at the Apex Peakway and South Hughes as modified by staff. (There were no recreation fee changes and no direction by Council regarding fee changes). Council Member Jones made the second to the motion. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.

End of Public Hearing # 03

Presenter: June Cowles, Senior Planner

Public Hearing # 04 - Hazard Mitigation Plan Update

Public hearing and possible motion to consider the Hazard Mitigation Plan Update.

Staff presented the Planning report that is attached and incorporated as a part of the official minutes; Plan was approved and adopted by Town Council September 7, 2004 and approved by FEMA November 7, 2004 and requires an Update Plan every five years (Plan Update attached). The Plan is a preventative plan for natural disasters and outlines goals and objectives and describes the action plan to reduce the Town's vulnerability to the effect of natural hazards. Each year Hazard Mitigation Plan Members meet and review the Plan, and prepare for update and held a public workshop March 18, 2009. Wooten Company prepares the Plan Update and submits the plan to the NC Emergency Management; plan will be reviewed and approved/revised by FEMA; once approved by FEMA will return to Town Council for adoption. Planning Board met April 13, 2009 and recommended approval of the Hazard Mitigation Plan Update. Any additional comments will be forwarded to Planning staff for inclusion.

Mayor Weatherly opened the public hearing at 9:00 p.m. and with no one addressing the Hazard Mitigation Plan Update, the public hearing was closed.

Action: Council Member Schulze made the motion to approve the Hazard Mitigation Plan Update. Council Member Jensen made the second to the motion. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.

End of Public Hearing # 4

End of Public Hearings

Mayor Weatherly asked to add an item to the Agenda

Mayor Weatherly asked to add a Resolution Opposing the Transfer of State Roads from State Maintenance to Municipal Maintenance relative to Legislative Bill 1001.

Action: Council Member Jones made the motion to add this item to New Business Item # 02. Council Member Sutton made the second to the motion. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.



OLD BUSINESS

Presenter: Bruce Radford, Town Manager

Old Business # 01 –Amendment to the Apex Town Code of Ordinances Sec. 12-48(f)

Manager Radford recommended the adoption of an Ordinance amending Town of Apex Code Section 12-48(f) to place a dollar cap on refunds per prepayment of prepaid sewer capacity fees. Council authorized the refunding of prepaid sewer capacity fees that has been on file for six months, and all fall under this category. Manager Radford has made two refunds with requests of \$354,000 this week. Staff believes an amendment to the ordinance is necessary for a maximum refund per developer for \$20,000 per calendar year. Council Member Jones felt the Finance Committee should review this item and determine the number of holders, and flush out the financial ramifications. Mayor Weatherly called for a motion to refer this item to the Finance Committee (Council Member Jones and Council Member Sutton).

Action: Council Member Sutton made the motion to refer this item to the Finance Committee regarding the request to amend the Apex Code of Ordinances Sec. 12-48(F). Council Member Jensen made the second to the motion. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was 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.

Nicholas Simon, Apex Business Owner, called awareness to the Apex Ball Dinner and Dance to be held in May at the Apex Halle Cultural Arts Center and held for the Cancer Research; noting all had been extended an invitation.

End of Public Forum

NEW BUSINESS

Presenter: Bruce Radford, Town Manager

New Business # 01 – Wake County Board of Elections/Municipal Elections Agreement

Manager Radford recommended approval of an Agreement between the Town and Wake County Board of Elections for the Wake County Board of Elections to conduct the 2009 municipal elections for the Town of Apex, noting the maximum estimate of \$37,910 and increase of \$20,000 over the 2007 costs; conditions and services will be the same with no early voting sites. Town Attorney Fordham asked to include additional language to paragraph 8 and that it begin.....With respect to the 2009 elections, the.....

Action: Council Member Sutton made the motion to approve the Agreement between the Town and Wake County Board of Elections for the Wake County Board of Elections to conduct the 2009 municipal elections for the Town of Apex with the maximum cost and with the modification as stated by the Town Attorney. Council Member Schulze made the second to the motion. Motion carried unanimously. Vote was 4 in favor and 0 opposed as Council Member Gossage was absent.

End of New Business # 01



Presenter: Manager Bruce Radford

New Business # 02 – Resolution by Apex Town Council (Add – on)

Mayor Weatherly asked Council to consider adopting a Resolution Opposing the Transfer of State Roads from State Maintenance to Municipal Maintenance relative to Legislative Bill 1001. Manager Radford noted the bill would reduce the State's burden to care for NCDOT roads, and would mandate municipalities take maintenance of the roads with no additional compensation, creating an unfunded mandate. This Resolution would voice the Town's opposition to such action that would add approximately 23 miles of roads for maintenance by the Town of Apex or 42 lane miles. Discussion continued regarding patching vs. paving estimated costs; receipt of Powell Bill funds and the shrinking formula; Council Member Schulze liked the idea of taking the streets as they could be repaired more quickly. Noted Streets: Center Street, Salem Street, Chatham Street, NC55, Laura Duncan Road, Old Raleigh Road to name a few. Council Member Sutton also agreed thinking this was a good bill, as the Town should take the streets over because the Town would do a better maintenance job and should take care of them as they would never get done if we wait on the State; Town would be in charge of the signals on our streets; the streets should belong to the Town, and Highways should belong to the State/Federal Governments. Manager Radford noted previous request to raise the tax rate by one cent for street repairs, and felt to take over the street maintenance was unaffordable and would eat away at General Fund, asking what services did they not want the Town to provide to make up the costs, unless they want to raise taxes and North Carolina traditionally had taken care of the street maintenance. Mayor Weatherly noted continuing to repair NCDOT streets would become critical and not sure the Town should do more. Council Member Jones noted the taxes that go to NCDOT and is not a part of this bill. Council Member Jensen noted gas taxes were for road maintenance not property taxes, and with gas taxes fixed, it's a problem. Council Member Sutton felt the Town would do a better job of maintaining the streets and done more quickly. Manager Radford addressed the complaints regarding Old Raleigh Road and the work the Town had done in maintenance, cost to patch vs. cost to resurface, and noted also the Powell Bill would not produce the funds to pay for maintenance. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to adopt the Resolution Opposing the Transfer of State Roads from State Maintenance to Municipal Maintenance relative to Legislative Bill 1001. Council Member Jensen made the second to the motion. Motion carried with a Vote of 3 in favor and 1 opposed with Council Member Sutton voting no and with Council Member Gossage absent.

End of New Business

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

There were no Closed Session items to be discussed.

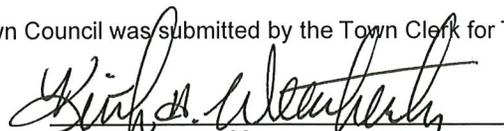
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn.

Action: Council Member Jensen made the motion to adjourn at 9:20 p.m. Council Member Jones made the second to the motion. Motion carried unanimously Vote of 4 and 0 and with Council Member Gossage absent.

The minutes of the April 21, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their May 5, 2009 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the May 5, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 5, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

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

PROCLAMATIONS

Mayor Weatherly presented Proclamations: 1) Police Week, and 2) Lyme Disease Awareness Month.

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 to approve the following items.

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

1. Minutes and General Account of April 21, 2009 Council meeting.
2. Minutes and General Account of April 27, 2009 Personnel Committee meeting.
3. Annexation Petition # 444, Wake County Board of Education owner/petitioner, petitioning to annex 32.286 acres into the Town's corporate limits and located on 6601 Apex Barbecue Road;
 - 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk;
 - 3) Resolution setting date of Public Hearing for May 19, 2009.
4. Resolution No. 09-0505-19 Accepting and Endorsing the Solid Waste Management Plan Update of 2009 for Wake County.
5. Renewal of Yard Waste Service Agreement with Highway 55 C&D Landfill, LLC (Griffin Brothers).
6. Set Public Hearing May 19, 2009 Rezone # 09CZ05: MCI Enterprises.
7. Set Public Hearing for various amendments to the Unified Development Ordinance May 19, 2009.
8. Personnel Committee recommends adoption of new Position Classification Plan for FY 09-10.
9. Transfer Lot 82 plots F, G & H in Apex Cemetery and recorded in the names of D.C. and C.H. Arthur, Donald C. Arthur or Carole H. Arthur all being of the same entity to Danny T. and Susan A. Carter, 7108 Waltridge Place, Holly Springs, NC 27540.
10. Order to close several roads in the Scott's Mill and Magnolia neighborhoods on Saturday, May 16, 2009 from 7:30 a.m. to 8:45 a.m. to accommodate the 2nd annual Monarchs in Motion 5K Road race walk and contingent upon the HOA notification to homeowners.

End of Consent Agenda



REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items.

PUBLIC HEARINGS

Presenter: Lauren Simmons, Planner

Public Hearing # 01 - Rezoning Case #09CZ04 and Major Site Plan for Peakway Physicians Park

Planning Board met April 13, 2009 and recommended approval with conditions recommended by staff; staff recommended approval with conditions; Town Council met April 21, 2009 and opened the public hearing and continued the public hearing to this meeting; Applicant has now requested continuation of the item to May 19, 2009 Town Council meeting to allow for a meeting with the neighbors May 6, 2009.

Continuation of Public Hearing and possible motion regarding Rezone # 09CZ04, from Office & Institutional Conditional Use to Neighborhood Business and Major Site Plan for Peakway Physicians Park; Dan Klausner & Jeff Crisp, applicants; site location at the corner of Apex Peakway and Olive Chapel Road.

Staff stated the applicant had requested this hearing be continued to the May 19, 2009 Council meeting to allow for a neighborhood meeting May 6, 2009.

Mayor Weatherly called for a motion to continue the public hearing to May 19, 2009.

Action: Council Member Gossage made the motion to continue the rezoning hearing Case #09CZ04 and Major Site Plan for Peakway Physicians Park to the May 19, 2009 Council meeting. Council Member Jensen made the second to the motion. Motion carried unanimously to continue the hearing.

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.

No one spoke during public forum.

**NEW BUSINESS**

Presenter: Brent Kirchoff, Waste Industries

New Business # 01 – Waste Industries Services

Brent Kirchoff, District Manager, Waste Industries offered a proposal for recycling services and use of the larger 65 gallon roll-out containers or to continued use of bins or both. Also a proposal was offered for adjusting solid waste and recycling service rates: 5 year contract that would affect upcoming planned rate adjustments; calculations are based on CPI and associated engineering issues; terms of the contract: for the first two years there would be no rate adjustment and offered a fixed 3% or less per year on the remaining three years. Manager Radford commented on the proposals, noting the proposed \$1.02 increase goes away and would allow either use of carts or bins. After discussion, Council asked for a written proposal to be considered at the May 19, 2009 Council meeting.

End of New Business # 01

Presenter: Lee Smiley, Director of Finance

New Business # 02 - Revenue Bonds

Director of Finance presented for adoption an Order Authorizing the Issuance and Sale by the Town of Apex, NC of a \$7,500,000 combined Enterprise System Revenue Bond, Series 2009 and Authorizing the Execution and Delivery of Certain Documents in Connection Therewith; resolution requests LGC to sell electric revenue bonds to Bank of America and authorizes Mayor, Manager, and Finance Director to sign necessary documents on behalf of Town. Other documents referenced by the Resolution Trust Agreement, First Supplemental Trust Agreement, and Bond Purchase Agreement are available for review in the Clerk's office. Bonds: \$7.3 million and comprised of \$100,000 for issuance costs, and \$7.2 million for construction; 3.62% interest rate.

Action: Council Member Jones made the motion to adopt the Order Authorizing the Issuance and Sale by the Town of Apex, NC of a \$7,500,000 combined Enterprise System Revenue Bond, Series 2009 and Authorizing the Execution and Delivery of Certain Documents in Connection Therewith. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02

Presenter: Lee Smiley, Director of Finance

New Business # 03 – Financial Summary

Director of Finance gave the review of the 3rd Quarter FY08-09 Financial Summary. Benchmark for the quarter is 75% for revenues and expenditures; significant variances were noted. Council accepted the financial summary as presented.

End of New Business

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following:
to receive legal advice about pending litigation designated *Cor Bregman v. Town of Apex*.

Action: Council Member Jones made the motion to move into Closed Session at 7:35 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. Council Member Gossage made the motion to move back into Regular Session at 8:04 p.m. Council Member Schulze 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.

Action: Council Member Jensen made the motion to adjourn at 8:05 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

The minutes of the May 5, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their May 19, 2009 meeting.

Georgia A. Evangelist
Town Clerk

George W. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the May 19, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 19, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

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

PRESENTATIONS

Mayor Weatherly presented the Spring 2009 Appearance Awards:

Residential Award: Joey Iannone, Developer, JVI Construction, the Groves II, SR1010.

Non-Residential Award: Jim Walker, Walker Insurance Group, Nationwide Insurance Plaza, 414 E. Williams Street.

Annual Tree Award: The "White Oak", Joseph & Lisette Zublena, 317 N. Salem Street.

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 to approve 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. Minutes and General Account of May 5, 2009 Council meeting.
2. Minutes and General Account of May 5, 2009 Council Closed Session (separate cover).
3. Budget Amendment and Capital Projects Ordinance amendment for proceeds of electric bonds to finance substation construction on Mt. Zion Road, and other system capital improvements.
4. Statement of the Apex Town Council and Ordinance for Rezone #09CZ01, Ashley Ansara, petitioner, for the property located at the intersection of Apex Barbecue Road and S. Salem Street.
5. Statement of the Apex Town Council and Ordinance for Rezone #09CZ02, Westover Properties, II, LLC, petitioner, for the property located at 903 Olive Chapel Road.
6. Statement of the Apex Town Council and Ordinance for Rezone #09CZ03, Town of Apex, petitioner, for the property located at 2300 Mt. Zion Church Road.



Consent Agenda continued

7. Formal acceptance of transfer of approximately 12.33 acres of parkland from Wake County to Town of Apex via General Warranty Deed, adjacent to existing Salem Elementary and Middle School Campus; Town Attorney will record deed.
8. Possible motion to amend Traffic Schedule I and II: As referenced in Sec 20-60.1 Traffic Schedules: Sec 20-68. Subsection (b) Stop Intersections & Sec. 20-70. Yield Intersections; to be kept on file by the Town Clerk.
9. Wake County Tax Report approved by the Wake County Board of Commissioners and accepted in their Regular Session May 4, 2009.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda will be set prior to taking action on the following items.

PUBLIC HEARINGS

Presenter: Lauren Simmons, Planner

Public Hearing # 01 - Rezoning Case #09CZ04 and Major Site Plan for Peakway Physicians Park

Review: Planning Board met April 13, 2009 and recommended approval with conditions recommended by staff; staff recommended approval with conditions; Town Council met April 21, 2009 and opened the public hearing and continued the public hearing to this meeting; Applicant has now requested continuation of the item to May 19, 2009 Town Council meeting to allow for a meeting with the neighbors May 6, 2009; Council approved the Applicant's request for continuation of public hearing from May 5, 2009 to this meeting.

Continuation of Public Hearing and possible motion regarding Rezone # 09CZ04, from Office & Institutional Conditional Use to Neighborhood Business and Major Site Plan for Peakway Physicians Park; Dan Klausner & Jeff Crisp, applicants; site location at the corner of Apex Peakway and Olive Chapel Road.

Staff noted this hear was a continuation of public hearing for rezone and major site plan (report attached and incorporated as a part of the minutes); stated current and proposed zoning, noted adjacent zoning and land uses. Applicant proposes to rezone 6.02 acres from O&I-CZ to Neighborhood Business (B1-CZ) for Peakway Physicians Park, a 62,634 square foot medical office building along with a second lot intended for retail, a pharmacy or other use on 7.602 acres; next to existing horse farm and home.

Permitted uses: Applicant proposes to permit the following uses in Neighborhood Business to be allowed; Applicant held a second neighborhood meeting and has eliminated uses shown with strike through.

1. ~~Accessory apartment~~
2. Day care facility
3. ~~Government service~~
4. ~~Entertainment, indoor~~
5. ~~Restaurant, general~~
6. ~~Restaurant, drive thru~~
7. Medical or dental office or clinic
8. Medical or dental laboratory with Special Use Permit
9. Office, business or professional
10. ~~Barber and beauty shop~~
11. Bookstore
12. ~~Convenience store~~
13. Dry cleaners and laundry service
14. Financial institution



- ~~15. Local shop~~
- ~~16. Grocery, general~~
- ~~17. Grocery, specialty~~
- 18. Health/fitness center or spa
- ~~19. Laundromat~~
- ~~20. Newsstand or gift shop~~
- 21. Personal service
- 22. Pharmacy
- ~~23. Printing and copying service~~
- ~~24. Real estate sales~~
- 25. Retail sales, general
- ~~26. Studio for art~~
- 27. Tailor shop

Restrictions/Conditions proposed by Applicant:

1. Uses: Dry Cleaner and Tailor shop are only allowed in front 50% of property fronting Olive Chapel Road.
2. All other allowed uses are allowed on entire property.

Grading plan: appears acceptable and site will be brought down significantly because of the terrain.

Landscape: Peakway Physicians Park major site plan includes a 30 foot wide landscape Type E buffer along Olive Chapel and Peakway, a 20' A type buffer along Amherst subdivision and 10' B type buffer along Glen Arbor Townhomes; applicant requests a 50% street front buffer reduction on the Peakway.

Stormwater Management: site has a planted bio-retention area that is adequate for controlling stormwater on-site. (Mike Deaton Environmental Programs Manager was present to answer questions and gave assurance of its adequacy). Staff defined allowed use for personal services: nail, hair or beauty service; dry cleaners and laundry together in use table allow laundry service; retail can be general and intent for medical sales with medical offices – there's no sub-category for this use.

Council Member Jensen asked for a line of site cross-section from the building as it abuts residential before making a decision, noting medical building height and without appropriate buffer would be looking onto residences; discussion of buffer types followed noting E type buffer along Peakway and did not give enough buffer to neighbors, and he previously asked for more buffer along Thistle Top Trail; noted little buffer with deciduous trees and no good in winter. Staff noted A type buffer with evergreens; he noted the medical building didn't need a view line, and need for more buffer and had not seen a landscape plan; sees islands planned for parking lot but what asked what type trees. Staff reported applicant had submitted a landscape plan and staff has determined and satisfied applicant has gone above and beyond to meet UDO buffer requirements expanding on landscape.

Mayor Weatherly at 7:20 p.m. recognized the following for comments:

Jeff Crisp, PE Crowley, Crisp & Associates, gave background information since beginning the project (had full set of plans for review) and held neighborhood meetings; eight attended first meeting for information and had limited concerns; moved into design stage with staff agreeing. Planning Board reviewed proposed rezone and site plan and recommended approval (two people attended meeting). Council heard presentation and Crisp was surprised at the concerns expressed during the meeting, and thus held a second neighborhood meeting to address concerns and hearing no other, addressed the concerns that was expressed by reducing permitted uses (10 people attended the second meeting and expressed they were fine with the uses eliminated); sentiment received was that it was a great meeting. Landscape: request 50% street front buffer reduction on Peakway (1595 square feet) near intersection; increased RCA to include this and exceeds UDO for the site. Folks were surprised and he didn't think they knew about the Peakway design (4 lanes divided with green strip running north/south and would loop around town and get traffic off NC55) and felt design was to get commercial development at signalized intersection of two major thoroughfares and this project fits. 2025 Land Use Plan: proposed rezone fits and allowed under current LUP without an amendment. Buffer: they are committed to B type buffer and commented on mix of tree plants and types; bio-retention areas will be fully planted (showed plans).



Dan Klausner, P3 MOB, LLC, commented on neighborhood meetings and 300' notification rule, and extended apology to those not there, having exceeded the rule for notification and wanted comments to incorporate in plan. Presentation attached: gives review for site selection all four corners zoned for commercial, uses/conditions were limited; noted laundry-mat was eliminated from the uses, medical clustering for larger patient base and where spaces are now, noted limited medical product, and paying attention to all parts that compose a Class A product noting current medical office space is limited to Class B and C single story condos; some physicians like hospital campus, some do not and need alternatives); gave economic development impacts (revenue, income and employment that would come with this product), noted pharmacies are business decisions and market driven and gave examples of opportunities that may exist; landscape and buffer doesn't make Class A, however, placement of the building was created for balance to minimize walks and drop-offs to the building, not too close to neighbors or street.

John Frazier, PE Crowley, Crisp & Associates, addressed stormwater design or bio-retention management practices, removing pollutants and noted the soil infiltration limits volume and peak flows and releases over two to five days.

Don Beci, 1003 Arbor Valley Lane, Glenn Arbor Townhomes HOA President, attended neighborhood meetings and asked assurance against stormwater run-off (less), lowering of the site significantly, and expressed concern with the retail parcel; buffers (homes face site, 2nd floors, asking for landscape provision for a year round buffer), and reduced lighting.

George Landberg, President, Peakway Village HOA, addressed zoning change from O&I-CU to Neighborhood Business, traffic considerations and stormwater control (attached handout); residents opposed the zoning change and stated reasons; residents request suitable action to address deficiencies in traffic study and stated reasons; master plan doesn't address total storm water flow that will process through Peakway Village Storm Water Control system; stated study by qualified and licensed engineer was warranted to address stated issues.

Joel Deese, 117 Sharp Top Trail, was unaware of the meetings and addressed notification, as he heard from another person, noted his neighbor didn't speak English; he received the second notice and couldn't attend; made reference to Cary and didn't want to go that way; asked Council consider the impact of this project on the neighbors; as for assurance water flow will go away from one direction would come back on him; maybe could have resolved some issues earlier on with developer; noted possibilities with development of the property; noted vacant space in Wake Med; need for more communication with neighbors and let them know what's going on, some of these things he's unaware of; supports Council taking a longer look at the request.

Trim Breninger, Peakway Village homeowner, agreed with project impact on homeowners not only the corner lots affected, bringing traffic (small children playing), parking lot will give lots of run-off; no reason for this development, asked to look longer at the request as additional expenses and drainage issues can't be taken on by the homeowners.

male property owner of the larger portion in the back area for eight years, received first notice, didn't receive notice for the second meeting; concern with plans for the back of the lot; issues to keep Peakway in best manner; would be covered by a three story building and seen from his property; trees are bare in the winter, and can see all the terrain; gets water run-off from rain events as all trees were taken off; is not against a well thought out plan but sees no advantage for another medical park and Wake Med without tenants since built; wants to see a better thought out plan; noted market development across the street and chains; concerns were with the lighting, view, water run-off, easements over properties, increased street traffic, traffic signals and timing, and pollution.

Mina Sute, property owner, Apex Peak Way Village, was told by a neighbor of the last meeting and attended, didn't receive flyer; was told by real estate agent the property would remain as is and is now stuck; addressed available office space; travels NC55 and noted Peakway design to reduce traffic time, noted outlets from Peakway, and the wait time at Zeno road onto the Peakway and signalization change-time, and asked why add more traffic out let or in let on Peakway; noted each homeowners pay \$50 in HOA fees monthly and do not have recreation facilities or other amenities, and understands this already is a high amount to pay and to add stormwater maintenance issues would be difficult to pay more in this economy and future generations; noted school buses cut-through traffic to avoid the signal light, and she would do the same; noted the 36 - 2/3 story homes on small lots and have limited parking spaces and when there are parties, average home has two and three cars, and it worsens; extra traffic and children waiting for

buses; have to wait to get on Olive Chapel and asks if there would be a signal there; warrants another meeting to discuss issues and appreciates reduction in uses.



Gina Caruso, 104 Sharp Top Trail, noted aggravation/worry; can't attend Planning Board held at 4 because she and others work; noted commercial planning for four corners and affect on residential; noted four-lane plans for Peakway may be a long time and the cut-cross in traffic; noted three pharmacies in the area and doesn't think there should be another; could place medical supplies in the medical building vs building another; noted physicians like the hospital campus and the hospital was an emergency room, not for long term care; noted the available space sign and the offices in the hospital were not filled. Felt to rezone sets precedent; expressed concerns as kids play, cut-throughs and not wanting the rezone or three story building, and as to do all they can to change this, she would.

Brendon Locklear, property owner, Apex Peak Way Village, addressed safety, storm drains, drought and rainfall, and noted death related incidents with storm drains and didn't want to see this; Peakway design and no entrance to align with Thistle Top or Sharp Top.

Rick Sharp, 201 Sharp Top, former Chamber President in Atlanta, had seen advocates for developments there, and none seen here; doesn't see added value to community noting impact on the neighbors and community as a whole; has four pharmacies here.

Crisp responded to some of the concerns:

Williams and Olive Chapel: noted the commercial site was chosen because of the Peakway and not Williams Street or Olive Chapel with similar situations, saw it as an appropriate use.

Crisp noted he had designed many storm water designs and asked Deaton questions regarding stormwater design measures. Deaton stated the Peak Way Village design was the first one of its kind (dry pond and pocket wetlands system), and noted the stormwater calculations from engineers suggest the 100 year storm event would be easily passed through those two ponds in series, two good vmps in-line; peak run-off from that drainage area is significantly reduced because of those vmps and without it would be a lot of flooding downstream.

Crisp asked about vmps upstream and downstream and if that were fairly common asking if it were typical from off-sites to do some kind of vmps : Deaton responded off-site meets certain criteria and has to have stormwater controls; it's not typical to see them in the same drainage feature as up-stream properties; thinks this is the route of all problems with this drainage area, and the maintenance concerns from Peakway Village; vmps are in-line with the drainage area, and any future development whether Peakway Physicians Park or future expansion of the Peakway, or the other parcels when they develop will have the same issues, and appear at the same time; prefers to have these systems off-line vs in-line with drainage feature especially with perennial streams. He noted the trend he's seeing today and guidance was not as clear in the past as it is today and thinks this issue will be less frequent.

Crisp asked his opinion of the design: Deaton responded his stormwater requirements and design meets the Town requirement and far exceeds the state requirement for peak flow run-off and reduction; additional benefit is nitrogen and phosphorus removal; water quality benefit of the vmps; noted this site would be developed with two drain areas six or seven areas; 78% of all the drain area will be flowing away from Peak Way Village; approximately 1.3 acres would go through their vmps and insignificant in terms of the total watershed area 22 acres or 5% and in his opinion the impacts related to this project would be negligible. Maintenance - Peakway Physicians Association would maintain their design, and vmps downstream would be maintained by the developer and/or HOA Peak Way Village – under an owner developer agreement signed and conveyed to the HOA. Council Member Jensen questioned being in-line and receipt of the waters from above, with Deaton stating biggest concern is peak concern, more so the construction grading and control of this project, Peakway widening project, Wake Med across the street, and the other parcels on the Peakway Village plan; Crisp noted more stringent control criteria in this area and are required by the state requirements for erosion control in place, and after large rain events have to repair immediately, and will be looked at it being well maintained, and by inspector; 25 year storm and state 10 year storm.



Russell Dalton, Apex Transportation Engineer, came forward and answered questions regarding the cut through traffic and stated he would be surprised to see it, and Crisp agreed with Dalton and their traffic engineer agrees as well, there would always be some type traffic problems and understands their concern, and that children are important, and relies on Dalton's professional opinion, noted there could be some type calming devices within Peak Way Village and if it were not developed by them would be something there. Dalton's response to the calming devices for Peak Way Village was that it was against the ordinance and with such a low number of homes doubt it would meet the traffic calming criteria. Crisp added that the traffic generation would be for uses related to medical, day traffic and not specific to peak time traffic.

Further discussion evolved around the following:

Elevations were shown by staff and site plan for larger building; grade of land: taking considerable amount of soil off site for reasonable elevation and site distance (estimated 10 feet above homes); gave elevations for each building.

Commercial zone allows more uses; eliminated some uses on site, however currently allowed on the Peakway Village site, but no development there as of today. Allowed under current zoning; staff noted the zoning was under the 2000 zoning code prior to UDO, allowing for office, medical, some industrial and institutional with conditions of all zoning and associated pieces of property currently developed; in her view the old ordinance uses would have been very displeasing to the neighbors, lighting, etc; staff noted there was no specific medical use retail category and understood intent for medical office use in the retail. Klausner addressed the concerns he heard, regarding restriction of retail uses, in line with medical office at rear of the building and not the front of the site; there would be no stand alone large, or big box, or dollar store, those type uses.

Alignment of drives along the Peakway: Dalton stated there were only so many places you could locate those drive ways, and if you don't align them you have conflicting problems with turn lanes, and more collisions if not aligned directly across; recommendation is that when the Peakway is widened would be to convert the northern one right-in and right-out closest to the intersection and the southern- most to allow left turns. Council Member Jensen questions restrictions, with Dalton responding the only restriction he would consider would be to convert the northern most one right-in and right-out in the interim with an island; and other than this, no other safe movements, as there's not enough room there; typically you would have a direct cross over like Kelly Road, where you have a left turn off the main line, but there's lots of room there for a concrete median, in this case you would have a thin concrete median at the northern most drive way to make a right-in and right-out. Council Member Jones noted if you did a right-in and right-out there would be no way to make a left turn into this development going south on the Peakway with Dalton adding you would go to the southern drive way; and at the southern-most one with the Peakway as is, you wouldn't be able to make that right-in and right-out without widening the road; there's a bit of taper at the northern most but necks down to two lanes so you would need an off-set to put in those two medians.

Council Member Jones questions the buffers or lack thereof on the south side: heard that would be A type opaque buffer which is not there now; planted would be a 20 foot A type in addition to the evergreen plantings on the wall to help screen the building height. Council Member Gossage questioned height expectations - would be 6 feet, with Khin expanding on the plantings and growth over time 20 foot plus eventually with expectations at time of plantings to be 6' and would grow pretty fast.

Council Schulze questioned zoning classes; current zone is O&I under the old code, didn't want a retail use there but could understand a medical retail use. Khin expanded on the 2025 Land Use Plan for the area, and amended after the Apex Comprehensive Plan in 2004; the area is required mixed use with office, residential and retail, with retail finishing out the piece of required mixed use, and have to have retail at the front to meet the 2025 Land Use Plan; staff told the applicant that's exactly what they envisioned in 2004 and held multiple public meetings and what folks thought should go there; staff told the applicant, it shouldn't be a problem, its exactly what is on the Land Use Plan, and exactly what they would like to see there and would complete the last piece of the required mixed use. She would not want it to not be retail at this corner; that is what the plan calls for.



Manager Radford questioned the western side of the Peakway, portion where Peakway Village is located, asked the applicable and appropriate land uses today. Khin responded everything proposed for this project, the Klausner project, in addition convenient store, gas sales, restaurant with drive through, and being the two most despised land uses from a neighbor's point of view, and could possibly be in their neighborhood at Peakway Village. Manager Radford continued that the questions that have been raised about this particular parcel of land from people/citizens who have moved into this area, have concerns about this particular parcel, have a worse case scenarios on the very property that they are a part of, with Khin responding this was correct. Those conditions existed when that development was originally planned, with Khin responding that was what was proposed by the developer of Peakway Village, was consistent with the land use plan and approved. Khin stated they could come in with a site plan, will not come back to Council and could be approved at staff level if it meets the UDO and no further action regarding public input, neighbors will not be notified, no rezoning necessary as long as it meets all criteria of the UDO, it will get approved. Manager Radford continued it could be a gas station, or a drug store, any of those uses, and could be standard height and could be closer to the homes than this proposed development.

Mayor Weatherly stated to the public they were listening to staff and the way it is and no way disputing what they were saying and no basis for anyone to say the Planning Director didn't know what she was saying. Khin explained this was on the Land Use Plan since 2004 and was part of an overall comprehensive plan process, that these land uses were determined to be the correct ones for this location.

Council Member Schulze noted the condition the applicant was offering regarding the box retail and would like that to be a condition of the rezone. Khin noted any conditions offered would be conditions of approval: B type buffer along the Peakway, and limit retail uses on the back portion of the property to retail inside a multi-story office building, and that there would be no stand-alone retail uses at the rear of the property – these were not included in the staff report, with Attorney Fordham advising those conditions should be clearly stated and how it would relate to the ordinance. Council Member Schulze stated it sounds he was willing to limit the retail to medical and didn't have a problem with medical related retail, but other types of retail. Khin asked was it inclusive of pharmacy, and added staff considers pharmacy a separate use from medical office. Khin noted he could offer anything regarding elimination of the front parcel. Mayor Weatherly stated if he were going to amend the conditions now would be the time.

Klausner stated there would be no stand alone retail use other than pharmacy on that front corner piece, with Mayor Weatherly asking the Attorney if this were sufficient; Khin restated any retail use other than pharmacy would not be allowed as a stand-alone building on the front piece. Attorney Fordham asked if the front piece were on the map, with Khin noting it was Phase 2 on the site plan. Attorney Fordham noted as long as the front piece was unambiguous he felt that was ok. Khin stated he would still allow it to be a stand-alone pharmacy (the only stand-alone retail use allowed). Khin noted the other option would be a medical office or office building at the front. Council Member Jensen asked the limitations on uses of the larger building to the south, he wanted to find out, with Khin responding any retail uses in Phase I would be required to be a part of the multi-story office building; there could be some things inside that building; he couldn't turn in a new plan with retail business, Khin noted there was no medical category for related retail. Council Member Jones felt they were getting to picky, and related to a three story building that if a financial institution may want to go into, what would be the problem with that, and why would it need to be medical related. Council Member Schulze would agree with a financial institution, but to talk everyday retail, its zoned O&I now, what the people wanted, and doesn't think it should be anything but O&I, and can accept something professional in nature, with Council Member Jones understanding.

Council Member Jensen wanted to know the maximum building height under O&I that could be put on this property, with Khin responding, she couldn't say for sure, she could tell him with O&I property, the original rezone was three parcels, including the Peakway Village property, the current zoning wording says it has to be designed with the rest of the property that has rezoned out of all of its conditions, and they really need to rezone because they have these conditions that has nothing to do with their parcel as a stand-alone parcel, it was as an entire project. She couldn't say for sure without getting the file how many stories, but typically office was approved at that time for three stories and O&I typically three stories. Council Member Jones added 45 or 48 feet whatever the number. Council Member Jensen had problems with the three story along-side the neighborhood. Council Member Gossage asked the proposed height; 42 feet. Khin related to the 42 foot building and retaining wall height on Amherst side, heights were discussed, approximate 8 foot slope and 42 foot building or 50 feet.



Mayor Weatherly closed the public hearing at 9:00 p.m.

Council Member Jones asked Deaton 1) relative to the adequacy of the stormwater management of the ground water in Peak Way Village and if they were up to date with inspections and meeting all maintenance requirements of vmps. Deaton noted it in a wetlands area, with dry pond design, had ground water concerns and engineer redesigned it, and was approved in March and with an annual inspection due March 2010; approved the dry pond, noted it in good condition and that debris is routine and the straw there would decrease over time; and maintenance was not a concern, noting off-site construction was the main concern. 2) relative to stormwater run-off, current conditions and plan improvements with the proposed plan surpasses state requirements and close to the 25 year storm plan design that would control more volume during larger storms, reducing post to pre-development for the 1 and 10 year storms with Crisp noting the design closure to the 25 year storm plan, but may not completely pass the 100 year storm event.

Khin answered questions regarding the rezone from Council Member Gossage, noting the rezone more restrictive than initially proposed for the corners at Peak Way Village, that there are additional uses currently allowed in the O&I zoning, otherwise, wouldn't need the rezoning, and that pharmacy stands out being allowed, and is more restrictive than initially proposed; they have removed about half of the original proposal. Council Member Jensen asked if it were less restrictive, with Khin responding it allows different uses, with Council Member Gossage adding it's less restrictive, with Khin responding yes.

Council Member Gossage asked relative to stormwater run-off plan, if it's improved existing conditions; that it surpasses state requirements. Deaton responded standard state requirement for quantity is a one year and 24 hour storm event, post development peak run-off must be below or equal to pre-development conditions for the one year and 24 hour storm event. The Town has a 10 year and 24 hour storm event; they will be meeting that, and unsure about any other storm event and close to the 25 Crisp had said; as we get a larger storm, there will be more volume and higher peaks. Council Member Gossage asked as it relates to current conditions how would their plan handle run-off compared to the way it is right now. Deaton responded, it would be reducing post development peak run-off rate that of pre-development for the one and ten; didn't know the exact numbers; noted they were on the slide. Council Member Jensen asking would it reduce for the 25, 50 or 100. Deaton responded it's close to the 25 and may not reduce it completely, and it safely passes the 100 year storm event. He looked at the one, ten and 100.

Council Member Gossage addressed the concerns with the lighting. Khin responded this was one of the conditions staff had recommended and Planning Board agreed with, that they would need to do the cross section with lighting and meet the UDO requirement, and was agreed too. Council Member Jones addressed the UDO requirement of limiting the off-site, with Khin expanding on the lighting limitations.

Mayor Weatherly asked if there were a motion. Council Member Sutton expressed he wasn't going to make a motion for the following reasons: the 60,000+ square foot building was allowed under O&I, and could put the Physicians Park on it as its zoned, O&I, and to rezone to allow business exacerbates problems: traffic, and other things that go with it, and to allow retail, pharmacy, bookstore, or whatever it is, will create a different type traffic. With physician's buildings, you have appointments, and not an impulse trip; and as far as the required line for mixed use thinks they have an obligation, or he feels he has an obligation, for health, welfare, and safety of the people who live near there, overrides the required line, and he doesn't support rezone for retail.

Mayor Weatherly referred the matter to Council for possible motion.

Action: Council Member Jones respects Council Member Sutton's point of view, however, Council has told staff for at least five years, they have wanted commercial development along the Peak Way, and where they wanted it to develop, keep traffic in other places, concentrated in certain locations, and to avoid cut throughs and other things they are hearing about that might happen; he understands the Peakway Village resident's concerns especially if they were misinformed about what could happen on their own property, and what could happen to property across the street that was being referred to tonight, but they have promoted mixed use, encouraged mixed use and talked about walkable communities where people could live, and work next door, shop next door, go to the pharmacy next door, or the office next door, to avoid having to get into a car to go to other places; he didn't have a problem with the three story building as long as it's a nice building; if they are going to promote mixed use, thinks they should promote quality products which this appears to be; there are issues they have to deal with during construction of run-off, if the stormwater management system within Peakway Village is inadequate, then that needs to be addressed;



but they have told this particular developer this is what they wanted, and he has done everything that staff has asked him to do, so for that reason, he made the motion to approve the rezone and site plan with conditions as presented and agreed too. Mayor Weatherly asked if there were a second. With no second, the motion died for a lack of a second.

Council Member Jones stated in response to no second to the motion if that's the case then there should be a called planning meeting, immediately to consider change in the comprehensive land use plan. Discussion followed with Council Member Schulze expressing that he was torn about this, one of the most tougher decisions he has had to make in a while; he agrees with what's said having given staff direction, being in favor a long time for vertical buildings and this suits the case; struggling with the O&I zoning, in nature is less intense than business retail, and has a real compelling reason to allow that; if this were strictly O&I, it's the rezoning piece he's having trouble with; if strictly O&I and the site plan thinks he would probably be approving it, he didn't understand which direction he was going, now still undecided.

Mayor Weatherly stated he would need a second to the motion to continue debate, or would cut off debate, and without a second the motion will die. He continued that the absolutely worse thing in planning in any community is to send schizophrenic signals to everybody that comes in and they were sending schizophrenic signals to our own staff without direction, that Council Member Jones was absolutely right, that Council had been consistent for at least 10 years, that mixed use was the way to go, along corridors identified on the Land Use Plan to have commercial; what Dianne had said was absolutely the signal this governing board has always sent, and doesn't know why developers or anybody would want to invest their capital in our community and what they are going to expect for giving answers about, why they should develop in predevelopment costs, when they get to this stage and split off in different directions and don't stay consistent with the things they have been saying for many years.

Council Member Jones noted it a strategic goal for increasing our commercial ratio to our residential, we are throwing that out the window. Council Member Gossage responded he thinks it prudent and allowable for the governing body to set and overall goal and still allow itself some flexibility when it comes down to specific details of a plan, and obviously one of the things that's catching him up about, is not the rezone, it's the site plan and those driveways; he knows we like to alignment intersections, desires more clarity on the traffic issue; is comfortable with the zoning, and didn't want to dictate pharmacy whether it would exceed here or fail here, is not his job; lighting and stormwater concerns were answered sufficiently; the one sticky point for him is traffic; didn't see this as schizophrenic to say to staff that this is the direction we want to go, it's not the governing body, it's the direction the citizens wanted to go with the 2025 Land Use Plan, the result of public hearings and citizen input on what they all have told them in the past, what they wanted and was not a Council plan but their plan, and now Council is in a position determining what he thinks now is we are not making a strong determination, are making a more narrow determination, and reason for them to be a little bit more critical, looking at it with a more critical eye and is Council's choice, this is what the citizens designed, and are looking at it, does it match, doing our job and not just rubber stamp it; he heard over and over, zoning, stormwater, lighting, and traffic.

Council Member Schulze felt rezoning by definition is an exception to the plan; they have a plan and are asking for an exception and he does have a problem with the plan. Council Member Gossage stated the rezoning was to get this into compliance with the plan and why he doesn't have a problem with the rezoning. Council Member Jones referred back to the 2025 Land Use Plan for the area and the mixed use for this piece of property. Council Member Schulze felt they accomplish the mixed use plan, not on this particular site, but adjacent, and by allowing segregation, you exacerbate the situation by adding more intense uses.

Council Member Gossage concern with buffers was addressed and what comes down to him is Sharp Top Trail and Thistle Top Trail whether or not they would see additional traffic and his hunch is that they will.

Council Member Jensen has a bit of problem with traffic as well, the three story building was his major problem very tall for this area with three neighborhoods around it; he understood O&I allows for a building of this height; he looked at the requirements for the zoning standards, and number two of those is compatibility and has trouble with compatibility of a three story building; he wants to see more commercial and office and thinks we desperately need, but at the same time have to mold those into an area with mostly neighborhood around it, and if it were a two story building would jump at it; another problem is with the buffer would not be opaque for 10 years, and neighbors would see the site for ten years with folks looking out their windows into their yards; if it were more scaled down would be a



very good fit and thinks the zoning would be acceptable to have these other uses; he agrees with the Mayor that we want a more walkable neighborhood but need to scale things side by side, and this is not the proper scale.

There was no second made on the original motion, and Mayor Weatherly added they would move on and take no action. Attorney Fordham asked Council have a brief recess at 9:20 p.m. to look at a point of law; may need to make a motion to deny. Council back in Regular Session at 9:30 p.m.; Klausner asked Council to give him four weeks or the June 16, 2009 Council meeting, to give consideration to traffic improvements and entry on/off the Peakway.

Action: Council Member Schulze made the motion to honor the request to allow applicant to return to the June 16, 2009 Council meeting. Council Member Gossage made the second to the motion. Mayor Weatherly noted the hearing was closed and this item would come back June 16 for a decision. Council Member Sutton did not agree and didn't want to hear it again. Council Member Schulze felt the applicant could go a bit more. Council Member Gossage noted this was not to continue the public hearing, but deliberate. Vote on the motion was 3 in favor and 2 in opposition, with Council Members Sutton and Jensen voting no. Motion carried.

End of Public Hearing # 01 with item to be brought back for decision June 16, 2009 Council meeting.

Presenter: Brendie Vega, Principal Planner

Public Hearing # 02 – 2025 Land Use Plan Amendments

Review: *Planning Board met May 11, 2009 and unanimously recommended approval; staff recommends approval.*

Public Hearing and possible motion regarding amendments to the 2025 Land Use Plan.

Staff presented proposed amendments to the 2025 Land Use Plan:

1. **Request from property owner:** change from "Low Density Residential" to "Office & Institutional" on the property located in the northeast quadrant of Wimberly Road and Jenks Road, to be consistent with the "Office & Institutional" designation across Wimberley Road and compatible with the "Mixed Use: Retail, Office & Institutional, and High Density Residential" designation south of Jenks Road. (PIN #s 0722-68-7241; 0722-78-0191; 0722-78-4193; 0722-78-8252) (item relative to Westford PUD; staff wanted to maintain the area; was on the Wake County Land Use Plan prior to Apex ETJ; area along US64 has no commercial and staff would like to see commercial development).
2. **Request for Parks, Recreation, and Cultural Resources Department:** change from "Park" to "Medium Density Residential" in an area west of the Walden Creek Subdivision to correspond with changes made previously to the Parks, Recreation, Greenways, and Open Space Master Plan Map. (PIN #s 0732-38-7570; 0732-39-7559; 0733-30-7210) (Council Member Sutton questioned removal of parkland from Plan Map; Council Member Jones responded it was not the best place and not consistent with Plan, partly wetlands).
3. **Request from Planning Department:** change from "High Density Residential" to "Medium Density Residential" in the area east of Lake Cameron Apartments and Beaver Creek Townhome Apartments due to topographical and hydrological challenges. (PIN #s 0733-70-6935; 0733-70-9908; 0733-70-6412; 0733-70-9307; 0732-79-8712; 0732-89-3803)
4. **Request for Parks, Recreation, and Cultural Resources Department:** change from "School" to "Park" on the parcel adjacent to Salem Elementary School. This property is currently a park owned separately from the school. (PIN #0742-59-1809)
5. **Request for Parks, Recreation, and Cultural Resources Department:** change to several parcels shown on the Land Use Plan as "Medium Density Residential" to "Park" to be consistent with the Parks, Recreation, Greenways, and Open Space Master Plan Map. (PIN #s 0732-86-8247; 0732-95-2613; 0732-96-7187; 0742-06-4149; 0742-06-3172; 0742-16-2139; 0742-24-8984; 0732-31-4682; 0741-24-3405)



6. Request from property owner: change to the area along the Apex Peakway from North Salem Street to Hillcrest Road from "Medium Density Residential" to "Mixed Use: Office & Institutional and Medium Density Residential" (PIN #s portion of 0742-24-8388; 0742-34-1423; portion of 0742-34-2267; portion of 0742-34-2297; portion of 0742-34-4339; 0742-34-6374; 0742-34-6179; 0742-34-8333; 0742-34-8138) and from "Medium Density Residential" to "Mixed Use: Office & Institutional and Commercial." (PIN #s 0742-44-5861; 0742-44-1830; 0742-44-2686; 0742-44-3438) (changes provide consistency with current zoning at the intersection of the Apex Peakway and North Salem Street as well as provide consistency with the mixed use designation on the east side of North Salem Street).
7. Request for the WCPSS: change from "Medium Density Residential" to "School" on a portion of the parcel purchased by Wake County Public Schools for Scotts Ridge Elementary (E-32), located on Apex Barbecue Road east of the future 540 highway corridor. (Portion of PIN #0731-47-7631)
8. Request from Planning Department: change from "Park" to "Medium Density Residential" on property located on Apex Barbecue Road east of the future Scotts Ridge Elementary School/future adjoining town park. This change is proposed as a "swap" for the school property, which located on a parcel shown for future Medium Density Residential. (PIN #0731-67-6714; portion of PIN #0731-76-1944)
9. Request from Planning Department: change from "School" to "Office & Institutional" on a portion of a parcel located near the intersection of Apex Barbecue Road and S. Salem Street, due to the Wake County Public Schools' decision to purchase property further west on Apex Barbecue Road. (Portion of PIN #0731-76-1944)
10. Request from Planning Department: change from "Mixed Use: Medium and High Density Residential" to "Mixed Use: Office & Institutional and Light Industrial" on a portion of a parcel located along future Jessie Drive, to be consistent with the surrounding 2025 Land Use Plan designation. (Portion of PIN #0751-10-2449)
11. Request from Planning Department and property owner: change from "Mixed Use: Medium and High Density Residential and Commercial" to "Office & Institutional" (PIN #s 0740-95-4868; 0740-95-6817; portion of PIN #0740-95-9547; 0740-95-9472; 0740-95-9208; 0740-95-9186; portion of PIN #0740-95-9065; portion of PIN #0740-94-7918; 0740-95-3877) and "Mixed Use: Office & Institutional & Light Industrial" (PIN #0740-95-5223) (in an area located along East Williams Street north of the future 540 highway corridor, to be consistent with the land use designation on the west side of East Williams Street; Rezone request # 95CZ05).
12. Request from property owner: change from "Medium Density Residential" to "Mixed Use: Commercial, Office & Institutional, and Medium Density Residential" on several parcels at the northeast corner of Old Smithfield Road and NC 55 Bypass (backing up to the future 540 highway corridor) to be consistent with the mixed use designation on the Holly Springs' side of Old Smithfield Road. (PIN #s 0740-64-9391; 0740-74-6347; 0740-74-8420; 0740-84-0331; 0740-84-2133; and portion of PIN #0740-84-2383) (Citizen will come in for rezone and site plan)

Council Member Sutton stated as far as to removal of parkland from Plan Map, he didn't remember it and didn't want to drop it without Council approval, Council Member Jones responded it was a sliver of land, with nothing on it and was a buffer next to the horse farm and amended the master plan.

Mayor Weatherly opened the public hearing at 9:45 p.m.

Natalie Hinton Brooks, 5900 Old Smithfield Road, agrees with the proposed change to amendment # 12; submitted a petition with residents in favor; she is a building owner and wants to zone an assembly hall for profit; father passed and allowed alcohol license to expire and was not grandfathered, and she would like to acquire a license again.

Teresa Kapatrick, 8016 Jenks Road, intersection of Wimberly and Jenks and Mr. Cleary, next door, would like to have this land zoned mixed use or commercial; noted there would be three lanes in front of their houses, and signal and needs to be commercial. She can't sell as residential and is forced to sell as commercial; US64 has no future access.



Khin noted uses on the west side were all O&I and staff likes this; is a good transitional zone, good neighbor, and sees no problems with O&I on Jenks Road. She noted the neighbors (mostly New Hill) that came to the meeting couldn't disagree; noted low density residential was not appropriate. Council Member Jones agreed O&I was an appropriate use, noted these 14 acres would be limited as mixed use and supports O&I. Council Member Jensen agrees with O&I however not with three story buildings as it limits view in neighborhoods, same with # 6. Council Member Gossage commented on the property owners and their concern regarding public input. Khin noted O&I as a good transition with study that was done by Don D'Ambrosi making sense; gave the area land uses and noted typical three stories allowed.

Mayor Weatherly closed the public hearing and referred the matter to Council.

Action: Council Member Gossage made the motion to approve the Land Use Plan amendments as stated with the exception of # 6. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

Presenter: June Cowles, Senior Planner

Public Hearing # 03 - Rezoning Case #09CZ05

Review: *Planning Board met May 11, 2009 and unanimously recommended approval with added use and conditions as noted; staff concurs with proposed uses and conditions, with exception of Condition # 8 – staff recommends revisions noted in staff report.*

Public Hearing and possible motion regarding Rezone # 09CZ05: MCI Enterprises, LLC, applicant seeking rezone from Light Industrial Conditional Use (LI-CU) to Light Industrial Conditional Zoning (LI-CZ); 5.99 acres located at 2121 E. Williams Street (84 Lumber).

Staff presented the planning report which is attached and incorporated as a part of the minutes, for the 84 Lumber and building supply wholesale and rezoned to Light Industrial Conditional Use in 2002. Rezone permitted uses and conditions and applicant proposal are noted on page 2 of the report along with request for additional permitted uses and conditions. Staff concurs with proposed uses and conditions with exception of condition # 8 and recommends it be revised as noted on page 3 of the report under staff analysis. Neighborhood meeting was held and shared concerns are noted. Planning Board recommends approval unanimously with an added use and condition as stated on the agenda action request form.

Mayor Weatherly opened the public hearing at 10:05 p.m.

Pete Cnossen, 221 N. Salem Street, noted in regard to condition # 8, wanted conformity with the existing building; with any new structure following same; improvements have been made to the site.

Mike Mahoney, Former 84 Lumber owner, didn't agree with metal siding; would like to match existing for consistency, and fairness to the property, and is consistent the Planning Board recommendation.

Mayor Weatherly closed the public hearing at 10:10 p.m. and referred the matter to Council.

Action: Council Member Schulze recommended approval of the rezone as submitted with the conditions as stated. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 3



Presenter: Dianne Khin, Director of Planning

Public Hearing # 04 – Annexation # 444 Wake County Board of Education

Public Hearing: Annexation Petition # 444, Wake County Board of Education owner/petitioner, petitioning to annex 32.286 acres into the Town's corporate (proposed Scotts Ridge Elementary School) and located on 6601 Apex Barbecue Road.

Staff presented the petition from Wake County Board of Education, to annex the land for the proposed school and future town park.

Mayor Weatherly opened the public hearing at 10:10 p.m. and with no one addressing this annexation, closed the hearing and referred the matter to Council.

Action: Council Member Jensen made the motion to approve Annexation # 444. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearings

Mayor Weatherly in looking ahead on the agenda, called on Council Member Sutton who asked the Worksession on the budget be moved to the next meeting June 3, 2009 to give due diligence with Manager Radford agreeing.

OLD BUSINESS

Presenter: Bruce Radford, Town Manager

Old Business # 01 – Waste Industries Service Contract

Review: Council at their May 5, 2009 meeting received verbal proposal from Waste Industries Brent Kirchhoff; Council asked he bring a written proposal for their consideration at this meeting.

Waste Industries Brent Kirchhoff, Division Manager, presented a proposal for Waste Industries Service contract, (attached), asking for a five year extension of the service agreement due to expire June 30, 2010, and proposes no rate increase this year but would look at a fee adjustment in 2010 based in keeping with the CPI, and offer to customers the residential 65 gallon cart or 18 gallon bin and would contact customers regarding same, with delivery beginning August 1. Noted the CPI based on fuel rise and major impact on them. Manager Radford stated concerns regarding definable, CPI and agreed regular CPI was customary; stated Waste Industries has provided excellent service and provision of carts or bins would be most appreciative by all folks, and the proposed rate increase would go away; recommends extending the contract for 5 years.

Action: Council Member Gossage made the motion to approve the proposal as recommended by the Manager and extension of the contract for 5 years as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Old Business #01



Old Business continued

Presenter: Marty Mitchell, Director of Facilities and Fleet Services

Old Business # 02 - Public Works Expansion Project

Review: *Public Works Feasibility Study presented to Council during 2009 Retreat and approved in CIP; funding is in place for completion of Phase 1 and includes Schematic Design, Design Development, and Construction documents.*

Mitchell recommended approval of the design contract with Smith Sinnett Associates for Phase 1 of Public Works Expansion Project for \$268,025.80. Council Member Sutton asked that when the design starts, he wanted them to show it to Council right away and not waiting to the end; agreed it would be shown at the end of the schematics. Council Member Jones expressed concern with the Agreement of all phases and project closure, and referenced to construction start time, noted the length of time between the agreement and construction start, and would like to see an agreement proposed through the construction document phase. John Hitch, AIA with Smith Sinnett Architecture didn't think it needed to be structured that way and noted Phase 2 doesn't become active without authorization from Town to proceed, noting the 30 month time frame within the document. Council Member Jones noted the cost increase "compensation" and concern was for protection of both, and proposed deletion of 2.5 and 2.6 regarding bidding or negotiation phase and construction phase, administration of the construction contract. Attorney Fordham stated this was a policy decision and up to Council. Council Member Jensen asked if during the 30 months, there was need for money somewhere else, then what, with Council Member Jones adding what if they don't agree with the CD's.

Action: Council Member Jones made the motion to accept the agreement as presented. Council Member Sutton 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

Presenter: Lee Smiley, Director of Finance

New Business # 01 – Town of Apex - General Obligation Bonds

Mayor Weatherly introduced the following Bond information for Council's consideration. Director of Finance recommended approval of Resolution Authorizing Sale of \$6.5 million of General Obligation Bonds for Streets and sale of Refunding Bonds (Apex Peakway); corrected version with minor changes were noted and with the correction in place the Town is noted under the small issuer category and allows for a better interest rate. There are four resolutions for adoption and the order (attached). Documents are available in Town Clerk's office regarding same.

Action: Council Member Sutton made the motion to adopt the resolutions as presented and recommended. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business # 01



New Business continued

Presenter: Hank Fordham, Town Attorney

New Business # 02 – Developer/Reimbursement Agreement

Attorney Fordham presented for consideration a developer/reimbursement agreement related to the Miller Family Limited Partnership V's construction of improvements to Kelly Road and Evening Star Drive at and north and south of their intersection. Under the agreement, the Town would pay the cost of the off-site work to connect the existing sidewalk and street adjacent to Abbington Subdivision for better access, and Town would pay \$5000 towards the on-site work and related to a site plan and day-care; this is a cost savings for both off-site and on-site to be done as one project. Kent Jackson Director of Construction Management explained the contribution by the Town towards the onsite work as a small portion of actual costs to complete the road improvements and justified; engineer's estimated estimate \$50,000.

Action: Council Member Schulze made the motion to approve the agreement as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business

WORKSESSION

Presenter: Bruce Radford, Town Manager

Worksession item # 01 – Proposed FY09/10 Budget

Worksession regarding the FY2009-10 Annual Budget was deferred to the June 2, 2009 Council meeting.

Worksession continued to June 2, 2009 Council meeting

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 10:30 p.m. for discussion regarding Personnel.

Action: Council Member Gossage 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 of Closed Session were recorded separately. **Action:** Council Member Gossage made the motion to move into Regular Session at 10:42 p.m. 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.

Action: Council Member Gossage made the motion to adjourn at 10:43 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the May19, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their June 2, 2009 meeting.

Georgia A. Evangelist
Town Clerk

Keith W. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes of June 2, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 2, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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

Mayor Weatherly recognized the Lady Cougars Lacrosse Team by presenting a Proclamation and a photograph of the team, recognizing their third straight championship for Apex in five years of Varsity competition. Apex High School Coach: Jessica Pinneo.

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 to approve the following items.

Action: Council Member Gossage made the motion to consider # 7 separately (New Business). Council Member Jones made the second to the motion. Motion carried unanimously.

Action: Council Member Jones made the motion to approve the consent agenda 1-6. Council Member Gossage made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of May 19, 2009 Council meeting.
2. Minutes and General Account of May 19, 2009 Council Closed Session (separate cover).
3. Minutes and General Account of May 5, 2009 Finance Committee meeting.
4. Budget Ordinance Amendment for replacement of booster pump at Community Center.
5. Council Statement and Ordinance for Rezone #09CZ05, MCI Enterprises, LLC, petitioner, for property located at 2121 E. Williams Street approved by Council May 19, 2009.
6. Set Public Hearing June 16, 2009: Rezone # 09CZ06: Bunn Olive, 10.65 acres.
7. Ordinance # 09-0602-03: Section 20-150 Prohibiting Parking on the East side of Town Side Drive.

End of Consent Agenda

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda was set prior to taking action on the following items with amendments: Consent Agenda #7 (New Business); Mayor Weatherly asked to add discussion regarding NCDOT US64 Corridor Study ; Attorney Fordham asked to add Closed Session items related to pending litigation, eminent domain, and to receive legal advice; and Mayor Weatherly asked to report on the Town of Apex GO Debt Rating.

Action: Council Member Gossage made the motion to set the regular meeting agenda with amendments as stated. Council Member Schulze made the second to the motion. Motion carried unanimously.

Presenter: Keith Weatherly

ADD-ON: NCDOT US64 Corridor Study

Mayor Weatherly noted he had been contacted by citizens regarding NC DOT US64 Corridor Study to develop a plan for the future of US64 and NC49 from Charlotte and Statesville to Raleigh. The plan will assess mobility and connectivity needs through the central portion of the state, foster economic growth and development, relieve congestion on I-40 and I-85, and optimize transportation funding. Mayor Weatherly noted the disruption and restrictive movements from the proposed project, leaving Apex with no options and only partial control access on the proposed freeway. Stated Apex should be proactive in the process.

A resolution had been adopted by the Town Council in June 2008 to support the adopted Apex Transportation Plan in the NCDOT US64 Phase 2A Study. The Town participated in the NCDOT US 64 Phase 1 Study process and has consistently advocated a freeway section with full control of access on US 64 west of I-540 only, with partial control of access on US 64 east of I-540 as included in the Apex Transportation Plan; and that NCDOT adopt policies in the US 64 Phase 2A study wholly consistent with the Apex Transportation Plan.

David Wasserman, NCDOT Project Manager for the study stated NCDOT's intent to hold another project meeting for public input to address comments and concerns, to be announced and notification by emails, public notice through utility billing; previous meetings were held in May 08 and April 09; most concerns were relative to the US1 to Laura Duncan Road corridor; currently, there is no funding for the proposed plan. Discussion followed regarding expressway portions of the planned project, restrictive movements along the proposed corridor route; Apex positions relative to the design and its impacts, with NCDOT having the adopted 2008 resolution. Resident asked for separate notification, verification of email addresses, and further addressed concerns/impacts on the corridor residents related to the future plan. End

PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

Public Hearing # 01 – Unified Development Ordinance Amendments

Review: *Planning Board met May 11, 2009 and unanimously recommended approval; staff recommends approval.*

Public notice advertised on the Town of Apex website.

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

Amendment requested by business owner and Town Attorney:

1. Amend 4.2.2 *Use Table* to add Church as a permitted use to Planned Commercial (PC), Light Industrial (LI) and Major Employment Center (MEC) Zoning Districts.
2. Amend 4.2.2 *Use Table* to remove *Entertainment, Indoor* from B2-Downtown Business District.
3. Amend Sections 4.2.2 *Use Table* and 4.4.5.G.14 to add Supplemental Standards to Theaters in B2-Downtown Business District.

Requested by Zoning Compliance:

1. Amend Section 12.2 *Terms Defined* to amend definition of Produce Stand to clarify that structures shall be open air structures only.



Public Hearing # 01 continued

Council Member Sutton asked for clarification of the amendments. Mayor Weatherly opened the public hearing at 7:32 p.m. and with one addressing the proposed amendments, closed the public hearing and referred the matter to Council.

Action: Council Member Gossage made the motion to approve the amendments to the UDO as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing

OLD BUSINESS

Presenter: Mike Couch, Electric Superintendent

Old Business # 01- Electric Substation

Electric Superintendent Couch requested approval of award of bid for substation construction labor contract for Mt. Zion Road project to lowest responsible bidder Lee Electric Construction Company with a base bid of \$668,289, with a completion date of 140 days; an alternate bid was less desirable at \$651,419. Total project budget \$7 million; Engineer's estimate for the project: \$693,850. Discussion followed regarding contingency for the overall project (10%); responsibility of the bidder should time exceed the 140 days; bid tabulation attached.

Action: Council Member Jones made the motion to approve the award of bid to Lee Electric Construction Company as the lowest responsible bidder. Council Member Gossage 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

Add-on: Consent Agenda #7 – No Parking Ordinance

Mayor Weatherly presented an Ordinance Amendment to Section 20-150(24) of the Town Code relative to prohibiting parking on the east side of Town Side Drive. Council Member Gossage asked the origin of this proposed amendment. Manager Radford responded St. Mary Magdalene School had numerous complaints regarding children cutting through cars when coming and leaving school and was encouraged by the school to consider this amendment to the ordinance, and the proposed is con-current with what's being enforced on the East side.

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

End of Consent item Add-on to New Business



New Business continued

Presenter: Marty Mitchell Director of Facilities and Fleet Services
New Business # 01 – Furniture/Furnishings for Town Facilities

Director of Facilities and Fleet Services Mitchell recommended award of bid for furniture and furnishings for Public Safety Station # 4 and Police Station; bid opening held Friday, May 29, 2009 at 3:00 p.m.; bid tabulation and bid award attached. Discussion followed regarding bids being broken down in lots and by using multiple vendors, and noted the ultimate cost savings of \$50,000. Barbara Ratchford, Director of Interior Design for Stewart, Cooper, Newell Architects was present and recommended the same.

Action: Council Member Jones made the motion to award the bid to the multiple vendors as recommended. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 01

Presenter: Mark Haraway, Fire Chief

New Business # 02 – Acquisition of Tanker

Fire Chief Haraway asked Council to allow him to proceed with the acquisition of a 1991 E-One 15,000 gallon Tanker from Fairview FD and would replace the existing Reserve Engine 5 Spartan/EEI 1993, while enhancing the department's water hauling capabilities in the ETJ and rural fire district. Purchase price \$25,000 (original cost: \$132,316 and today would cost \$264,000); 16,630 miles. Town would sell town's existing reserve engine, appraised value of the Town's engine, by C.W. Williams for \$25,000 and would recoup money spent on the tanker. Discussion led Manager Radford to report the primary use of this tanker would primarily be for the New Hill community where there is limited water supply and a good opportunity for the Town.

Action: Council Member Gossage made the motion to authorize the Fire Chief and the Manager to proceed with the acquisition of the tanker from Fairview FD and sell of the town's reserve engine as requested. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 02

Presenter: Bruce Radford, Town Manager

New Business # 03 – FY 2009/10 Budget Ordinance

Manager Radford presented the FY 2009-10 Budget Ordinance (consistent with Manager's recommended budget) for scheduled consideration by the Council and a vote for adoption on the June 16, 2009 meeting; ordinance presentation at this meeting and ordinance presentation at the June 16 meeting would be "a second read" of the ordinance, and needed so if there were not a 2/3's majority of the Council present or voting in the affirmative on June 16, then a simple majority vote would be sufficient; this would avoid last year's need for a special meeting, and further anticipation that full Council would not be at the June 16 meeting. Revisions will be made to the Ordinance reflecting any changes as a result from the budget Worksession and public hearing that will follow.

Action: Council Member Sutton made the motion to set the ordinance for consideration at the June 16, 2009 Council meeting as requested by the Manager. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business #03

Presenter: Keith Weatherly

Report: Town of Apex GO Debt Rating

Standard & Poor's press release states Apex's strong economic base, history of healthy finances elevated general obligation debt rating to "AAA" from "AA+", supported by good management practices. Director of Finance Lee Smiley reported this was the highest rating the Town can received and are now in a select group in the state of North Carolina with Apex being the smallest municipality in this group.

End of Report

**WORKSESSION & PUBLIC HEARING
PROPOSED FY2009/10 BUDGET**

Presenter: Bruce Radford, Town Manager

Worksession: Proposed FY09/10 Budget

Manager Radford presented an overview and answered questions regarding the proposed FY09-10 Annual Budget during the Worksession (for full details refer to the Budget message).

General Fund Revenue reflects the Town's tax rate will remain at \$0.34 per \$100 valuation with a tax base of \$4,230,879,637, while noting decline in projected revenues, specific reduction of sales tax and franchise tax; noted any reduction in revenue detrimental to this budget, with extraordinary measures having been taken to present a balanced operating budget offering acceptable service levels.

Summary of personnel requests and recommendations are listed in the budget message with only a recommended 0.25 for an existing Sr. Program Coordinator position (30 hours to 40 hours per week). With economic conditions such as they are, there has been no change in the consumer price index, and thus impact to the work force follows: salaries are effectively frozen; no cost of living adjustment; a diminished merit pay program (expanded on the value of the merit program); and the offer for a potential lump sum of \$375 for each employee with a qualifying performance rating could be awarded or \$105,000. Personnel Committee met with three Council Members present, and recommended proposed expanded position in P&R be re-examined at a later date and that potential \$375 lump sum merit award be eliminated; with Council's direction, should the lump sum merit award be eliminated, the Finance Director will transfer the funds that were included for these purposes out of the proposed budget for every department. Reported revenue projections do not appear to be any better in the next fiscal year. Town currently has no plans to eliminating any positions.

Decline in revenue impact to Capital expenses; detail of capital spending included and not included is noted. New initiatives: 1) EMS Division to the Fire Department (planned merger, expected to be self-funded with specific EMS generated revenues – 10 positions anticipated in August 09); 2) Additional debt service payment for extension of the Apex Peakway and Bridge Project to be constructed between North Salem Street and Laura Duncan Road (bond issue planned for June 2009; anticipate better price for construction and promise on completion; discussion on Powell Bill funding and possibly forego of street resurfacing and street maintenance, however, street conditions would not allow such, and proposed budget includes \$400,000 in Powell Bill funds; further discussion during the breakdown of this item, noted state revenues were further dropping and the money it takes to maintain streets may not be available. Attorney Fordham gave a brief update on the CSX agreement for the north Peakway project and related NCDOT south CSX project. Manager Radford expanded on the process and project funding. Water, Sewer and Electric Fund reflect capital spending has been significantly reduced from the previous years.

Manager Radford gave a breakdown for each department (see proposed budget) with discussion evolving around:

1) Dues/Subscriptions: \$43,200; took a closer look at the value of each item within the line item (ask to see a breakdown). 2) Community Center operations to remain open on Sunday: discuss existing employees to work the hours of operation, with Director of PR&CR Brown commenting on the subject and preference of Manager to hire staff vs. utilizing more experienced employees already employed by the town; estimated cost \$7000+ (staff will visit costs); sentiment of the Council was for the Community Center to be open on Sundays. 3) Ask that a TRACS representative give an update on services and fees.

End of Worksession



Presenter: Keith Weatherly, Mayor

Public Hearing: Proposed FY09-10 Budget

Mayor Weatherly opened the public hearing at 9:00 p.m. regarding proposed FY09-10 Budget. Budget Ordinance is scheduled for adoption June 16, 2009.

Brenda Stein, Apex Chamber of Commerce, seeks Council's approval for the Chamber request of \$83,200 and as recommended in the proposed budget, with 2/3 of the funds used for salary of Economic Development Director, 10% HR costs, relocation packages, guides, education initiatives, and leadership.

Lynn Pearce, Executive Director of Kids Voting, seeks Council's approval for the Kids Voting request for \$1700 and as recommended in the proposed budget, and noted 7300 kids voted in 2008 out of 14,000 (goal is for 30,000 kids to vote in this year's election) with all schools participating, and encourages more, expanding on the full time organization, the programs offered, their goals and objectives. Council is invited to October 17, 2009 Education Forum at the NC Museum of History, where students will learn more about local government process, why it's important and daily responsibilities of each office.

Mayor Weatherly closed the public hearing at 9:12 p.m. and expressed appreciation to the Manager for the extraordinary work during these difficult economic circumstances presenting a proposed balanced budget with no additional tax increase to the Town's citizens. Manager Radford added that any additional requests or changes to the proposed budget will reduce the proposed \$105,000 in the personnel section and will be used as General Fund contingency and only accessible with Council's permission.

End of Public Hearing

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 9:15 p.m. to discuss and receive legal advice on four items: 1) pending eminent domain action Re: Smiths; 2) litigation /eminent domain; 3) litigation/Mercy's Trust, and 4) receive legal advice/Progress Energy.

Action: Council Member Schulze made the motion to move into Closed Session for the reasons stated. 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 back into Regular Session for the reasons stated. Council Member Schulze 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 authorizing the Manager to sign a Progress Energy Encroachment Agreement (Garmon Property). Council Member Gossage made the second to the motion. Motion carried unanimously.

Action: Council Member Jones made the motion to approve an encroachment agreement with Progress Energy. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Regular Session



ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn.

Action: Council Member Schulze made the motion to adjourn at 10:04 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the June 2, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their June 16, 2009 meeting.

Georgia A. Conquist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the June 16, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 16, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Chad Barefoot, Southeastern Baptist Theological Seminary. 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 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 to approve 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 and General Account of June 2, 2009 Council meeting.
2. Minutes and General Account of June 2, 2009 Council Closed Session (separate cover).
3. Transfer Lot 65 Plot B Apex Cemetery from Gerald J. & Joana P. Lehman, to Sandra Brunson, Pulaski, Va.
4. Resolution No. 09-0616- 20: Wake County Revenue Director to collect taxes on behalf of the Town of Apex.
5. Budget Ordinance Amendment and Project Ordinance Amendments for fire truck purchase, downtown economic development, Health Insurance Fund revenues and expenses, furniture for new buildings, and NCDOT grants for street projects.
6. Records and Retention Schedule published by NC Department of Cultural Resources giving consent for municipalities to dispose of public records according to G.S.§121-5 and G.S.§132-3.
7. Set Public Hearing date of July 21, 2009 for various Unified Development Ordinance amendments as requested by Tom Hendrickson for Veridea.
8. Resolution No. 09-0616- 21: Approve Receipt and Restriction of Monies Designated in Cy Pres Fund Created in EQ Litigation Pending in the United States District Court for the Eastern District of N.C.
9. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in their regular session on June 1, 2009.
10. 5-Year extension of curbside solid waste, curbside recycling, and commercial solid waste contracts with Waste Industries authorized by Council May 19, 2009.
11. Correction on Goodworth Commons Site Plan at Pinnacle Park; located at the corner of Burma Drive and Goodworth Drive.

End of Consent Agenda

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda was set prior to taking action on the following items with amendments:

Action: Council Member Jones made the motion to amend the agenda to include: David Wasserman NCDOT request amendment to the Agreement regarding US64 Phase 2A Study by NCDOT. Council Member Gossage made the second to the motion. Council Member Sutton made the second to the motion. Motion carried unanimously.

Action: Council Member Schulze made the motion to amend the agenda to include: request by Town Attorney for Closed Session item relative to potential litigation. Council Member Jones made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

Public Hearing # 01 – Rezone # 09CZ 06

Review: *Planning Board met June 8, 2009 and unanimously recommends approval with conditions; staff recommends approval with conditions as proposed.*

Public hearing and possible motion regarding Rezoning Case #09CZ06 Cecil Bunn Olive, Jones & Crossen Engineering, PLLC, applicant, seeking to rezone from Rural Residential (RR) to Medium Density Conditional Zoning (MD-CZ) for property located at 2504 Whistling Quail Run, containing 10.65 acres. Director of Planning Dianne Khin informed that the Applicant had requested this hearing be continued to July 21, 2009 Council Meeting to allow for finalizing bank financing.

Action: Council Member Gossage made the motion to continue the public hearing to July 21, 2009. Council Member Jones made the second to the motion. Motion carried unanimously.

Public Hearing continued to July 21, 2009

OLD BUSINESS

Presenter: Lauren Simmons, Planner

Old Business # 01 - Rezoning Case #09CZ04 and Major Site Plan for Peakway Physicians Park

Review: *Planning Board met April 13, 2009 and recommended approval with conditions recommended by staff; staff recommended approval with conditions; Town Council met April 21, 2009 and opened the public hearing and continued the public hearing to May 5, 2009; Applicant requested continuation of the item to May 19, 2009 Town Council meeting to allow for a neighborhood meeting May 6, 2009; Council approved the Applicant's request for continuation of public hearing to May 19 meeting; Council received citizen input during the public hearing, and closed the public hearing; Applicant requested Council defer action until June 16, 2009 to allow him to consider traffic improvements and entry on/off the Peakway .*

Possible motion regarding Rezone # 09CZ04, from Office & Institutional Conditional Use (O&I-CU) to Neighborhood Business (B1-CZ) and Major Site Plan for Peakway Physicians Park; Dan Klausner & Jeff Crisp, applicants; site location at the corner of Apex Peakway and Olive Chapel Road.

Lauren Simmons, Planner informed that the applicant has proposed the following changes since the public hearing held May 19. 1) Northern entrance is being converted to a right-in and right-out. 2) Uses of retail sales general, bookstore, personal service, tailor shop, and dry cleaner shall not be stand-alone uses, but will be tenants in a multi-story building that includes office uses; additionally, no retail sales general use will be allowed on the Phase II parcel fronting Olive Chapel Road; staff and applicant are in agreement with the proposed changes; applicant has worked with staff to resolve all issues.



Old Business # 01 Continued

Planning Board recommended approval at their April 14, 2009 meeting; Staff recommends approval of the rezone and site plan with condition that the lighting plan be approved at the Construction Plan Phase (staff report attached and incorporated as a part of the minutes).

Dan Klausner presented the attached handout commenting on the uses and conditions (allowed, eliminated, and additional restrictions; building heights and grade levels; landscape plan, line of sight and existing buffers to the surrounding areas, noting the requirement to align entrances on the original layout and with Jeff Crisp commenting on the improved conditions, an effort to address residents and Council's concerns regarding cut throughs and for Peakway (northern entrance, right-in and right-out with concrete median with dedicated left turn lane into site).

Klausner in response to Council Member Sutton's request to limit the hours of lighting stated it could be done, however his foremost concern was safety in that an unlit lot at the back of a building would cause concern for the townhomes, and had talked about placing security cameras. Council Member Jones agreed. Staff noted the UDO would require shielded lighting.

Action: Council Member Schulze made the motion to approve the rezone and site plan with the conditions as noted by staff and agreed to by applicant. Council Member Gossage made the second to the motion. Council Member Schulze expressed concern earlier on regarding the front parcel; all issues have been met, and he sees this as a good project. Council Member Gossage had earlier addressed issues with traffic, buffers, stormwater, lighting, and with the right-in and right-out and designated left turn lane to help eliminate cut through traffic, was glad to see this. Mayor Weatherly noted applicant had worked with staff to mitigate all concerns. 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.

Marie Vaughn, Cameron Park resident preferred larger recycling bins (65 gallon recycle bin service begins July 1); secondly she does not get cell phone reception for Verizon service (Verizon Tower is located on the larger town water tank).

End of Public Forum

NEW BUSINESS**New Business 1A – Add-on**

David Wasserman NCDOT requested an amendment to the Supplemental Agreement of October 2007, for Project: R-4469 US64 Phase 2A Study by NCDOT to extend the study completion date from December 31, 2008 to December 31, 2009; Council approved the original agreement of 2007. There are no additional costs associated with the amendment. Public meeting regarding the study will be held July 16, 2009 at Green Hope School, 6:30 p.m. to 9:00 p.m. Council agreed for the need of the study. Executed contracts must be submitted to Wake County by June 30, 2009.

Action: Council Member Gossage made the motion to approve the amendment to the Supplemental Agreement. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business 1A



New Business Continued

Presenter: Fire Chief Mark Haraway

New Business # 01 – Code Amendment (Ordinance No. 09-0616-04)

Fire Chief Mark Haraway presented and recommended a proposed amendment Chapter 9 of Town Code to include Article V. Standard for use of combustible landscape material (pine straw) within 10 feet of a building with combustible exterior construction, evolving after the extensive damage to a home and six townhomes in recent fires that span from discarded smoking materials in pine straw used for landscape. Group mailings have been sent to parties responsible for overseeing multiple residential units and have responded favorably for such ordinance; Detached Single Family Homes are exempt from the amendment. Annual code enforcement will apply to exterior spaces.

Action: Council Member Jones made the motion to approve the amendment as proposed, noting his employer had made this decision two years ago, and reported no fires since. Council Member Gossage made the second to the motion, commending the Fire Chief, asking if other mulch, and pine bark would still be allowed (yes), and exception of detached single family homes (yes). Motion carried unanimously.

End of New Business # 01

Presenter: Bruce Radford, Town Manager

New Business # 02 – FY 2009/10 Budget Ordinance

Review: Budget Worksession and Public hearing was held June 2, 2009; Budget Ordinance was presented to Council as "first read"; Budget Ordinance presentation is a "second read" and a simple majority vote by Council would be sufficient.

Manager Radford presented the FY 2009-10 Annual Budget Ordinance with the Worksession and public hearing held June 2, 2009. Noted technical corrections made to the contributions to Downtown Merchants from \$5,000 to \$10,000. Noted the Community Center will be open Sundays 1-6 p.m. at a cost of \$8,000 annually. Noted a savings of \$48,000 in Liability Insurance bids; the two sums will be taken from this amount and leaves the balance in contingency with Council having government over same (\$35,000). Comments were made concerning Dues and Subscriptions: TJCOG \$13,000 is money well spent and keeps us a seat at the table regarding triangle issues at hand; same with Metropolitan Coalition with Apex being the smaller town at the table; noted the town is insured by the NC League of Municipalities; Council would like to see Triangle Business Journal added to the Subscriptions.

Don Willis, Transportation Manager, Wake County Human Services, spoke on behalf of the Rural Public Program, known as TRACS, with town's partnering and included in the budget, and with other Wake County Towns, and with NCDOT grant monies that support the program; noted this keeps people independent with some 40 riders over the last 60 days going to doctors and medical visits, shopping, working, and making connections to the community; family and others would have to be responsible if it were not for this program; shared costs comparisons, at an average cost of \$2.00 per mile from Apex to Raleigh. Council Member Schulze would like the statistics emailed to him.

Mayor Weatherly noted the Manager's recognition of employees for their performance by having offered in the proposed budget to each employee \$375 or total of \$104,000; Personnel Committee met and did not recommend the Manager's proposal; Mayor Weatherly noted he had continued to think of the conversations and proposed an average of 2.5% merit money in all funds. Eleanor Green, HR Director explained the current merit pay system managed by department heads, scoring employees performance based on four categories: exceptional, commendable, acceptable, and unacceptable, with 98% of all employees receiving some type increase in salary. Categories and performance measures were discussed, with a desire from Council to no longer reward employees with merit pay if their performance fell under the category of acceptable, challenging employees to excel in commendable or exceptional categories. Mayor Weatherly noted the town's financial reserves and noted to fund the merit program would be without a tax increase to the town's citizens. Manager Radford noted an average 2.5% merit program would require an additional \$93,000 in General Fund, with Water, Sewer, and Electric, absorbing and without transfer of funds.



New Business # 2 continued

Mayor Weatherly continued to recognize the excellent service given by the Town's employees, and for willingness to shift in necessary work force duties, noting this an excellent place to work and that the Manager is responsible to reward employees accordingly and not having to borrow money, or raise taxes, or cut services, and noted it an obligation to the employees that excel and exemplify themselves in regards to merit performance. Green noted it not unique that most employees receive some type reward.

Council Member Jones agreed, noting the town's employees were the lowest per capita of number of employees of any of the area towns, and still at the lower end of the spectrum, with Council Member Sutton adding did have, that there were 19 employees added this year, and Council Member Jones responding it may be. Mayor Weatherly noted all additional employees were in public safety. Council Member Jones continued that the town employees do a good job and he doesn't hear complaints from the citizens about performance in various departments; noted the Town has money in the bank and received AAA rating for managing its money well, and is a good thing and agreed 2.5% is a small amount to transfer to make this 2 or 2.5% range happen; he's read in the newspaper that other local town's are considering and some already passed budgets that have small merit, and some even have COLA, however, does not agree with COLA, and felt it needs to be based on performance.

Council Member Gossage expressed the Personnel Committee had discussed in great length these topics, and the decision was not made lightly and was a unanimous decision that came from the committee; ultimately their thinking was that we are in recession and need to be conservative with tax dollars right now and wanted Council to understand they didn't want to be in a position a year from now, if the economy were to worsen, you're talking in a range of 100 or 200 upward to a quarter of a million dollars, depending on the numbers you look at, going to 3, 4, 5, or 6 employees and having to say, you don't have a job anymore, but aren't you glad we gave everyone \$375 pre-taxed; he knows \$375 is not a lot of money but when you add it all up, six figures is a good sum of money; he didn't want to have to be placed in a position of cutting people and saying don't you feel good cause everyone got a bonus last year. That was one of their motivators and the other being accountable to the citizens; not wanting to go to them and say, we understand you are a teacher and you are not getting a raise this year or you are not getting your contract renewed, or your spouse got their pay cut or was laid off, but we gave our employees bonuses with your tax dollars. It was the sense that this is the year to not spend but tighten our belt.

Mayor Weatherly added the town was very fortunate to be in the situation it was in, with many municipalities having raised taxes and having had layoffs, however, shouldn't judge by the fact that some of the other municipalities and private sectors were having to do otherwise. Council Member Gossage added our taxpayers work for those private companies. Mayor Weatherly noted the town was not raising their taxes and this conversation would not be occurring if their taxes were being raised.

Council Member Schulze was under the impression there are funds to cover this and that this was a small percentage of General Fund; his philosophy was that we want to keep valuable employees, and it's hard to replace them; town employees are the face of the town and are the ones that interact with citizens and he consistently hears favorable things about that interaction, so he thinks it's important to retain those employees and make sure they are happy and their morale is good, and thinks this goes a long way, wishing he could do more, but thinks it's a step in the right direction, that it's important to do this, and should do it.

Mayor Weatherly turned to Manager Radford, and stated that his fiduciary responsibility was not only to the citizens but to give Council guidance, asking if they take the human element away, our hard working employees, can we afford this merit reward, with Manager Radford responding yes sir, without question. As far as his fiduciary responsibilities to the Town he feels it has been demonstrated in the past few weeks, with Mayor Weatherly adding with the initial budget, with Council Member Sutton noting the original recommendation was for \$375. Manager Radford continued that's not to say he's opposed or unable to afford this, but would take the Council's wishes to heart, and could make this work as we do with many other items and as has been done this evening.



New Business # 2 continued

Council Member Sutton stated he had attended the Personnel Committee meeting and wishes Council Member Jensen was here, that the committee had done a thorough job; had good input from staff and Manager, and had considered it at length, and was a tough decision to make on their part, and had not taken the issue lightly. Had held a budget workshop and public hearing and now talking an additional \$263,000; the \$375 was the Manager's recommendation and he personally would be willing to compromise and put that back in; beyond that, he thinks with the economic environment the way it is, he would agree completely with Council Member Gossage, it would be flaunting what others in the community are facing, like we are immune to what's going on; we are different but he doesn't think we are when taxpayers are getting laid off; he saw the charts in the newspaper, and the majority of the towns are not giving pay raises, none are adding the number of people we are adding to the payroll. We do have money in the bank because the town elected to pay for the capital projects police station and fire station, and elected to borrow the money because we could get it at a favorable rate due to our bond rating and was a conscientious decision; if we had paid cash, we would not have that kind of money in the bank. He would be willing to compromise to put the \$375 back in as a gesture to the employees that we do appreciate them, and they are good employees and we do recognize what the tax payers in this community are going through, and to take their tax money when they are getting laid off, taking cuts, and we are giving pay raises, he doesn't like that.

Mayor Weatherly's response was it was analogous to take the same amount of tax money, we are not raising taxes, and will put back in a savings account from reserve; we are not going to ask for more revenue to fund this. Council Member Sutton stated his goal personally was to preserve the jobs that we have, and not cut jobs, noting jobs are being cut by the State and in other towns. He stated the Manager had met his expectations when he preserved all jobs and thinks that is more important at this time, that his budget did that for him. Mayor Weatherly responded, all agree on that.

Council Member Gossage stated he was looking beyond this fiscal year and didn't want to be the Council Member a year from now saying you do not have a job anymore because we were short sighted when we made sure we gave a bonus last year, but spent that money for your job. Council Member Sutton stated he hasn't poled the employees, but the ones he has talked to are pleased to not have had their jobs cuts, and their fellow employees, which was their primary concern.

Council Member Jones agreed we are in hard times; however over the ten years past were not hard times, with employees having received average COLA and merit increases, asking the average over ten years. Green's response was employees have received an average 3% COLA based on CPI and average 4% merit; this year couldn't justify COLA even if the town was flushed with money, they would not be asking for money as the CPI was flat; in the good years they have seen 7% total. Mayor Weatherly added 7% and then 0% this year was a steep bump, and to do that would call for a tax increase. Green considered 7% generous but not totally out of line with what other cities are doing, thinking this is very generous and all would appreciate it and has helped in retention, and better than most in terms of retention; has had career movement because the town has grown over the years and especially in public safety and didn't feel stagnant in those jobs. Council Member Sutton noted there's still possibility for promotions and Personnel Committee had made that clear. Council Member Gossage noted those are policies the Personnel Committee sets, the ability to provide merit increases every year. Green noted merit has always been through the Personnel Committee and when the merit matrix was switched, they did look at that and improved how the increases were done. Manager Radford noted each year those recommendations are brought back to Council.

Mayor Weatherly stated this had been a concern of his, since their last discussion, and referred the matter to Council, a motion or no motion.



New Business # 2 continued

Action: Council Member Schulze made the motion to fund the increase for an average 2.5% merit program for a total cost of \$197,951 General Fund (adopts Budget Ordinance Amendment Number 1 for \$93,000). Council Member Jones made the second to the motion, noting there are lots of psychological and behavioral aspects to the performance measurement process and the key is to have an average, with the Manager being responsible for the average of salary dollars and the process that has to be in place to make that happen. Green noted town was successful in doing this, but last year came in under 4% average. Vote on the amendment: Council Member Schulze and Council Member Jones voted in favor of the amendment. Council Member Gossage and Council Member Sutton voted in opposition to the amendment. With the vote being 2 in favor and 2 opposed, Mayor Weatherly voted in favor of the increase for 2.5 % average merit; the amendment was adopted 3 in favor and 2 opposed.

Mayor Weatherly called for a motion on the Budget Ordinance as amended by the Manager, and expressed appreciation for all the effort in putting the budget together.

Action: Council Member Sutton made the motion to adopt the Annual Budget Ordinance for 2009 and 2010 as proposed in the agenda notebook, and at the public hearing and the work session. Council Member Jones made the second to the motion. Motion carried unanimously. The Budget Ordinance was adopted with the amendment, also adopts the Development Fee Schedule with no changes in fees, and with the minor changes in wording for clarity.

End of New Business # 2

Presenter: Bruce Radford, Town Manager

New Business # 03 – Cancellation of Council Meeting

Manager Radford requested Council consider the cancellation of the Council meeting of July 7, 2009, 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 7, 2009 meeting.

Action: Council Member Sutton made the motion to cancel the July 7, 2009 meeting as requested. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business

WORKSESSION

There were no Worksession items for discussion.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss pending Litigation at 8:30 p.m.

Action: Council Member Schulze made the motion to move into Closed Session for the reason stated. Council Member Jones 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 into Regular Session at 9:51 p.m. 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.

Action: Council Member Schulze made the motion to adjourn at 9:52 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the June 16, 2009 meeting of the Apex Town Council was submitted by the Town Clerk for Town Council approval at their July 21, 2009 meeting.

Georgia A. Evangelist
Town Clerk

Phil A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA
Minutes of the July 21, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, July 21, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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 to approve 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 and General Account of June 16, 2009 Council meeting.
2. Minutes and General Account of June 16, 2009 Closed Session.
3. Transfer/issue new deeds in Apex Town Cemetery: Lot 68: Plot(s) A, B, C, D, E, F, G and H, John C. Clark, 1025 Ivy Lane, Cary, NC, solely in his name from his late wife's estate Brenda P. Clark.
4. Transfer/issue new deeds in Apex Town Cemetery: Lot 69: Plot(s) A, B, C and D John C. Clark, 1025 Ivy Lane to Joann Sanders, 3421 Langston Circle, Apex, NC 27539.
5. Transfer/issue new deeds in Apex Town Cemetery: Lot 69: Plot(s) E and F John C. Clark, 1025 Ivy Lane to Marijane Burns, 1213 Imperial Drive, Cary, NC 27511.
6. Project Ordinance Amendment for Safe Routes to School grant \$250,000 will be used to construct greenway, sidewalk, and crosswalk improvements to provide safer pedestrian access to Olive Chapel Elementary School.
7. Statement of Apex Town Council and Ordinance for Rezoning #09CZ04, P3 MOB, LLC, Petitioner, for the property located at 995 Olive Chapel Road to Neighborhood Business District Conditional Zoning District (B1-CZ).
8. Resolution No. 09-0721-22 Accepting Dedication of Public Power Drive as a Public Street (culmination of agreement entered into with private parties to rehabilitate street that runs between Arby's and Kangaroo Mart and for Town to accept dedication).
9. Minor changes/clarifications to current operating guidelines associated with Halle Cultural Arts Center.
10. Establish name and hours of operation for the recently acquired park property adjacent to Salem Elementary and Middle Schools known as Salem Pond Park.



Consent Agenda continued

11. Approve request from NC Department of Transportation "Certification of Municipal Ordinance Declaring Speed Limit Modifications and Request for Concurring Ordinance" relative to State Highway System Street School Zone for Apex Elementary School (25 mph speed limit).
12. Wake County Tax Report approved by the Wake County Board of Commissioners and accepted in their Regular Session July 6, 2009.
13. Release of 50' Access Easement across Lot #11, Merion Subdivision, owned by Penfield Homes, LLC. so the title may be cleared and lot sold; Town claims no interest in the easement.
14. Accept an offer by Progress Energy (PEC) to purchase a utility easement from the Town related to the PEC connection to substation at Mt. Zion Church Road Substation (0.351 acre easement area \$8,500).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Manager Radford asked Old Business # 03 be removed from the agenda, to allow the EMS Attorney time for final review; this item will return for Council's consideration at a future date.

Action: Council Member Schulze made the motion to remove Old Business # 03 from the agenda. Council Member Jones made the second to the motion. Motion carried unanimously. The meeting agenda was set as modified.

PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

Public Hearing # 01 – Rezone # 09CZ06

Review: *Planning Board met June 8, 2009 and unanimously recommends approval with conditions; staff recommends approval with conditions as proposed; public hearing was continued from June 16, 2009; Applicant requests public hearing be removed from this agenda, and be put on an agenda at a later date.*

Continuation of Public Hearing and possible motion regarding Rezone Case #09CZ06 Cecil Bunn Olive, Jones & Clossen Engineering, PLLC, applicant, seeking to rezone from Rural Residential (RR) to Medium Density Conditional Zoning (MD-CZ) for property located at 2504 Whistling Quail Run, containing 10.65 acres.

Staff stated Applicant requests the public hearing be removed from this agenda, and will be continued until further notice, and will be readvertised before returning to Council for public hearing and consideration.

Action: Council Member Sutton made the motion to honor the applicant's request for removal from the agenda. Council Member Jensen made the second to the motion. Motion carried unanimously.

Public Hearing # 01 was removed from the Agenda.



Public Hearings continued

Presenter: Brendie Vega, Principal Planner

Public Hearing #02 – Amendments to Unified Development Ordinance

Review: Requested by Lookout Ventures, LLC, for creation of sustainable development conditional zoning district/ Tom Hendrickson (Veridea Project); Planning staff recommends Town Council delay vote on the proposed UDO amendments until such time the Veridea rezoning and corresponding SD Plan are presented to and found acceptable by Town Council.

Public hearing regarding various amendments to the Unified Development Ordinance as requested by the petitioner, Lookout Ventures, Inc.

Staff presented the planning report for the public hearing (incorporated in the body of the minutes) for proposed UDO amendments, and containing the Planning Board’s recommendation.

"Ordinance to Amend Several Sections of the Town Of Apex Unified Development Ordinance "

The attached includes proposed amendments as requested by Developer: Lookout Ventures, Inc. for the creation of a Sustainable Development Conditional Zoning District (SD-CZ). The applicant is proposing a project that cannot be developed under any of our current Planned Development Districts therefore they are proposing a new Conditional Zoning District that would give them flexibility to develop within a sustainable and form-based code framework.

Form-Based Codes are one of the main reasons we are being presented with a new District. None of our current districts allow Form-Based Codes to be the basis for development. What is a Form-Based Code? It is a method of regulating development to achieve a specific urban form. "Form-Based Codes create a predictable public realm primarily by controlling physical form, with a lesser focus on land use, through city regulations."

Conventional Planning and Zoning Codes	Form-Based Codes
Auto-Oriented, segregated land-use planning principles	Mixed use, walkable, compact development-oriented principles
Organized around single-use zones	Based on spatial organizing principles that identify and reinforce an urban hierarchy, such as the rural-to-urban transect
Use is primary	Physical form and character are primary, with secondary attention to use
Reactive to individual development proposals	Proactive community visioning
Proscriptive regulations, regulating what is not permitted, as well as unpredictable numeric parameters, like density and FAR (floor-area ratios)	Prescriptive regulations, describing what is required, such as build-to lines and combined min/max building heights
Regulates to create buildings	Regulates to create places

Source: Form-Based Codes: A Guide for Planners, Urban Designers, Municipalities, and Developers



The proposed amendments to the Unified Development Ordinance (UDO) not only create a new Conditional Zoning District which closely follows the Planned Unit Development sections; they also provide for the following deviations from our normal standards:

1. In Section 2.3.16 (C), the minimum size of an SD-CZ district may include other parcels of any size within 300 feet of such parcel of at least 500 contiguous acres.
2. In Section 2.3.16 (D) there will be *Unified Ownership or Control* over each SD-CZ district. This section also gives any property within 300 feet of the SD-CZ district the ability to be rezoned SD-CZ and could be brought in to an existing SD plan with an increase to densities on a pro-rata basis.
3. In Section 2.3.16(F)(2)(e) the SD Plan may modify or supersede the provisions of the UDO or any land development document referenced by the UDO.
4. In Section 2.3.16 (J) the Planning Director would have the ability to approve a modification to the SD Plan of up to fifteen percent of any provision setting forth a number or stating a standard, concept or design.
5. In Section 4.2.2 a new column will be added named SD for the SD-CZ district. All uses will be permitted with the exception of the following:
 - Adult Establishment
 - Airport Landing Strip
 - Airport
 - Sanitary Landfill
 - Land Clearing and Inert Debris Landfill
 - Mobile Homes
 - Asphalt or Concrete Plants
6. In Section 4.3.1 Accessory Apartments would be allowed on the ground floor of commercial districts.

Planning Board Recommendation

The Planning Board was presented with the proposed UDO Amendments at their regular meeting held on July 13, 2009. The PB voted to hold a special meeting to further consider the UDO Amendments on July 20, 2009. At the special meeting, the Planning Board made the following recommendation to Town Council:

The Planning Board unanimously approved the proposed UDO amendments with the following conditions:

1. 2.3.16.C *Location*; 2.3.16.F.2.e *Standards*; 3.3.4.B *Sustainable Development Conditional Zoning District* and any other areas where contiguous acreage appears in the document should be changed to a "minimum size of 500 contiguous acres plus any other parcels within 300 feet" but keep the language in 2.3.16.D *Unified Ownership or Control*.
2. 2.3.16.G *SD Plan* include a reference to section 2.3.16.F *Standards* as one of the requirements of the SD Plan.
3. 2.3.16.J *Deviation to SD Plan* the first sentence should be more in line with the current provisions of the UDO for Minor Deviations from a PD Plan.
4. 4.2.2 *Use Table* will be revisited when the SD Plan is reviewed.

Staff recommended the UDO Amendments only be approved at the time the SD Plan is found to be acceptable by Town Council.



Applicant's Response

The applicant submitted a revised version of the proposed UDO Amendments earlier today where they addressed the Planning Board concerns #1 and #2 from the list above.

Item #3 *Deviation to SD Plan* has not been addressed by the applicant. Section 2.3.4.M has been added as an Appendix to this staff report to show the limitations on Minor Deviations currently permitted to PD Plans by the UDO.

The applicant agrees that the Use Table will be re-reviewed at the time the SD Plan is presented to the Planning Board. The applicant agrees with the recommendation that the UDO Amendments only be approved if and when the SD Plan is found to be acceptable by Town Council.

Staff Recommendation

Staff has reviewed the UDO Amendments and concurs with the recommendations made by the Planning Board to Town Council.

The Veridea Sustainable Development Plan (SD Plan) has been submitted to the Planning Department and is currently under review by TRC.

APPENDIX A

2.3 Development Approvals

2.3.4 Planned Development Districts

M) *Minor Deviations*

A minor deviation to a PD Plan may be approved by the Planning Director. A minor deviation shall be limited to technical or engineering considerations first discovered during actual development which could not reasonably be anticipated during the approval process or any other change which has no material effect on the character of the approved PD development or any of its approved terms or conditions, as long as it complies with the standards of this Ordinance. Minor deviations shall be limited to the following:

- 1) ***Height.*** An increase of building height by not more than ten (10) percent, as long as the height increase is consistent with the contextual height of the surrounding buildings and structures, the PD Plan and Article 9: *Design Standards*, or a detailed design plan (if appropriate).
- 2) ***Alteration of the building envelope.*** Alteration of the building envelope of up to ten (10%) percent, provided such alteration does not materially change the design of the development approved in the PD Plan, and does not change the number of stories, density or intensity.
- 3) ***Reduction of open space.*** Reduction of the total amount of open space by not more than two (2%) percent.
- 4) ***Parking spaces.*** A decrease of parking spaces by not more than five (5%) percent, if it is demonstrated that the minor deviation complies with an approved parking plan.
- 5) ***Relocation of buildings.*** Relocation of buildings or uses, as long as they maintain the same general building relationships, topography, landscaping and utility design and are consistent with the PD Plan and Article 9: *Design Standards*, or a detailed design plan (if appropriate).



Public Hearing # 02 continued

Tom Hendrickson presented an overview of the proposed sustainable, green, walking, mixed use urban community to be constructed on 1000 acres within Apex and viewed as next generation RTP including a range of housing choices, places to shop, employment opportunities, and entertainment and recreation options that will accommodate growth and increase tax base (Community Prospectus attached); Petitioner proposes the amendments for the purpose of creating a Sustainable Development Conditional Zoning District (SD-CZ); this would enable a future rezone document SD Plan to propose standards different than UDO's typical standards. UDO amendments, rezone request and SD Plan are the three basic components; staff was not asking Council to vote on the project and the applicant concurs with staff as they continue to work together on the project.

Terry Shook, Shook Kelly, Inc. presented "Planning of Veridea"; gave guiding principles behind the design, with the UDO amendments needed to allow for flexibility and change as a part of the environment, with focus on the framework of the green/solar community in whole: community its elf, getting around the community, housing choices, places to shop and to work, entertainment/recreation, social elements. One of the key elements of the plan is sources and uses of energy.

Comments from Council: Council Member Sutton didn't agree to the level of ability of the Planning Director to approve modifications to the SD Plan, felt Council should be involved; also questioned sustainability issues that will be addressed in the SD Plan. Council Member Schulze felt flexibility and deviations of the project should be brought to Council and not kept at staff level as well (understood importance of keeping Council informed). Council Member Jensen wanted a mechanism to ensure balance in employment opportunities and housing (Veridea team is sensitive to create a balance in the plan; can't predict what it will be or which will come first, however important to create a mix). Mayor Weatherly spoke relative to a phasing plan (there will be a phasing plan; team is taking collective comments, looking through revisions, and will bring this forward). Mayor Weatherly commented on the timing of build-out for the long term project and response to the market at that time (team will look at economic model; create a balance, cutting corners was not a desirable options; plans to create an alternative zoning for the project to allow for flexibility). Manager Radford informed there will be various workshops regarding the project before final vote.

Mayor Weatherly opened the public hearing at 8:00 p.m.; those speaking in support of the proposed project:

Lacy Reeves, legal Counsel for Veridea team noted the existing UDO does not allow for this project to come to fruition; Conventional Planning and Zoning Codes vs. Form-Based Codes and the need for flexibility to form a sustainable development conditional zoning district; process has had lots of dialogue, and noted proposal has changed many times, having made changes as late as today after the Planning Board met, with more to come, and looks forward to continuing the project. Brendie Stein, Executive Director of the Apex Chamber of Commerce, stated 15 Chamber Board members were in 100% in favor of the conceptual plan for the Veridea project.

Engineer Alan Manase, ETJ resident, Board Member Apex Chamber of Commerce, and member of Economic Development Committee, has had extensive experience in worked with the Town's UDO on many projects and with other towns; noted vision of the Council showing great leadership to ensure quality design and life for residents; noted this was an opportunity to show leadership to Wake County, Triangle, State and Nation and urged Council's to consider favorably the Veridea team's requests.

Chris Hilt, 204 Hinton Street, member of US Green Building Council representing the State of NC, Most lead Architect in the state; has spoken to numerous groups, and consultant for Veridea, and should be proud of the sustainable community and beautiful downtown, and are looking at a possibility to extend character and charm of Apex, with its own identity, praised staff, represents the town equality having served in various town positions, and proud of the message being sent relative to sustainability.



Public Hearing # 02 continued

Mayor Weatherly closed the public hearing at 8:14 p.m.; noted Apex's recognition for Apex's identity being third best place to relocate by Forbes magazine, and Money magazine accolades to Apex as one of the best small towns in America, the only NC town that made the list under 50,000, being a state of small towns; he stated this project would be quite a challenge for all of us involved, and wants to be encouraging and welcoming to those that have come, but doesn't want to "Kill the Goose that Laid the Golden Egg" by being a great place, once you are here to stay and raise a family".

End of public hearing # 02

Mayor Weatherly called for a recess of the Council at 8:15 p.m.; Council was called back in session at 8:25 p.m.

OLD BUSINESS

Presenter: Town Attorney Hank Fordham

Old Business # 01- Corridor Project Master Agreement

Attorney Fordham presented the latest revision of the Corridor Project Master Agreement ("CPMA") providing for a new at-grade railroad crossing of the Apex Peakway and for the Town Manager to sign same. This item is a follow-up to prior actions by Town Council approving earlier versions of the CPMA among CSXT, DOT and Town of Apex. He noted the larger of the concerns had been addressed, in that the town would not close Moore Street within 24 hours of the opening the north Peakway at-grade crossing. He noted both NCDOT, and CSXT are acceptable to the agreement. Full list of revisions are noted on the agenda item action request sheet.

Action: Council Member Sutton made the motion to approve the Corridor Project Master Agreement between Town of Apex, DOT and CSX. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Old Business # 01

Presenter: Fire Chief Mark Haraway

Old Business # 02- Financial Agreement Apex EMS

Fire Chief Mark Haraway presented a Financial Agreement between Apex EMS, Inc. and the Town of Apex for Public Safety Station 4; Apex EMS will pay Town of Apex 22% of the construction cost of Public Safety Station 4 or \$593,017 in return Town grants Apex EMS, Inc. exclusive and non-exclusive use of identified areas of Public Safety Station 4 as identified in Section 2 of the agreement. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to approve the Financial Agreement between Apex EMS, Inc. and the Town of Apex for Public Safety Station 4. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Old Business # 02

Presenter: Fire Chief Mark Haraway

Old Business # 03- Agreement to Convey Assets and Assume Liabilities Apex EMS

Possible motion to sign Agreement to Convey Assets and Assume Liabilities Related to Emergency Medical Services between Apex EMS, Inc. and Town of Apex for Public Station 4.

This item was pulled from the agenda to allow the EMS Attorney final review; no action was taken; item will return to Council's August 4 agenda for consideration.

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.*

NEW BUSINESS

Presenter: Chief of Police Jack Lewis

New Business # 01 – Budget Amendment Apex Emergency Communications Center

Chief of Police Jack Lewis stated after a review of the current emergency communications function and anticipated needs and demands that will impact this critical component of the town's public safety responsibilities, asked Council's consideration regarding a budget amendment to fund service enhancements and upgrades to the Apex Emergency Communications Center at a total cost of \$427,000. A breakdown of different components of the upgrade: recording system replacement, furniture/ergonomic console; radio IP solution/CAD Upgrades/Additions; E911 Phone System Upgrade/additional stations is listed in the attached staff report. He offered competitive bids may come in under this amount. He expanded on the move last year, the upgrade is needed due to the growth of the town and demands placed on Police and Fire System; noted need for additional communication staffing as the departments continue to grow.

Questions by Council: Council Member Sutton asked if grant funding was available to help offset the costs (none that is known); didn't recall discussion of such a major item during Council Retreat and was not a part of the adopted budget; appreciated the presentation. Council Member Jones too was not aware of the need to upgrade the equipment and commented on the timing and would like to look at what we have and do not have before a vote to move forward; the presentation was hard to say no to for the request. Council Member Gossage noted the request seemed reasonable, was also surprised at the timing, to see this after the budget had passed; would like to see more breakdown in costs for each section. Mayor Weatherly commented on the great thought to use the old and outdated equipment, and when it was moved out of the building, realized it would not work in the new facility and began to figure the costs; seemed a reasonable clue for an upgrade. Chief Lewis continued he had tried to give the best explanation possible for cost, and noted the time element necessary to build the components to the specifications needed, and when given authority, would like to bid the components so they would be available prior to building completion date December 14, 2009 and not hold up progress. He explained he had never dealt with communications and found this to be expensive equipment; had explored all avenues to make a better way for 911 upgrade; all this had taken time to figure out and found this to be what's available; accepting all responsibility not realizing the costs, however seeing the need for upgrade at present time, and now the question was how to pay for it.

Manager Radford added that he would take the responsibility as he had tried to do cheaper and go caught short, believing they could make the older system work. Marty Mitchell, Facilities Director, noted the project budget was at 60% and would spend 100% to complete the project; no money left over. Discussion followed regarding, timing, cost, keeping the existing equipment where it is until it could be replaced. Chief Lewis responded it was his intent to move the communications into the new facility first, have it in operation and then the full operation would follow, following would be to clear the modular units out and free up parking, etc. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to authorize solicitation of bids, and defer two weeks the action on the budget amendments. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

TOWN OF APEX, NORTH CAROLINA

July 22, 2009 Special Meeting of the Town Council

Meeting Agenda (CLOSED SESSION)

A Special Meeting of the Apex Town Council scheduled for Wednesday, July 22, 2009, 7:00 p.m., will be held in the Third Floor Conference Room of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly will preside over the meeting.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:

Mike Jones

Bill Jensen

Bryan Gossage

Gene Schulze

Bill Sutton

COMMENCEMENT

Mayor Weatherly will call the Special Meeting of the Apex Town Council to order and extend a welcome to those in attendance.

Motion to go into Closed Session under G.S. Sec. 143-318.11(4).

PRESENTATION

Introduction by Apex Town Manager Bruce Radford.

Iceland Presentation by Mr. Bob Hawkins, Vice President North Carolina Operations EMC2

Overview of Wake County Incentives Policy by Ken Atkins, Wake County Economic Development

Mayor and Council Questions

Mayor and Council Deliberations and Discussion

ADJOURNMENT

TOWN OF APEX, NORTH CAROLINA
Minutes of August 4, 2009 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 4, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

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

PROCLAMATION

Mayor Weatherly presented a Proclamation: "Neighbors Helping Neighbors" to Western Wake Crisis Ministry Director Becky Spell who commented on the event that will be held during September affording Apex residents and Apex businesses an opportunity to participate in provision of financial assistance to the economically challenged and struggling neighbors of Apex.

PRESENTATION

Peak City Film Festival Producer, Bob Crowley, introduced John Demers, Actor and Executive Producer for the planned event that will bring attention to Apex, while engaging the community in promotion of the arts and with family friendly content. Contest entries from various categories will be accepted through October 1, judged November 1, and with recognition and announcement of winners November 22. There will be a lifetime achievement award presented by Actor and Film Star Jerry Mathers, "The Beaver" from the long time famous TV series, "Leave It to Beaver." Permits will be needed, request for water bill inserts, placement of banners on Salem Street, red carpet for sidewalk, street entertainment, food vendors, search lights, Stars: Apex Walk of Fame, and Street Closures for this event; potential to be an annual event assisted by "Crew", mascot for the event.

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 to approve the following items. Council Member Sutton asked items # 6 and # 9 be removed from the consent agenda for separate consideration. Council Member Jensen asked item # 4 be removed from the consent agenda for separate consideration.

Action: Council Member Gossage made the motion to honor the request regarding separate consideration for the stated items. Council Member Schulze made the second to the motion. Motion carried unanimously.



Consent Agenda continued

Action: Council Member Sutton made the motion to approve consent agenda items 1, 2, 3, 5, 7, and 8. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of July 21, 2009 Council Meeting.
2. Minutes and General Account of July 21, 2009 Closed Session (separate cover).
3. Minutes and General Account of July 22, 2009 Special Council Meeting Closed Session (separate cover).
4. (Considered under New Business) Set public hearing August 18, 2009 for Rezone #09RZ07 Veridea, Lookout Ventures, Inc, petitioner; rezone 1,011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR) and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) generally bound by US 1, East Williams Street, and future I-540 corridor.
5. Set public hearing August 18, 2009 for Rezone #09RZ08, Town of Apex, petitioner; rezone 12.33 acres at 6112 Old Jenks Road, from Residential Agricultural (RA) to Conservation Buffer (CB).
6. (Considered under New Business) Purchase six additional voltage regulators for Mt. Zion Road Substation using the piggybacking process; Notice of Intent with possible award at the August 4, 2009 Council meeting.
7. Changes to Town's current grading fee schedule to include increase of \$500 per disturbed acre and removing current 20-acre cap to be in line with neighboring S&E programs.
8. Revisions to Town's Yard Waste Ordinance to reflect changes in yard waste collection practices made over the past few years and provide consistency with NPDES Phase II rules and place certain limitations on land clearing debris and yard waste generated from commercial landscape or other businesses.
9. (Considered under New Business) Revisions to Town's Soil Erosion and Sedimentation Control Ordinance to include performance guarantee for soil and erosion measures.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set as modified to include Consent Agenda items 4, 6, and 9 under New Business prior to taking action on the following items. The meeting agenda was set as modified.

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

OLD BUSINESS

Presenter: Apex Fire Chief Mark Haraway

Old Business # 01- Agreement to Convey Assets and Assume Liabilities Apex EMS

Review: This item was pulled from the July 21, 2009 Council Agenda for further review by both parties, and is being brought back for consideration and recommended for approval.

Apex Fire Chief Mark Haraway presented for adoption Resolution No. 09-0804- 23 and thus would recommend approval of an Agreement to convey Assets and Assume Certain Liabilities between Apex EMS, Inc. and Town of Apex, noting the attachments, and to authorize the Town Manager and Fire Chief to set closing date and execute documents as necessary to facilitate the transition and obtain applicable federal, state, and local licenses, permits and other documents related to the provision of emergency medical services.



Old Business # 01 continued

Four conditions were presented for the completion of this transaction even after the Agreement is approved: 1) Licensing; 2) Resolution by County; 3) Agreement with County; 4) Representations and Warranties. Agreement begins the process of obtaining the licenses, permits and agreements required for the Town to provide emergency medical services. Noted the Agreement was reviewed by the Town Attorney, and discussed the time frame to complete the defined process. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage recommended approval of the Agreement to Convey Assets and Assume Certain Liabilities between Apex EMS, Inc. and Town of Apex by adopting the Resolution, and authorizing the Town Manager and Fire Chief to set closing dates and execute documents as necessary to facilitate the transition and obtain applicable federal, state and local licenses, permits, and other documents related to the provision of emergency medical services. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Old Business # 01

Presenter: Apex Police Chief Jack Lewis

Old Business # 02 – Budget Amendment Apex Emergency Communications Center

Review: Council gave consideration to this item at their July 21, 2009 meeting and authorized solicitation of bids, however, deferred action for two weeks (August 4, 2009) regarding the action on the budget amendments.

Apex Police Chief Jack Lewis presented for consideration budget amendments to fund service for enhancements and upgrades to the Apex Emergency Communications Center as previously discussed at the Council's July 21, 2009 meeting; noted continued efforts to save money. Manager Radford noted investigation of supplemental grant funding had found there was no available grant money for such. Chief Lewis indicated a cost savings of approximately \$25,000 to \$30,000 could be saved from a credit towards the radio system with change and negotiation in Sprint radio frequency; noted requests for proposals were sent out discussing and negotiations have been with several vendors, and does not require bids (in discussion for inclusion of Motorola); total cost remains at \$427,000 and will be expensed from general fund. Construction Project Costs Breakdown was attached as requested by Council along with Change Order Narrative. Council Member Jones commented there would be an individual meeting with the Manager to discuss any further concerns regarding the project costs with Council Member Jensen asking to be included. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to adopt the budget amendments approving the request as presented to fund enhancements and upgrades to the Emergency Communications Center. Council member Schulze made the second to the motion. Council Member Jones knew this replacement to come sooner or later, and had looked at the current center, and noted similar installation at Wake Med, however, more costly and hopes to get this for a good price; preferred it had been included in the project package, but no reasonable way to do it at this point.

Mayor Weatherly noted the Town's obligation to public safety and key to get state of art quality technology and personnel, which would serve well over the years to come, with current technology now obsolete, supports this request. Council Member Schulze was in agreement that it was the right thing to do, to outfit the new building with the new equipment, however doesn't like surprises. Council Member Sutton noted this request wasn't in the budget, not allowed, nor had been discussed until after the budget was adopted, and he felt manipulated and didn't like it; Town had always met needs of Public Safety, always straight forward. Manager Radford wanted to assure him he was not intentionally manipulated. Mayor Weatherly called for a vote on the motion. Motion carried unanimously.



Old Business continued

Presenter: Tim Donnelly, Director of Public Works

Old Business # 03- Regional Waste Water Treatment Facility

Tim Donnelly, Director of Public Works asked Council for approval of Draft Site 14 Water and Sewer Extension Policy relative to New Hill Site 14 Regional Water Reclamation Facility, and reviewed by Council at their September 18, 2007 meeting explaining the policy required no annexation as a condition of service and no impact fees as a condition of service. In addition costs would be shared as per the PAC vote of February 27, 2007. Apex cost share 26.9% or \$800,000 of the \$3 million necessary to complete the project; no action was taken as policy changes through the EIS process were possible. Draft EIS has now been commented on by public and new draft has been reviewed by PAC on July 14, 2009 and approved; now requests consideration by Apex Town Council. Portions of the agreement were discussed relative to acquiring easement for infrastructure, and time for folks to know in advance, with Council Member Sutton approving of the policy thinking it fair to the people living around the site area, giving the in-town water rates and no annexation. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion for approval of Draft Site 14 Water and Sewer Extension Policy relative to New Hill Site 14 Regional Water Reclamation Facility. Council Member Sutton made the second to the motion. Motion carried unanimously.

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

There were no Regular New Business items to be considered, however Consent Agenda items 4, 6 and 9 were placed under New Business for consideration.

Consent Agenda Item # 04 – Council Member Jensen

4. Set public hearing August 18, 2009 for Rezone #09RZ07 Veridea, Lookout Ventures, Inc, petitioner; rezone 1,011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR) and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) generally bound by US 1, East Williams Street, and future I-540 corridor.

Council Member Jensen expressed concern with setting the date for this public hearing, not having discussed sustainable development conditional zoning, and needing a tremendous adjustment in the UDO, felt were rushing the project without knowing the rezone, and thinks people would lose interest over time. Mayor Weatherly explained it not unusual for Council to continue public hearings, staff needs to start the process and are ready to present the project to Council, with the decision and timing left to Council, and in no way ready for a vote. Manager Radford noted this the usual process, and anticipates the process taking more than a couple of months, however not out of the ordinary to hear concerns, and scheduling the public hearing holds no bearing on Council's action and none would be taken until after a series of workshops.

**New Business continued**

Council Member Sutton noted they had not talked about sustainable development zoning and the public needed to know what the UDO amendments were and would be a part of the conditions. Manager Radford noted the public hearing was held July 21, 2009 regarding UDO amendments and are in the minutes. Council Member Schulze felt as far as involving people, the sooner the better and discussed the process and timing. Council Member Jones noted they wouldn't attempt UDO amendments without the request for the sustainable rezoning, and they petitioner had asked for public input and staff had not made any recommendation. Council Member Jensen was bothered as this was an applied action item to him and would like to get the UDO changes for the sustainable development, and felt they were spinning their wheels until they see what to compare to.

Lance Olive, Planning Board, gave a review of the Planning Board's activity and review, not having seen a SD Plan, and assurance the UDO doesn't change unless it meets all concerns, and would take roughly four to eight weeks, and workshops until both are satisfied. Mayor Weatherly referred the matter to Council.

Action: Council Member Jensen made the motion to approve setting the date of public hearing for August 18, 2009 for Rezone #09RZ07 Veridea, Lookout Ventures, Inc, petitioner; rezone 1,011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR) and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) generally bound by US 1, East Williams Street, and future I-540 corridor; with no decision being made at that time, however, giving public more time for review. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Consent Agenda Item # 04**Consent Agenda Item # 06 – Council Member Sutton**

6. Purchase six additional voltage regulators for Mt. Zion Road Substation using the piggybacking process; Notice of Intent with possible award at the August 4, 2009 Council meeting.

Council Member Sutton called for an update on this item. Electric Superintendent Mike Couch came forward and noted the costs for the project \$116,310 was included in the approved budget with delay for purchase of these 6 additional voltage regulators due to storage. He gave an update on the site and the service lead time and noted it necessary to order; low bidder from town's previous bidding process, conducted February 09 has agreed to extend the same pricing to the Town for purchase of additional quantities. Mayor Weatherly referred the matter to Council.

Action: Council Member Sutton made the motion to purchase six additional voltage regulators for Mt. Zion Road Substation using the piggybacking process. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Consent Agenda Item #06**Consent Agenda Item # 09 – Council Member Sutton**

9. Revisions to Town's Soil Erosion and Sedimentation Control Ordinance to include performance guarantee for soil and erosion measures.

Council Member Sutton called on Michael Deaton, Environmental Services Director for explanation of the revisions. Deaton stated with economic environment, and projects being abandoned, the environment was left in jeopardy, and believes it in the best interest of the Town to pursue performance guarantees relative to soil erosion and sedimentation control measures, to ensure downstream water resources are not negatively impacted from non-compliant or default projects. Revision requires a \$2,500/disturbed acre performance guarantee to be submitted to the Town prior to approval of a soil and erosion control plan. Guarantee remains in full force until the site has received a Certificate of Completion from the Town; should the project fail to remain in compliance with the approved S&E plan, and ordinance,



New Business continued

the Town may use the performance guarantee to stabilize the site and bring the site into compliance which protects downstream water resources. Manager Radford briefed on an area where algae had taken over, and town was not in a position to repair same; revisions allow prevention of such in the future. Mayor Weatherly referred the matter to Council.

Action: Council Member Schulze made the motion to adopt revisions to Town's Soil Erosion and Sedimentation Control Ordinance to include performance guarantee for soil and erosion measures. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Consent Agenda Item # 09

End of New Business

WORKSESSION

There were no Worksession items for discussion.

CLOSED SESSION

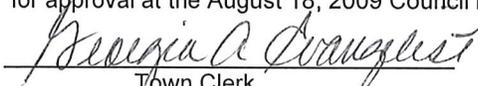
There were no Closed Session items for discussion.

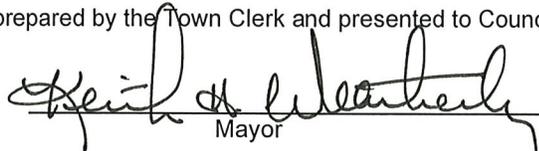
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn.

Action: Council Member Gossage made the motion to adjourn at 8:12 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the August 4, 2009 Council meeting were prepared by the Town Clerk and presented to Council for approval at the August 18, 2009 Council meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

August 18, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 18, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

Web site: 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 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 to approve the following items. There were no amendments to the Consent Agenda; the following action was taken.

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 and General Account of August 4, 2009 Council meeting.
2. Annexation Petition # 445, Tim M. and Laura C. Hinson, owners/petitioners, 1.14 acres into the Town's corporate limits and located on 1004 Care Free Cove (Salem Woods Subdivision);
 - 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and
 - 3) Resolution setting date of public hearing for September 1, 2009.
3. Approved an encroachment agreement related to a Town of Apex public sanitary sewer easement in the Green at Scotts Mill neighborhood and for the Town Manager to enter into same with the relevant property owners.
4. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in their Regular Session on August 3, 2009.

End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Mayor Weatherly asked to add an Old Business item regarding the renewal of the Apex Chamber of Commerce Lease Agreement for use of the Depot Building on Salem Street.

Action: Council Member Jensen made the motion to amend the Regular Meeting Agenda, by adding the Old Business item as requested. Council Member Schulze made the second to the motion. Motion carried unanimously. The meeting agenda was set as amended.

PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

Public Hearing # 01 – # 09CZ07 Lookout Ventures, Inc.

Review: Planning Board met August 10, 2009 and did not hear the Rezoning and Land Use Plan amendment, therefore a continuance is requested to the September 15, 2009 Council meeting.

Public hearing and possible motion for zoning case #09CZ07, Veridea: Lookout Ventures, Inc., petitioner, seeking to rezone 1011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR), and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) generally bound by US 1 Hwy, E Williams St, and the future 540 corridor. A land use plan amendment is also requested for all parcels included in the rezoning from Mixed-Use: Commercial, High Density Residential, Medium Density Residential, Low Density Residential and Office and Institutional; Industrial; and Office and Institutional to Mixed-Use: Commercial, Office and Institutional, Industrial, High Density Residential, and Medium Density Residential.

Mayor Weatherly stated the Planning Board met August 10, 2009 and did not hear the proposed rezone and Land Use Plan amendment, and therefore was requesting continuance of this hearing to the September 15, 2009 Council meeting. Director of Planning Khin stated this was correct. Mayor Weatherly referred the matter to Council.

Action: Council Member Jensen made the motion for continuance of the proposed rezone #09CZ07 to the September 15, 2009 Council meeting. Council Member Gossage made the second to the motion. Motion carried unanimously.

Public Hearing # 01 continued to September 15, 2009

Presenter: Dianne Khin, Director of Planning

Public Hearing # 02 – # 09RZ08 Town of Apex

Review: Planning Board met July 13, 2009 and voted unanimously to approve the rezone; staff recommends approval.

Public hearing and possible motion for zoning case #09RZ08, Town of Apex, petitioner, requesting a rezone of 12.33 acres from Residential Agricultural (RA) to Conservation Buffer (CB); 6112 Old Jenks Road (Salem Pond Park).

Dianne Khin, Director of Planning gave the staff report which is attached and incorporated as a part of the minutes, orienting to the site, giving the project description and background information for the proposed; requesting 12.33 acres be rezoned from Residential Agricultural (RA) to Conservation Buffer (CB); rezone is recently acquired Town park site formerly owned by Wake County. The rezone will remove residential and institutional uses which are currently allowed by the RA zoning; land use plan designates the area for Park. Planning Board and staff recommend approval.

Mayor Weatherly opened the public hearing, and with no one addressing this rezone request, closed the public hearing 7:10 p.m. and referred the matter to Council.

Action: Council Member Schulze made the motion to approve rezone # 09RZ08. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing #02

End of Public Hearings

**OLD BUSINESS****Add – On: Old Business #01 - Apex Chamber of Commerce Lease Agreement**

Mayor Weatherly stated negotiations had begun with the Apex Chamber of Commerce regarding renewal of their Lease Agreement for use of the Depot Building on 220 N. Salem Street, as the 10-year Lease has expired; stated the proposed lease amount had been offered to the Chamber, however, their Board of Directors voted and agreed on a counter offer of \$500 per month with a 12 month lease, and Town performing and being responsible for maintenance on the building and grounds; feels this is a good interim arrangement with the Chamber; feels a new agreement can be reached in much less time, and recommended acceptance of \$500 month for a 6 month period; and certain would come to an agreement within the 6 month period; if no agreement is reached, it would then terminate, however, expects an agreement to be reached.

Council Member Jones, Liaison to the Apex Chamber, noted the Chamber newly elected officers will take seat October 1 and also begins their new budget year. Attorney Fordham advised the lease is automatically renewed for 12 months annually; noted the lease ends in December, unless notice of termination is given at least 30 days in advance. Mayor Weatherly offered a start date of October 1 with a new lease arrangement. Attorney Fordham advised any changes should be done by amendment to the existing lease, and would deal with the terms of the sublease of the land with CSX, and this new lease could provide with a new start date and termination date of negotiations didn't come to fruition, or a long term agreement. Jim Stella Economic Development Director of the Chamber was present, however, not privy to any of the negotiations. Council Member Jones began discussion regarding dates and lease arrangements, seeing this as a bridge to a long term agreement; he received a call from the Chamber President of the Board of Directors, and he informed her, the item was not on the agenda, however may come up on the agenda; no representative from the Chamber was present to weigh in on the discussion, and he would like to have them present for an opportunity to address this. He continued from a business perspective, the assumption was he felt they asked for 12 months for budget purposes preparing between now and September for next fiscal year beginning October 1 and for the full budget year what your rent would be; he doesn't think it would take long to come to an agreement on the rental rate; doing this for 6 months they have an unknown financial situation for 6 months. Council Member Schulze looked at the worse-case scenario, anything under that were better off. Mayor Weatherly felt if they stuck to the current lease, would be much worse off January 1 if unable to make an arrangement between now and whatever the notice given.

Discussion continued regarding timing, with Mayor Weatherly stating they have to reach a reasonable lease sometime before November to exercise terms, or would roll into another year. Since Chamber made the offer of \$500 per month over 12 months, thinks it's reasonable. Council Member Schulze felt this was a reasonable compromise, and time to look at the agreement and thinks 6 months is an appropriate amount of time. Council Member Jensen suggested a counter offer \$500 monthly for 6 months or \$700 for 12 months, or \$800 each month after, since they were not clear on the terms, and gives them option for their budget purposes. Council Member Jones thinks they would reach an agreement prior to this; 6 months seems reasonable, but as far as budget, it makes it tough not knowing the cost the second half of the fiscal year. Mayor Weatherly felt the longer they deal with this the longer it would take and felt they should know in a couple of meetings if they could come to terms on an agreement on both sides or not. Council Member Gossage liked Council Member Jensen's idea, and could step up the price every 3 or 4 months; that helps move the process. Mayor Weatherly stated no decision need be made at this time. Council Member Jones feels a bit remiss it was not on the agenda, and his concern a Chamber representative not being here to speak on their behalf. Mayor Weatherly referred the matter to Council asking if they wished to continue this item to the September 1, 2009 Council meeting. Consensus by Council was to continue this item to September 1, 2009 meeting, with notification being given to the Chamber so they could be present.

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: Brendie Vega, Principal Planner

New Business # 01 – Salem Village Phase 1

Review: Planning Board met August 10, 2009 and unanimously recommended approval with condition relative to streets; staff recommends approval with condition relative to streets.

Possible motion regarding Salem Village Master Subdivision Plan Phase 1 that includes 61.49 acres; 136 single family lots.

Brendie Vega, Principal Planner presented the planning report for Salem Village Master Subdivision Plan for Phase I and is attached and incorporated as a part of the minutes and includes background information, project description, and existing five conditions of the approved 2008 rezone and subdivision plan (101 single family lots on 61.27 acres – 12,850 square feet, 1.64 units per acre). Applicant requests additional lots in Phase 1 (136 lots on 61.27 acres, density 2.2 per acre); 4 retention ponds, RCA, and temporary pump station remains same; proposed average lot size 9,175 square feet; RCA remains at 12.30 acres (20 per cent). TIA report prepared by Kimley-Horn and Associates regarding traffic impact from 340 units - average daily trip generation 2,390 vehicles (original TIA assumed build out of up to 340 units in three phases); this phase includes 40 per cent of the number of units; an updated traffic analyses will be required when the 3 phase plan exceeds 340 units; no off-site improvements are recommended; required to connect Apex Peakway to Tingen Road; no off-site improvements are recommended other than what is required to connect the Apex Peakway to Tingen Road; off-site improvements may be recommended with Phase 2. The Planning Board met August 10, 2009 and recommended approval unanimously with the following condition: 1) Street R016 shall be reduced to a minor residential street provided that Street R015 in Salem Village Phase II shall be upgraded to a minor collector street. Staff recommends the proposed be approved with the same condition.

Council Member Sutton asked the location of the collector street (runs parallel to the Apex Peakway to the western property line). Council Member Jensen addressed the density (adding 35 lots 1.64 to 2.2) and noted that many more lots in Phase 1, and not lowering density elsewhere (correct). Council Member Schulze addressed the use of the temporary pump station until the Western Wake Water Reclamation Facility is on line (yes), with town maintenance.

Jason Bertoncino, Withers and Ravenel, noted the existing conditions and restriction in place with a limited number of units; original cap of 340 units to use the temporary pump station as intended, with any additional units in any of the other phases going to the Western Wake Facility; cap still exists. He responded to Council Member Sutton's question noting the street runs parallel to the Apex Peakway and also connects to the Peakway, with road connection next to temporary pumping station. Russell Dalton Transportation Engineer reported the town's transportation planner and staff are fine with the plan and they are in agreement with the added condition by the Planning Board and staff. He responded to Council Member Jensen on the proposed additional lots, in that Phase 1 contains the connection for the roads, and proximity to the pumping station and needed to be developed first, and lots of this size are more apt to be marketable with current economic conditions.

Mayor Weatherly referred the matter to Council.

Action: Council Member Schulze made the motion to approve Salem Village Master Subdivision Plan Phase 1 with the additional condition as stated. Council Member Jones made the second to the motion.

Council Member Jensen noted he understands change of times, however had problem with smaller lots from the original proposed project, having agreed to 90 foot of frontage, now down 30%, not wanting to continue having smaller lots; agreeing it fits now, however approved 136 units and now 171 units, asking when it stops.



New Business # 01 continued

Council Member Schulze tended to agree, things change in time; he'd rather have the larger lots and noted residents had moved due to not having larger lots, however noted the proposed does meet the ordinance and current rules and meets the approved traffic plan. Council Member Jensen noted what was approved before is quite a bit different than this. Council Member Gossage expressed concern when approved the first time, were looking at the big picture and now looking at a more narrow view, operating with less information and if he knew the numbers could be adjusted somewhere else might make it easier; he was not thrilled about this. Council Member Sutton tended to agree, they were getting a smaller picture here. Council Member Jensen was in agreement they were coming back with more lots. Council Member Gossage was trying to look at how the conversation had gone a year ago with the extra lots added and couldn't recall, wondering how close they were then. Mayor Weatherly didn't think this sets precedent, but does think it accommodates change in economic times, noting the investment this company is making in Apex, normally may have concerns, but believes year from now, nobody does, the economic situation and feels the stress is now being felt at this level. Council Member Jensen agreed and proposed to work with the developer; if there were higher density here to get this through, then lower the density elsewhere as times change; also noted residents had moved due to not having larger lots; in a more global picture look, what happens with the next phases, and sees no commitment to keep average density; that's what they were talking about; he would be happy with higher density here, if they would lower it someplace else or go with more open space elsewhere- it's a one way train. Council Member Gossage noted the big picture, not liking the idea of approving something as this could be broader than it is, having the developer come back over and over again sneaking in a few more lots over time; he gets the point that it meets the rules, probably a yes vote as it meets the rules, not liking the idea. Council Member Schulze agreed but wanted flexibility as clearly market conditions have change; with Council Member Gossage agreeing, and with Council Member Schulze continuing the need to allow for it. Council Member Jensen would be willing to approve this if he saw some commitment to lower density someplace else; added this subdivision is not going to build out until we get the wastewater facility 3 or 4 years on. Council Member Gossage added he hated to pass something, the big picture, and a month or so later have a change come, and bothers him, but it meets the rules. Council Member Sutton recalls a year or so ago, the issue was traffic and why they placed a cap on the limit of the number of lots until they came across the railroad on S. Salem Street, until they got the crossing and placing a limit on the number of lots; limit still stands at 340 overall until the improvements are made. Council Member Jensen wanted to hear from the developer if they would do something further on if they up at this point, wanting to continue this a couple of weeks; he noted the lots across the street, small in size and not moving any faster; he wanted to see a compromise.

Mayor Weatherly noted the motion on the floor; vote on the motion was 3 in favor and 2 opposed with Council Member Jensen and Council Member Sutton voting no. Motion carried.

End of New Business # 01

Presenter: Kent Jackson, Director of Construction Management

New Business # 02 – Street Fee In Lieu Payment

Review: Staff recommends fee in lieu be retained by Town for various reasons.

Consideration of a request from Community Properties Inc. to refund a street fee in lieu payment made in regards to construction of a portion of Rothwood Way in Abbingdon West (Stratford) Subdivision.

Manager Radford stated he had been asked to remove this item from the agenda and it not be considered at this time. No action was necessary by Council.

End of New Business # 2

WORKSESSION

There were no Worksession items for discussion.



CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following: 1) to receive legal advice and discuss potential litigation related to potential eminent domain matters; 2) to discuss personnel.

Action: Council Member Schulze made the motion to move into Closed Session at 7:40 p.m. for the purposes stated. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Gossage made the motion to move into Regular Session at 8:05 p.m. Council Member Jensen 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 to adopt the following resolutions related to Apex Street System improvements. Council Member Gossage made the second to the motion. Motion carried unanimously.

1) **Resolution No. 09-0818-24** Authorizing Eminent Domain Proceedings Related to the Peakway Segment from Salem Street to Old Raleigh Road for the Improvement of the Apex Street System; property owner Guy C. Lee Building Materials, LLC.

2) **Resolution No. 09-0818-25** Authorizing Eminent Domain Proceedings Related to the Peakway Segment to Connect to Tingen Road for the Improvement of the Apex Street System; Seymour Farm Properties, LLC.

3) **Resolution No. 09-0818-26** Authorizing Eminent Domain Proceedings Related to the Hughes Street Sidewalk Project for the Improvement of the Apex Street System; Paula F. Raybon.

Mayor Weatherly called for a motion to move back into Closed Session for a personnel matter at 8:08 p.m.

Action: Council Member Schulze made the motion to move back into closed session for the purpose stated. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately and will be provided at a later date.

Action: Council Member Gossage made the motion to move back into regular session at 9:07 p.m. Council Member Jones 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.

Action: Council Member Gossage made the motion to adjourn at 9:07 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the August 18, 2009 Council meeting were prepared by the Town Clerk and presented to Council for approval at the September 1, 2009 Council meeting.

Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA
September 1, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 1, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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

Presentation by Wake County Planning: Sherri Peterson, Tim Gardiner, and Pat Crissman from the Wooten Company, Harris Lake Drainage Basin Land Use Study. Purpose of the study was to more closely examine the area surrounding the Shearon Harris Nuclear Power Plant to determine a preferred development pattern for this fast developing area of Wake County, and involved stakeholders including Towns of Apex, Holly Springs, and Fuquay-Varina, Progress Energy who owns 43% of the study area, and also owns and operates the nuclear power plant, interested state agencies, and residents of the area. Land development scenario activity outlined key principles, impacts, and plan changes, with the summary of scenario projections being presented. Study recommendations were highlighted; questions and/or comments will be received by Wake County through October 15, 2009. A copy of the entire presentation is attached.

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 to approve the following items.

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

1. Minutes and General Account of August 18, 2009 Council meeting.
2. Minutes and General Account of August 18, 2009 Closed Session (minutes recorded separately).
3. Transfer Lot 89 Plot(s) F in the Apex Town Cemetery, recorded under the name of Bob McIver to William English, 331 Sherman Road, Fuquay-Varina NC 27526.
4. Set Public Hearing September 15, 2009 for various amendments to Unified Development Ordinance.
5. Set Public Hearing September 15, 2009 regarding Conditional Rezoning # 09CZ09 and Special Use Permit.
6. Statement of Apex Town Council and Ordinance for rezoning case #09RZ08, Town of Apex, petitioner, for the property located between Old Jenks Road and Davis Drive.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Council Member Schulze asked to add discussion regarding John Locke Foundation Ratings report: Transparency. **Action:** Council Member Schulze made the motion to add this as New Business # 02. Council Member Jones made the second to the motion. Motion carried unanimously. The meeting agenda was set with the amendment.

PUBLIC HEARINGS

Presenter: Dianne Khin, Director of Planning

Public Hearing # 01 – Annexation Petition # 445

Public hearing and possible motion regarding Annexation Petition # 445, Timothy M. and Laura C. Hinson, owners/petitioners; petitioning to annex 1.14 acres into the Town's corporate limits; property location 1004 Care Free Cove in the Salem Woods Subdivision.

Dianne Khin, Director of Planning stated the petitioner is requesting annexation of the property; purpose: need water. Staff recommends approval. Mayor Weatherly opened the public hearing at 7:35 p.m. and with no one addressing this request, closed the public hearing and referred the matter to Council.

Action: Council Member Gossage made the motion to approve Annexation Petition # 445 by adopting an ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Presenter: Mayor Weatherly

Old Business # 01 – Apex Chamber of Commerce Lease Agreement

Review: Council considered renewal of the Lease Agreement of the Depot Building at their August 18, 2009 meeting, and asked it be placed on the September 1, 2009 agenda to allow the Chamber representative to address the issue. Possible motion regarding renewal of the Apex Chamber of Commerce Lease Agreement for use of the Depot Building on 220 N. Salem Street.

Mayor Weatherly stated this item regarding the Apex Chamber of Commerce Lease Agreement had been continued from the August 18, 2009 Council meeting. Attorney Fordham asked Council consideration for a closed session to receive legal advice prior to taking action on this item. **Action:** Council Member Gossage made the motion to move into Closed Session at 7:38 for the purpose stated. 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 7:44 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

With Council having moved back into Regular Session, Mayor Weatherly recognized Brenda Steen, Executive Director of the Apex Chamber of Commerce, who proposed a counter offer to the previous offer of the Council and referenced in the attached correspondence. Chamber of Commerce originally proposed \$500 per month for 12 months and with the town performing maintenance on the building and grounds; this would allow both parties time to consider a mutually beneficial agreement. Council at their August 18, 2009 meeting proposed a counter offer \$500 per month for 6 months and continued this item to the September 1 meeting to allow the Chamber representative to address the issue. Steen addressed Council and presented the Chamber of Commerce counter offer of \$500 per month for 9 months beginning January 1, 2010, with the Town performing maintenance on the building and grounds. It was noted the current lease has the tenant responsible for maintenance, but it was noted the Town has been responsible for the maintenance.

Old Business # 01 continued

Council Member Jones, Liaison to the Apex Chamber of Commerce noted the new budget year for the Chamber begins October 1, 2009 and understood the 9 month request; recognizing there could be negotiations for terms of the lease for the long term; noted annual expenditures of \$3000 for maintenance costs and noted it was not a large portion of the town's budget. Manager Radford noted the maintenance terms could be addressed within the contract and the town could consider charging the maintenance costs to the Chamber accordingly. With no further discussion, Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to accept the counter offer proposed by the Apex Chamber of Commerce for \$500 per month for 9 months, beginning January 01, 2010. Council Member Gossage 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

Presenter: Mayor Weatherly

New Business # 01 – Parks and Recreation Commission

Mayor Weatherly recognized Council Member Mike Jones, Liaison to the Parks and Recreation Commission and who presented for Council's consideration an appointment and reappointments to the Apex Parks and Recreation Commission.

Council Member Jones made the following recommendations, noting all members have been heavily involved in the Veridea review process and reappointments of these members would allow them to continue to do so.

Recommends the appointment of Carol Hoffman for the senior seat filling an unexpired term, and will expire May 31, 2011.

Recommends the reappointments of Scott Lassiter, Julia Epplin, and Don Koch; each for a three year term, with terms expiring May 31, 2012.

Recommend reappointment of Angela Reincke as Chair with term to expire May 31, 2010.
Recommend reappointment of Greg Coley as Vice Chair with term to expire May 31, 2010.

Mayor Weatherly referred the matter to Council.

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

End of New Business # 01

New Business continued

New Business # 02 (Add-on) – John Locke Foundation Ratings

Council Member Schulze addressed the 2009 transparency ratings report by John Locke Foundation and made regarding provisions of public information available on public websites by various towns, noting the Town of Apex had received a rating of D. He considered this an opportunity and a step in the right direction towards making public information more readily available to the public and more easily accessible; it was noted the town has always provided information upon request. Council Member Schulze recommended this matter be referred to the Planning Committee for study and review of the public website and its documents that are made available to the public and those documents he felt should be made more ready available to the public.

Mayor Weatherly disagreed with some of the report's ratings however, felt it was a good suggestion to look at this. Discussion followed and included clarification that the agenda is placed on the public website (they have been for many years) and the town has a fulltime webmaster (yes the Town has a fulltime webmaster) and sites do not provide salary data (true it does not provide salary data); all ratings were made on the low end curb mostly C and D (true with discussion that the school site provided more data and received a B rating).

Action: Council Member Sutton made the motion to refer this matter to the Planning Committee for study and review. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02 with item referred to Planning Committee

End of New Business

WORKSESSION

There were no Worksession items for discussion.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following: 1) to receive legal advice and discuss potential litigation related to potential eminent domain matters; and 2) to discuss personnel.

Action: Council Member Jones made the motion to move into Closed Session at 7:55 p.m. for the purposes stated. Council Member Schulze made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. Council moved back into Regular Session at 8:45 p.m.

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

Action: Council Member Jones made the motion for approval of three condemnations by **Resolution No. 09-0901-27** related to the Apex Street System improvements: Beck/Fletcher property, the Herndon property, and Vineyard Station LLC. property. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Regular Session

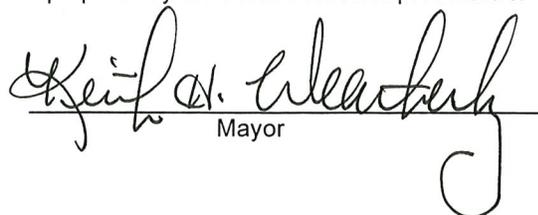
ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 8:46 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 September 01, 2009 Council meeting were prepared by the Town Clerk and presented to Council for approval at the September 15, 2009 Council meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

September 15, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 15, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

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

Mayor Weatherly presented a Proclamation: Recognition of the United Order of Tents 2009 Conference.

INTRODUCTION OF NEW EMPLOYEES

Introduction of newly hired employees in Parks and Recreation, Electric, and Fire.

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 to approve 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. Minutes and General Account of September 1, 2009 Council meeting.
2. Minutes and General Account of September 1, 2009 Closed Session of the Council (separate cover).
3. Minutes and General Account of September 1, 2009 Closed Session of the Council (separate cover).
4. Minutes and General Account of September 1, 2009 Closed Session of the Council (separate cover).
5. CSX Transportation Wire Line Crossing Supplemental Agreement to Permit # CSX-038346 / upgrade of facilities relative to construction of electric substation, Mt. Zion Church Road to run fiber optic cable to site for remote monitoring and control functions, and upgrade of existing fiber optic cable crossing CSX railroad tracks at Center Street to provide additional capacity.
6. Co-location agreement with Clearwire for location of cellular telephone antennas on above ground Water Tank located on South Salem Street. 1) Option and Structure Lease Agreement; 2) Resolution No. 09 – 0915 -28 Declaring A Leasehold Interest in Real Property Surplus; 3) Resolution No. 09 – 0915 - 29 Authorizing Lease of Town Real Property and Upset Bid Process; 4) Public Notice of Lease of Antenna and Related Space on Town Elevated Water Tank Site.

End of Consent Agenda

**REGULAR MEETING AGENDA**

There were no amendments to the Regular Meeting agenda and was set as presented.

PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

Public Hearing # 01 – #09CZ09

Review: Planning Board will meet September 14, 2009; staff will report the recommendation at Council meeting; Certification of Public Notice advertised on the Town of Apex website.

Public hearing and possible motion for zoning case #09CZ09, Special Use Permit #09SUP01 and Minor Site Plan for proposed telecommunications tower: American Tower Corporation, applicant, seeking to rezone from Rural Residential to Office & Institutional Conditional Zoning district 3.51 acres located at 1716 Old US1.

Town Clerk administered an oath to those speaking during public hearing in relation to the special use permit: Brendie Vega, Dianne Khin, Karen Kemerait, and Tony Sears.

Staff presented the Planning report (attached and incorporated as a part of the minutes) regarding applicant's proposal for rezone of 3.51 acres of a 45.89 acre tract of land from Rural Residential zoning to Office and Institutional Conditional zoning; current use is Residential (farm approved for forestry use value under the Wake County Code); applicant seeks a Special Use Permit, and minor site plan approval for construction of a 199 foot telecommunications tower to be located in the Apex ETJ and known as ATC Kelly Road Telecommunications Tower; Condition of rezone: 3.51 acres will only be used for a telecommunications tower site and a 30' access and utility easement. No concerns have been expressed that would require change to the plan. Planning Board met September 14, 2009 and unanimously recommended approval. Staff recommends approval as the request is consistent with the 2025 Land Use Plan, and the Apex Transportation Plan.

Mayor Weatherly opened the public hearing at 7:20 p.m. Karen Kemerait of Blanchard, Miller, Lewis and Styers, P.A., 1117 Hillsborough Street Raleigh, representing American Tower Corporation, spoke in favor of the proposal and need for extensive coverage; there is no opposition to the proposed 199 foot telecommunications tower (ATT antennas) to be located in a rural area, close to proposed I-540 interchange, with mature trees providing shielding and buffering from neighboring properties; property owner Tony Sears was present; eight people attended a community meeting and asked general questions, with no major concerns or opposition; noted no negative impacts: in good location; unlit tower; no noise; no negative impacts on utilities; little traffic. Noted: towers are permitted in O&I zoning up to 100 foot and request is to rezone to allow for 199 foot that would provide for coverage problems in the area, and along I-540 prior to the interchange; Planning Board gave a unanimous recommendation for approval and Planning staff recommended approval as it is consistent with the 2025 Land Use Plan and the UDO requirements.

With no one speaking in opposition, Mayor Weatherly closed the public hearing.

Council addressed: conventional height of tower and land fall zone (fall zone is equal to the height of the tower or 200 feet; required by UDO); clarified 199 foot tower was appropriate for the area to resolve service issues, with taller tower heights up to 300 feet in some rural areas. With no further discussion the request was referred to Council for their consideration.

Action: Council Member Sutton made the motion to approve the request for the rezone #09CZ09, Special Use Permit #09SUP01, and Minor Site Plan for proposed telecommunications tower. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01



Public Hearings continued

Presenter: Brendie Vega, Principal Planner

Public Hearing # 02 – Unified Development Ordinance Amendments

Review: Planning Board will meet September 14, 2009; staff will report the recommendation at Council meeting;

Certification of Public Notice advertised on the Town of Apex website.

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

Staff presented proposed UDO amendments (planning report is attached and incorporated as a part of the minutes), and properly advertised; staff recommends approval of all the amendments.

Amendments 1-3 requested by Council Member Jensen was pulled.

- 1) Table 1 in Section 8.2.6(B)(3) to change all thoroughfare buffers from Type E to Type B.
- 2) Section 8.2.6(B)(5)(e) to remove all Type E Thoroughfare Buffers.
- 3) Section 8.2.6(B)(5)(b) to include language related to Type B Thoroughfare Buffers.

Amendment 4 requested by Business owner: letter attached; 4) UDO Section 8.3.6 (D) *Surfacing and Maintenance* to allow gravel parking for Athletic Fields only under the category of *Entertainment, Outdoor*.

Currently gravel parking is only allowed in public areas for parks and athletic fields; request allow same standards for private parking areas; types of materials used and assurance of appropriateness, keeping dust free conditions, will be a part of plan review; Planning Board met September 14, 2009 and recommended approval with an additional phrase at the end of the section: "...and kept in a dust-free condition at all times."

Amendment 5 requested by Business owner: 5) Section 2.3.16(C) the minimum size of an SD-CZ district may include other parcels of any size within 2000 feet of such parcel of at least 500 contiguous acres.

Relates to Veridea project and will be presented with overall presentation as a whole.

Amendment 6 requested by Zoning Compliance: 6) Section 8.2.8 (B) *Screening Methods* to add provisions for screening smaller appurtenances on non-residential structures.

Amendment 7 requested by Zoning Compliance: 7) New Section 9.2.2 (G) *Accessory Facilities* is proposed under 9.2.2 *Building Design* to incorporate exterior elements into the design of the building in non-residential structures.

To be clearly spell out in the ordinance, mounted/fixed appurtenances will be screened to blend in with overall architecture of building, and if impractical, paint to match primary building color or portion of building where mounted; will be under screening methods and building design.

Amendment 8 requested by Planning Staff:

8) New Section 4.4.5.G.5 Supplemental Standards for Gas and Fuel, Retail that are in line with the Supplemental Standards for Convenience Store with Gas Sales. Existing Supplemental Standards 5) and 6) to be renumbered and supporting amendments to 4.2.2 Use Table.

5) a. There shall be a pitched canopy over stand alone gasoline pumps;

b. Gasoline pump canopies shall be located with the shortest side of canopy facing the primary abutting street.

Planning Board met September 14, 2009 and recommends approval of items 4, 6, 7 and 8.



Public Hearing #2 continued

Amendments 9 & 10 requested by Planning Staff (continued to Planning Board October 12 meeting to allow review by legal counsel and will be brought back for Council's consideration)

- 9) New Section 7.2.2 Transit and a new Subsection 7.2.2 (A) Corridors to provide provisions for Transit in the UDO and to define Transit Corridors.
- 10) Section 7.4 Dedication of ROW for Thoroughfare Plan Streets and Highways to Dedication of ROW for Transportation Corridors to be inclusive of Transit Corridors.

Amendments 11 & 12 requested by Planning Staff

- 11) Section 5.1.5 *Measurements* to allow for 50' wide lots in the Small Town Character Overlay District where there is a shared driveway or an alley (currently allows single family homes on 60 feet)
- 12) Section 4.5.6 (E) *Yard Setbacks* to change the side and rear yard setbacks for

Staff proposes where there are two lots that want to share a driveway, they be allowed to have a 50' wide lot. Council Member Sutton asked if you allow a shared driveway, also can have an accessory apartment in the back of those two? Noted 4 domiciles there, sharing a driveway, and they want to make smaller lots of 50 feet.

Council Member Jensen questioned with lots 100 feet wide, this amendment would allow for subdivision of infill lots (there 100 foot lots and would allow for infill); would change neighborhood character; applicant requesting reduction will speak during public hearing.

Council Member Sutton asked if it were logical to have more dwellings on smaller lots with Dianne Khin Director of Planning responding staff wanted to keep 60 foot wide lots, unless character of the downtown is improved by adding alley or shared driveway and is an incentive to do this with reduction of the lot width requirement from 60 feet to 50 feet; standard to have one's own driveway would still be 60 feet; 50 foot lot width is standard in medium density residential district; majority of lots in the downtown character district are already zoned medium density residential; most of the lots have drive way minimum width for one car of 10 feet; basically reduction in lot width would be as if you take out one drive way; options for drive materials were discussed, noting they are not necessarily concrete.

- 13) Amendment Section 4.5.6 (E) *Yard Setbacks* to change the side and rear yard setbacks for Accessory Apartments in the Small Town Character Overlay District.

Staff noted accessory apartments in small town character are required to have a 10 foot side yard setback; Setback reduction: accessory apartments shall have a minimum 6 foot side yard and would be consistent with medium density zoning; examples were shown. Council Member Sutton clarified medium density zoning allows for accessory buildings (yes). Planning Board unanimously recommended approval; staff recommended approval of items 11 and 12.

Mayor Weatherly opened the public hearing at 7:35 p.m.

Sarah Potter, Green Cottage Custom Homes, has built homes in downtown, adding value, and supports the 6' setback requirement, is working with planning staff to subdivide property: 411 Olive Street; wants to keep the character of the homes in the area and build smaller homes; would like to keep the 1950 historic home portion on the property and move it to the back of the lot; has an agreement to move it as an accessory apartment and allowed by the UDO – could be an in-law suite: was told a specific setback, was approved and recorded in August; had a conflict with permitting; a vote against the change does not prevent her from putting an accessory structure; she can design smaller structure however would prevent the use of the 1950 house because it's a bit wider; with 6 foot side yard she can keep the house and move it to the back and would like to keep it, noting its character; noted the 50 foot lot width and shared drive has nothing to do with her property; noted in the small town character area you are not allowed a garage in the front of the house and need a driveway going to the back and nothing to do with having an accessory structure in the back; if you put a garage it would be behind the house, could be kept as a shared drive; project would add value to the downtown and as a homeowner in the downtown she would not want to degrade her own home; only wants to help downtown.



Public Hearing #2 continued

Kathy Taylor, 115 S. Mason, objects to the amendments; would eat into the protection the UDO gives the small town overlay district and national register historic district; negatively impact the streets and character; amendment 11 reduction in lot size would make it easier to subdivide putting two or more homes where one stands; amendment 12 would allow accessory apartments in historic district and avoid setbacks making it possible to put more dwellings on lots, and have an immediate impact on 411 Olive Street lot; noted it an investment for Green Cottage Custom Homes and working on dividing the lot and protected by the UDO where 100 foot lot is not wide enough and amendment 11 would allow the lot to be divided into two 50 foot lots; most recent plan for this lot shows four houses (could be rental); noted if current yard setbacks would prevent this, amendment 12 allow them to be built; has seen the work by this person and are nice but has a hard time with four houses on the lot; asked does infill lots take advantage and is it a good investment for the town; read section of the overlay district code to make good surroundings; shared concern with the notification process only known to those who actively search the town's website; encouraged Council to do what is best for the town and delay action to allow residents to weigh in.

Collin McNare, Real Pro Realty, Richardson Road, Apex, spoke in support of gravel parking lots vs pave parking lots; addressing sites not public owned but private owned set aside for recreation where private parties can lease short term or long term over time; public doesn't need to continue to build parks as there's an oversupply of users who want to use these; recommends entrances/exits be concrete onto public streets and parking areas graveled, with chocks designated for organized parking; noted unanimous approval by the Planning Board; noted it a benefit with proper screening, buffers, and a good use for these properties for 3 to 10 years and then the use of the property could change with development, and often happens with these type facilities.

Susie Freedle, resides in the downtown district and lives in a historic home, and friend to Sarah Potter; last thing she wants to see is the neighborhood character destroyed; understanding her plans, thinks it's a fact there are larger lots with older dilapidated homes on them, and builders have to make money from them in some way; noted there could be options: two mansions that would take away character, or smaller homes that would stick with it; completely understood concerns as she was a homeowner in downtown as well; stands up for Sarah as far as quality and character of homes, gave Culvert Street as an example building houses next to a group home adding a lot to that street and neighborhood; trust she will do the same here.

David Kuehr-McLaren, 205 S. Mason, likes the intent, however concerned with change of town character; 60 feet preserves the character; 50 feet opens the door and would make a difference in appearance.

Ross Olive, 1210 Old Raleigh Road, addressed concern with amendments 11 and 12; property owner of 109 S. Mason and not in favor of making changes to accommodate this situation; sounds developer does quality work; making changes accommodates additional homes on Olive Street lot and reduction of 60 feet to 50 feet and sharing a driveway sounds as if it would be two drives almost if you go with 10 foot driveways; noted creek drainage slope on back of Mason Street property, draining north to this wet area and storm drain, Middle Creek, to the Neuse and then out at New Bern; keep this in mind with rear and side yard setback compromises; felt Council should delay action in their vote to allow neighbors to address this as he had only found out the day before the hearing. Potter is keeping development as far as they can to the left of the buffer, and if they go wider will push them closer to that.

Shirley Beasley, 109 Cunningham Street, spoke in opposition; gave the history of the lot sold wanting to sell it for two lots and the town didn't permit it and doesn't understand reason to place 4 houses on the lot. Mayor Weatherly noted it a proposed ordinance change, and encouraged Mayor to look at the property in question and see how small it is; agreed the applicant does beautiful work, however, concerned with the impact and change that would destroy the neighborhood that has very old houses 50 to 100 years old; lady who's property adjoins this was not able to be here due to a death but is against four houses; understood in the historic district you could not do all of this for four years asking if they knew about the historic district; they demolished a structure, and she didn't agree with destroying historic structures.

**Public Hearing #2 continued**

The public hearing was closed. Planning Board unanimously recommended approval of both amendments 11 and 12. Council Member Sutton stated the request to change the UDO was for this one particular case, and felt the UDO was broader than that, and asked if staff if they would change the UDO every time someone comes in and asks for a change or variation. Khin responded not necessarily and gave the request for the gravel parking lot as an example; staff recognizes when things are brought to their attention and good for the town, they do bring it forward and is up to Council if they want to make the changes based on if they are necessary or advisable; staff's job is to be responsive to the business community and development community when they have an issue that is problematic for them, to bring it forward for consideration when staff does not feel it will be a detriment, and feel this is very common; believes accessory apartments are historical noting southern carriage houses in the 1800's. Confirmed to Manager's question: two single family homes and two accessory apartments could be placed on the lot as it exists today, more than likely would be attached accessory units to two main houses; staff felt two smaller houses with two small guest cottages behind them would be preferable.

Council Member Schulze addressed appearance guidelines, with photos of a shoebox look and not appealing, with Khin responding they already existed, and did not go through the small town character design review; previous UDO amendments were made a year ago for very strict design criteria and details. Mayor Weatherly asked the Planning Board opinion, with Khin responding they did not have discussion regarding this particular item and with no public comment on these, having spent more time on gravel lots and transportation items that were continued. Staff responded to questions regarding notification: some neighbors had been sending emails for a week regarding the proposed amendment with some only the day before the public hearing. Manager Radford asked how many residential districts in town allow for accessory apartments, with Khin responding basically all of them except for manufactured housing district and the mobile home park district.

Council Member Schulze addressed graveled parking lots and standards in place as they break down and the needed assurance for maintaining them. Khin responded during Planning Board discussion, it was felt staff should come back with a standard, as they were only allowed by the town and has their own maintenance program in place to take care of them; staff believes standards needed to be created regarding maintenance of gravel lots and agreeing they should be maintained; Planning Board were unanimous as they expressed fairness for private lots to have gravel lots as the public parks had gravel surfaces. Council Member Schulze was in agreement with gravel as long as they were maintained and shared examples of broken down gravel roads; staff noted Planning Board recommended they be graveled, maintained and dust free, and use of true gravel vs. crush-run. Council Member Jensen was in agreement with true gravel for ball field, as it could change over to another use, and asked why make them put in pavement.

Council Member Jones asked procedural questions relative to amendments 11 and 12; and with amendment 5 (relates to Veridea project and will be presented with overall presentation as a whole; noted Planning Board had already made the recommendation on previous UDO amendments, and the developer had come back wanting to make a change and this is the one; Planning Board has to reconsider it; will be presented to Council in total). Procedural questions were asked relative to amendments 9 and 10; legal questions for what was proposed, seeking town attorney's opinion and continued to their October meeting.

Council Member Jones shared some of the concerns regarding amendments 11 and 12, having seen the nice homes Ms. Potter had built, noted them very nice and the home fit very well with the neighborhoods; noted this particular lot will be significantly changed as well as change the neighborhood; he formerly lived near there and noted four homes on any one lot would change the neighborhood character, and asked if they are doing something that will have a far reaching affect, rather than for just this one lot; he was not ready to say yes or no and needed more thought time; asked how many 100 foot lots there are that this amendment might impact in this particular district and that could go from mostly single family homes on single family lots, and could subdivide with four homes because of this change; supports infill, thinking it's the appropriate thing to do with a vacant lot, and have the appropriate size lot, however unsure that 50 foot lots with a shared drive is the right thing to do.

Council Member Schulze shared concerns, and noted with too many things going on, he too needs more thought time, as there would be change in the neighborhood character, and expressed he was not ready to vote yes or no; and if forced to vote tonight would vote against it; would like to see overhead views.



Public Hearing #2 continued

Council Member Gossage felt changing for one individual or one set of circumstances was problematic; also would appreciate opportunity to hear more from neighbors there that would come to a future meeting if given opportunity and thinks they should do that; he did think the houses Potter had built looked great. Council Member Jones also felt neighbors from other parts of the area may want to address this as well. Council Member Gossage continued that maybe planning staff could explain what would be allowed there now. Council Member Jones was also confused, yes it would be allowed, something similar and how it would change. Council Member Gossage continued not right now, but if this is continued at a future meeting; he too thought overhead shots would be helpful.

Council Member Jensen agrees with all that had been said; the accessory building may be on a 100 foot lot was done before, but probably didn't have 50 foot wide lots some time ago in keeping the old town character; Council Member Schulze noted the times have changed, was worried people will pack little units in on these lots. Council Member Jensen didn't think it was bad to have accessory buildings as long as the lot is of reasonable width; he was concerned about the narrow lots and if voting tonight would vote against and was for putting off the vote tonight.

Potter stated this does not affect her plans and will continue with what she is working on; her plans would be allowed on the lot, and had rather not have destroyed the house, building smaller on reduced yard setbacks, with those here tonight not wanting to destroy the house, however, if this doesn't go through, she will have to move on with her plans; she was only trying to save the house.

Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to approve amendments # 4 (Sec. 8.3.6(D), 6 (Sec. 8.2.8.B), 7 (Sec. 9.2.2.G) and 8 (Sec. 4.4.5.G.5); delay items 9 (Sec.7.2.2) and 10 (Sec. 7.4) until such time the Planning Board gives a recommendation, and continue review of items 11 (Sec.5.1.5) and 12 (Sec. 4.5.6.E) at the next Council meeting. Council Member Gossage made the second to the motion. Motion carried unanimously. With a brief discussion, Potter expressed her intent to move forward with her plans; the following action was taken by Council: **Action:** Council Member Jensen restated the motion to continue review of amendments 11 and 12 to the October 20 Council meeting. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

Presenter: Reed Huegerich, Transportation Planner

Public Hearing # 03 – Transportation Plan Amendments

Review: Planning Board will meet September 14, 2009; staff will report the recommendation at Council meeting; Certification of Public Notice advertised on the Town of Apex website.

Public hearing and possible motion for approval of the Transportation Plan Amendments.

Staff presented the proposed Transportation Plan Amendments as stated in the Planning report which is attached and incorporated as a part of the minutes, and properly advertised, and pulling the proposed amendments to the Thoroughfare and Collector Street Plan as they deal with areas surrounding Veridea and best to deal with those in total for that topic. Bicycle, Pedestrian and Equestrian Plan amendments were presented due to public comment and planning efforts, as well as the proposed Transit Plan amendments as last update was 2005 and regional passenger rail planning has progressed; proposed indicated a multi-use path, light rail corridor, bus corridor, lane designations, bridge over US1, sidewalk plans, transit centers, as shown on the attached maps and outlined on the cover sheet and contained in the staff report.

Council Member Schulze asked multiple questions, with staff responding regarding the multi-use path and light rail corridor.



Public Hearing #3 continued

Special transit advisory commission recommended a light rail passenger system throughout the triangle area; CAMPO adopted the recommendation, as well as Durham, Chapel Hill and Carrboro; with a 2035 plan showing service to Apex South Salem Street, and further to proposed Veridea development (would not exist without proposed development); wanting to be in chorus with CAMPO long range plan and contingent on the passing of a referendum.

Council Member Schulze agreed they should be forward thinking and asked ramifications to property owners along the proposed route based on the plan, and asking if they were going to hold them, not to do what they want with their land, as it could be a pipe dream. Staff responded the time frame is 2035 with other phases farther out; the proposed amendment was dealing with corridor preservation for development and reason for referring it to legal staff to assure they could do that and is different than road corridors because everyone is not served by it, it could go through your property but not be served by it with a much longer time frame; with a road more than likely there would be access; staff noted at this point it's just a line on the map looking at slopes and the issues with I-540 corridor, and with limited access that comes with higher density development and expanded on the corridor feasibility.

Mayor Weatherly commented on the highly speculative and overly optimistic planning, first having to get the revenue stream, and to get to this phase of the light rail project, would have to show some success with the first phase before this phase would be built. Council Member Sutton commented on the Charlotte experiment (7 mile line), with the Mayor stating that was not like anything being discussed here as the voters hasn't even given to the revenues necessary to build phase one.

Council Member Jensen supports a fixed rail transportation system; commented on thought process for placing light rail in proposed I-540 right of way (staff noted it was looked at and there were significant issues, and if it were to hug the corridor would only allow access to one side; didn't look feasible; going down a highway is possible); the I-540 corridor is locked in and expanded on access; agreed with the plan but not to jeopardize property owners. Council Member Schulze does not support light rail and reluctant for it to be shown on the map, as it was noted as a future rail service; nowhere near a done deal, he preferred proposed rather than future, asking who's plan it was and if it were placing Apex a part of the plan; he was opposed as he was not for light rail. Council Member Jensen added it was a plan and a thought process, and agrees it should not impact property owners unless they have to; maybe should see if it could go along with I-540 corridor.

Council Member Sutton supports the plan and felt Apex should participate if they want to be included; staff added the plan is to bring light rail down from Cary to Apex, along the existing CSX corridor and doesn't impact any additional property owners; getting it to Veridea would be the issue, giving the proposed could come down Holly Springs Apex Road, however not desirable, and doesn't know it to be feasible. Council Member Sutton felt they could alter the plan, as some do not support light rail. Staff noted the adopted South Salem Street small area plan has planned transit around the existing rail corridor.

Mayor Weatherly asked what would give the most flexibility, thinking this would not happen, looking into the plan and if the revenue stream fails in 2011, and someone wants to develop in the corridor, could we make a conscious decision to change it, asking if this were an accurate way to look at this; say the developer of Veridea makes Apex come into the first phase for a rail stop, then Council has the revenue and says, "let's make Veridea a part of that," it's all speculative but can never tell. Staff continued language could be added in the UDO and sent back to Planning Board to assure a strict reservation or certain measures would have to be in place before requiring a land owner to be encumbered in that phase. Mayor Weatherly stated, not knowing what the future would hold, doesn't believe it will ever be anything other than a white elephant. Council Member Schulze felt they were showing the corridor through all little town's hoping to get people to vote for it; and 20 years down the road may never get there.



Public Hearing #3 continued

Council Member Gossage commented, he had heard the issue was that Apex didn't have the density needed for light rail, and felt that to be the case now, thinks putting 16,000 people in a 1000 acres of Veridea and perhaps that's the density needed for light rail to succeed; he doesn't know. Mayor Weatherly commented Veridea was planning to be a self sustaining community where they don't have to go anywhere. Council Member Gossage noted locating corporate headquarters and with the commercial space and people coming there, was now asking, does light rail transportation become a viable service; he doesn't know, but if we don't ask that question, then we do ourselves a disservice.

Mayor Weatherly added, he believes in maintaining flexibility as long as there's a legitimate development opportunity and doesn't preclude – that planning staff is not telling everybody their land is stuck as long as we want to hold it, because Council has encumbered your property by a corridor running through it; as long as staff doesn't give those signals by putting a line through it; do whatever to say, that future councils may continue to entertain development proposals within that corridor, subject to the possibilities of a light rail corridor, it's feasibility, or we forget all of this.

Council Member Gossage added, we always need to show some awareness of potential reaction of the land owners where we draw a line, sometime it's a line on a map for a plan that is 20 or 30 years from now, but for them it's a very real impact. Staff spoke to the line, in that again the UDO amendments might be a fairly continuous issue and would have to draft this carefully; continued showing proposed routes, Cary's existing facility; and necessity of a plan that is an idea that would set the framework for the future.

Council Member Schulze addressed bus transportation and the Cary transit bus corridor, and ramifications for Apex with potential bus stops; staff commented they couldn't speak for Cary, but had spoken with Cary regarding a route being considered for Beaver Creek Commons to allow their citizens to go there, and would be some cost share provisions to expand bus service, not having come forward with anything specific regarding that idea.

Council Member Jensen agreed there must be a plan to improve it, asking how wide the corridor would be (60 feet and not involving the bike pedestrian use 75 feet); he continued if we impact property owners and the community wants it, you don't jeopardize individual property owners; you pay for the land being taken which is responsibility to society. Mayor Weatherly commented on TTA's responsibilities, and with Council Member Jensen thinking that's what will have to happen here as stuff comes up, to plan for it not knowing who pays for it, and need to have something like this plan.

Staff spoke to the UDO amendments not being addressed at this time, noting language would be a reservation to the purchase, and a hypothetical as this has not gone through Planning Board, for a recommendation; the idea if this land were encumbered, it would be purchased. Previous plan shows corridor about I-540, thinking it necessary, and up to transit providers as to where they want to place it, thinking it unnecessary to show those, instead show existing and proposed service of transit providers, TTA and Cary Transit. Also, show existing rail corridors, CSX, Amtrack, and add former rail corridor preserved - American Tobacco Trail; NCDOT's policy is to preserve the corridors as they go from rail to trail; minimize at grade crossing in the future in the event it goes back to rail; and potential for this to be a transit corridor. Transit centers: bus, rail on South Salem Street Plan, proposed Veridea, and existing train depot; there was talk of increased size suggested for Villages of Apex, but no facilities were provided for that; if light rail happened could be provided in right of way; showing map.



Public Hearing #3 continued

Mayor Weatherly opened the public hearing at 8:45 and with no one addressing the changes, closed the public hearing and referred the matter to Council. Council Member Schulze stated he was voting against this, and if it does pass, would like to see the legend change from "future regional light rail corridor" to "possible regional light rail corridor."

Action: Council Member Sutton made the motion to approve the changes to the Bicycle, Pedestrian and Equestrian Plan and changes to the Transit Plan. Council Member Jensen made the second to the motion.

Council Member Schulze opposes light rail and thinks it's a huge waste of tax payer's money and thinks by approving a plan like this, somehow indicates you're in favor, and he's not, and is voting against the plan.

Council Member Jones agreed on the basis of finances or lack thereof, but was a bit torn that if it does happen, they need to plan for it, and if something happens and it is funded where would it go; he thinks thought has gone into that in the way of the proposed Veridea, and while he agrees it should be in the I-540 corridor, apparently it can't be; while he agrees with Council Member Schulze, he's not oppose to a line on a drawing, he agrees if it's possible for a proposed pipe dream in the future it would be better; he does think we need to plan for it, as we plan for a lot of things that we want to happen, and why not plan for the things that might happen. Council Member Schulze indicated he didn't want this to happen. Council Member Jones definitely didn't want to put anything on there that says that Apex..... with Mayor Weatherly interjecting that everybody recognizes it would be subject to the revenues and the plan going through, and we are way down the line on ever seeing part of that; he thinks it will prove that we maintained flexibility if this goes through; then 35 years from now, Apex may have a stop if we are on the plan to do it; he doesn't think Apex supports the revenues necessary to build this when 60% of the revenue would go to light rail project, but mainly helping Raleigh communities; 40% buses, which he supports the bus enhancement part of the package, much less expensive than the multi-billion dollar light rail that would be a drain on transportation dollars; he doesn't believe it would be a reality, when it's a dotted line on the map as long as we don't send a signal to the planning staff to tell those folks that own land that we are not open to change the dotted line on a map.

Council Member Jensen supports the planning for this; looking 35 years out, and looking back in history to 1900 might not have voted for the horseless carriage, by 1935 was a pretty popular device; as fuel prices and energy goes up we will get much more serious about going to light rail; we will lose freedom, but will do so all the time as we grow, it's a fact of life; Charlotte voted to fund their rail twice and is a mark in favor of saying, eventually maybe folks here as a group, might want to fund this in some manner to make things better for everybody; he thinks it's very important that Apex does plan.

Council Member Gossage thinks there's room to critique the state and their funding priorities and use of tax dollars and certainly would hope that a case could be made that dollars could be spent differently; you never know and voters have surprised him before; a few months later you read and then there it is; maybe it's good to give ourselves flexibility in planning. Council Member Schulze thinks there's a point where you draw a line and say this is where my line is. Council Member Gossage added he was speaking about transportation.

Mayor Weatherly called for the vote; vote on the motion was 4 in favor and 1 opposed with Council Member Schulze casting the opposing vote. Motion carried.

End of Public Hearing # 03

End of Public Hearings



OLD BUSINESS

Presenter: Lee Smiley, Director of Finance

Old Business # 01 – State Revolving Loan Funds

Possible motion to approve **Resolution No. 09-0915-30**, Authorizing Application for State Revolving Loan Funds to finance the Western Wake Wastewater Treatment Facilities.

Smiley presented the named resolution and commented on the application process, and authorization for him to file same; commented on the fee schedule and debt payment; if not paid the state treasury would withhold money primarily from the sale of taxes; commented on the 20 year loan period and the maximum 4% interest rate. Commented on Cary's 2.2% a few years ago, thinking 4% is a good rate.

Action: Council Member Schulze made the motion to adopt the resolution. 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

There were no New Business items to be considered.

WORKSESSION

There were no Worksession items for discussion.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following: discuss potential litigation and receive legal advice from the Town Attorney. **Action:** Council Member Jones made the motion to move into Closed Session at 8:55 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Schulze made the motion to move back into Regular Session at 9:15 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

ADJOURNMENT

With Council having moved back into regular session: **Action:** Council Member Schulze made the motion to adjourn at 9:16 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the September 15, 2009 Council meeting were prepared by the Town Clerk and presented to Council for approval at the October 6, 2009 Council meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

October 06, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 06, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

All Council Members were present.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:

Mike Jones

Bill Jensen

Bryan Gossage

Gene Schulze

Bill Sutton

COMMENCEMENT

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

PROCLAMATION

Mayor Weatherly presented a Proclamation for Peak City Film Festival Day to Bob Crowley, Producer.

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 to approve the following. There were no amendments to the Consent Agenda and was set as presented. **Action:** Council Member Jensen made the motion to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of September 15, 2009 Council meeting.
2. Minutes and General Account of September 15, 2009 Closed Session of the Council (separate cover).
3. Findings of Fact and Conclusions of Law: Special Use Permit #09SUP01 Kelly Road Tower; and Statement of Town Council and Ordinance for Rezone #09CZ09, American Tower Corporation, petitioner; located at 1716 Old US 1 Highway approved by Council at the September 15, 2009 Council meeting.
4. Set public hearing October 20, 2009 for Rezone # 09CZ10, Thomas E & Robin Seymour, applicants; to rezone 2.79 acres from Office & Institutional to Mixed Office Residential and Retail-Conditional Use, and located on S. Salem Street between W. Moore Street and near the intersection with W. Williams Street.
5. Amendment to Code of Ordinances: **Ordinance No. 09-1006-08** Sec. 20-150 adding subsection (25) relating to prohibiting parking on the south side of East Moore Street from South Ellington Street to South Tunstall Avenue.
6. Concurrence with proposed NCDOT Ordinance to maintain existing 45 mph speed limit on Old Raleigh Road west of Lake Pine Drive (to a point west of the Apex Peakway), and reduction of speed limit east of Lake Pine Drive from 45 mph to a statutory 35 mph.
7. Request from Peak City Film Festival to place banners over Salem Street, one north of Center and near Apex Auto Sales, and the other one, near the intersection of Moore Street, to announce an upcoming event – TV Pilot shoot.

Consent Agenda continued on Page 2



8. Request from Apex High School Student Council to close Laura Duncan Road from Old Raleigh Road to Knollwood Drive for a homecoming parade, Friday, October 23, 2009.
9. Award a construction contract for Hughes Street sidewalk project to American Contract Services, Inc., lowest responsible bidder; total bid \$37,273.50.
10. Resolution No. 09 – 1006 - _31_ to abandon two small areas of public utility easement related to Mac-Mere, LLC and Salem Street Promenade, LLC Lot recombination shown on Details # 1 and # 2 of the attached survey.
11. Wake County Board of Commissioners approved and accepted the tax report for the Town of Apex in regular session on September 8, 2009 for Town of Apex tax report.
12. Resolution No. 09- 1006 - _32_ releasing offer of dedication of public right-of-way for Brittlely Way Extension.
13. Request from R.T. Crowley to close certain downtown streets to allow for filming of the pilot episode of The Rusty Bucket Kids Club television show, Sundays October 18 and 25 for various time periods.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Attorney Fordham asked to add two closed session items to receive legal advice from the Town Attorney. Council Member Jensen asked to pull the New Business # 01 item. With the requests made the following action was taken: **Action:** Council Member Schulze made the motion to amend the printed agenda to as requested. Council Member Schulze made the second to the motion. Motion carried unanimously. The Regular Meeting 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.**

Joe Foresta, owner of the property located at Salem and Saunders Street, presented a cost saving, safety, and versatility enhancement proposal for Saunders Street parking lot; and preliminary concept plan and proposed town parking scenario, prepared by Jones & Cnossen Engineering, PLLC. Exhibits Attached. He noted the existing lot entrance off-set to the Police entry; discussed traffic flow, and future emergency light, noting higher costs to maintain and resurface the 10,000 extra square feet. Proposed plan showed the entry directly across from the Police entry, designed for improved traffic flow, and noted a large cost savings to resurface and maintain 10,000 square feet; showed additional green area (0.22 acre) and nine additional parking spaces; noted water/sewer taps installed for temporary police housing can later be used for future addition of rest rooms; noted area is large enough to be useful for events while allowing ample parking.



Kathy Taylor, 115 S. Mason Street addressed Council action of September 15, 2009 regarding the amendments to the UDO that gave way to proposed plans for the lot at 411 Olive Street allowing accessory apartments, with the possibility for similar situations to occur; referenced an email (exhibit) sent to the Mayor regarding division of lots, and possible amendments to the Unified Development Ordinance requirements for detached accessory apartments, that would place a limit on the maximum size of accessory apartments based on the size of the main house; that they could not exceed 800 square feet on each lot, or 50% of the size of the main house, whichever is smaller; calling attention to proportional size and lack of guidelines that could led to vulnerability of investors, leading to change the streets and neighborhood character from family zoning by placing two smaller houses on one lot ; noted the small town character value to citizens, and maintaining the historic district and surrounding area. Council Member Sutton voiced that he agreed.

Jim Oxford, 2532B, US64 West, stated he was solely responsible for the signs placed with the political signs that say, "no more yes men, and no more sheep", to disassociate any others running for political office. He expressed his appreciation to Council Member Sutton for his service to his country and this town as he plans to retire from the board. He expressed that he will continue to voice his opinion as to what goes on in Council meetings in the future.

End of Public Forum

NEW BUSINESS

Presenter: Council Member Bill Jensen

New Business # 01 – Resolution Amending Town Policy (Pulled)

Council Member Jensen has asked Council consider adopting a Resolution amending the Town's policies applicable to customer-owned electric generation facility interconnections to the Town's electric system to delete the "additional insured" requirement for non-residential customer interconnections of 10KW or lesser systems. No action taken as Council Member Jensen asked to pull this item.

End of New Business # 01

Presenter: Town Manager Bruce Radford

New Business # 02 – Town Council Meeting of November 3, 2009

Mayor Weatherly presented it had been traditional to cancel Council meetings when they fell on Election Day, this year's Election Day is November 3, 2009, and asked Council's consideration to cancel the Town Council meeting on this date.

Action: Council Member Gossage made the motion to cancel the meeting as local elections fall on Election Day, November 3, 2009. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business

WORKSESSION

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice about possibly joining in the amicus brief of the North Carolina League of Municipalities related to the Town of Cary's litigation concerning riparian buffers, and an additional two items to receive legal advice from the Town Attorney.

Action: Council Member Jones made the motion to move into Closed Session at 7:15 p.m. 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 back into Regular Session at 7:38 p.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; Town Manager Radford took the minutes through the end of the meeting.

Action: Council Member Schulze made the motion to adopt Resolution No. 09-1006 – _33_ Authorizing the Town Manager to Make Bankruptcy Decisions for Claims less than \$25,000. Council Member Sutton made the second to the motion. Motion carried unanimously.

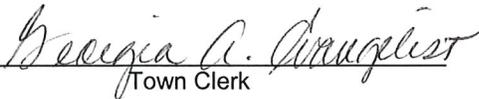
Action: Council Member Schulze made the motion that the attached Tingen Road Agreement be approved with the Town Manager and the Town Attorney having authority to make minor modifications to the language so that a final agreement can be reached. Council Member Gossage made the second to the motion. Motion carried unanimously.

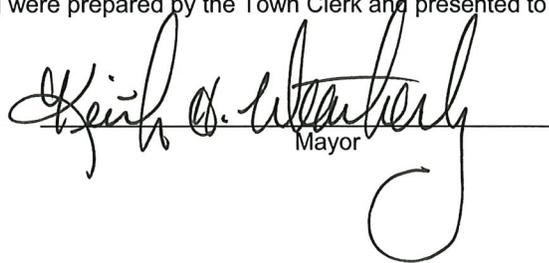
End of Regular Session**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn:

Action: Council Member Sutton made the motion to adjourn at 7:52 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the September 15, 2009 Council meeting were prepared by the Town Clerk and presented to Council for approval at the October 6, 2009 Council meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

General Account and Minutes of the Planning Committee Meeting of October 6, 2009

A special meeting of the Planning Committee of the Apex Town Council was held on Tuesday, October 6, 2009 at 5:30 p.m., in the Conference Room, 2nd floor, Apex Town Hall, 73 Hunter Street. The purpose of the meeting was to discuss: dissemination of public information through the Town's website.

Member Mike Jones was present. Also in attendance: Town Manager Bruce Radford, Assistant Manager Mike Wilson, Information Services Director Peter LaPiana, Director of Finance Lee Smiley, Web Master Stacey Rogan and Human Resources Director Eleanor Green.

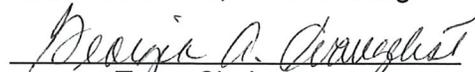
Chairman Gene Schulze called the meeting to order, and gave a recap of the September 1, 2009 Council Meeting item as it related to the 2009 transparency ratings report by John Locke Foundation and regarding provisions of public information available on public websites by various towns, noting the Town of Apex had received a rating of D. He considered this an opportunity and a step in the right direction towards making public information more readily available to the public and more easily accessible; during the meeting it was noted the town has always provided information upon request. Council Member Schulze had recommended this matter be referred to the Planning Committee for study and review of the public website and its documents that are made available to the public and those documents he felt should be made more ready available to the public.

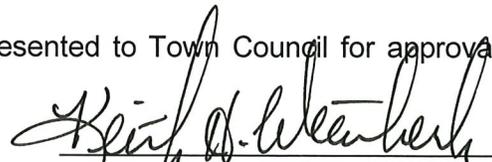
Mr. Schulze reviewed the information he had ascertained from several Municipal and County websites. Mr. Schulze suggested the following information could be placed on the website; Information regarding the Towns finances from the State Treasurer's office, The Apex Budget message and ordinance, the CIP, the Towns checkbook showing all regular expenses, the annual financial report of the Town, health plan expenses, Incentives provided, if any, salaries of employees by job code, number of authorized positions, various plans and study commissions, meeting minutes, planning retreat documents, public notices, Police and Fire Statistics, Water and Sewer statistics and other development reports. Some of these items are already on the website but in varying formats. Pete Lapiana was tasked with determining what, if any costs might be associated with this effort. Pete will respond to the Manager when he has determined the costs. After that time Manager Radford will contact Mr. Schulze to schedule another Planning Committee meeting before referring this matter to the Mayor and Council.

Chairman Schulze closed the meeting at 6:40 p.m.

Minutes submitted by Town Manager Bruce Radford.

Minutes of the Planning Committee meeting were presented to Town Council for approval at their October 20, 2009 meeting.


Town Clerk


Mayor

TOWN OF APEX
JOINT WORKSESSION OF THE APEX TOWN COUNCIL
AND APEX PLANNING BOARD
MEETING MINUTES

October 12, 2009

The Apex Town Council and the Apex Planning Board held a Joint Worksession meeting regarding the Veridea Sustainable Development Plan on Monday, October 12, 2009 from 5:30 p.m. to 8:30 p.m. in the Apex Town Hall 3rd Floor Training Room.

Council Members Present:

Keith Weatherly, Mayor
Mike Jones, Mayor Pro Tem
Bill Jensen
Bill Sutton
Eugene Schulze
Bryan Gossage

Planning Board Members Present:

Tommy Morgan, Chair
Lance Olive, Vice Chair
Staley Smith
Graham Wilson
Sheryl Bynum
Tom Colhoun
Lisa Carley
Terry Rowe

Town of Apex Staff Present:

Bruce Radford, Town Manager
Mike Wilson, Assistant Town Manager
Tim Donnelly, Public Works Director
Mark Haraway, Fire Chief
Jack Lewis, Police Chief
Dianne Khin, Planning Director
John Brown, Parks, Rec & Cultural Resources Director

Karl Huegerich, Fire Marshal
Brendie Vega, Principal Planner
Adam Stephenson, Senior Engineer
Russell Dalton, Transportation Engineer
Reed Huegerich, Transportation Planner
Lauren Simmons, Planner
John Maclaga, Electrical Eng. & Tech. Ser. Manager

Other: Glenn Dunn, Environmental

Veridea Team Members Present:

Tom Hendrickson, Lookout Ventures, Inc.
John Martin, Lookout Ventures, Inc.
Alan Maness, BBM & Associates
Mike Horn, Kimley Horn & Associates
Travis Fluitt, Kimley Horn & Associates
Lacy Reeves, Smith Anderson et al
Charlotte Mitchell, Blanchard, Miller, Lewis & Styers

Christine Hilt, CLH Design
Terry Shook, Shook Kelley
Tom Goodwin, Shook Kelly
Craig Duerr, WSP Sells
Ross Massey, WSP Sells
Stan Taylor, RST Engineering

Mayor Weatherly called the meeting to order and made some opening remarks explaining the format of the meeting. Town Manager Bruce Radford stated there has been a long, exhaustive review by town staff and that this joint meeting is for the Apex Town Council and Apex Planning Board to review and determine natural parings in order to make the process succinct.

DEVELOPER OF VERIDEA SUSTAINABLE DEVELOPMENT PLAN (SD PLAN)

Developer Tom Hendrickson of Lookout Ventures, Inc. thanked town staff for the time they have put into the review of the Veridea Sustainable Development Plan [SD Plan] and appreciates the collective efforts made by all. Mr. Hendrickson stated the following highlights from a letter submitted to the town:

- The Veridea Team participated in more than 50 meetings with neighbors, community organizations, Town of Apex officials and Boards, department heads and town staff from multiple departments.
- The SD Plan has evolved through more than two dozen drafts and seven official submittals to present to the Planning Board and Town Council.
- To help facilitate discussions, there are six broad policy issues they believe the Town Council must resolve:
 1. *Stage Planning and Site Planning* – whether to allow staff to approve site plans and subdivision plans within a Council-approved Stage Plan.
 2. *Street and Other Design Standards* – Apex Standards call for eight different types of streets; Veridea calls for twenty types of streets, roadways and alleys both public and private.
 3. *Resource Conservation Area* – Veridea proposes an Environmental Enhancement Plan (EEP) and has earmarked 300 acres of land for Civic, Public and Open Space.
 4. *Utility Policies, Rules and Regulations* – pursue the use of the Middle Creek Reclamation Facility for wastewater & return water back to Veridea in a reuse/reclaim program in conjunction with a discharge permit allowing return of waters to the Cape Fear River Basin.
 5. *Population and Community Facilities* – young professionals and empty nesters have small households and will be attracted to this project; Veridea models project a per household average of 1.7 persons.
 6. *Transportation Policies and their Impact Upon NC 55* – Transportation in Veridea will be multimodal; they propose NC 55 to become a network-based extension of the streets in Apex with traffic. Traffic that prefers a faster route will use I-540 and US# 1.

Below are comments, concerns and recommendations from Town of Apex staff.

PLANNING & COMMUNITY DEVELOPMENT

Principal Planner Brendie Vega oriented those present as to location of the proposed Veridea Sustainable Development Plan along with the current and proposed land uses. Brendie offered the following differences with the Sustainable Development and the Unified Development Ordinance:

- *Administration* – Form Based Code vs. Euclidean Zoning, new definitions, no standards for approval, exemptions from phasing, bonding/installation of infrastructure, and several UDO sections; this project may be the only SD plan to come to the town.
- *Plan Approval* – exemption from having to hold public hearings, no expiration date, town can amend the SD District section of UDO only if approved by the Controlling Person, deviation from the Town of Apex Standard Specifications and Standard Details.
- *Architecture* – no minimum or maximum square footage for non-residential, few architectural guidelines, no sign standards, includes private streets, alley and sidewalks.

- *Site Details* – no standards for retaining walls, dumpster enclosures, screening, lighting and tree protection fencing, much larger block sizes, and parking to be based on density.
- *Landscaping*– no buffering between uses, trees allowed in public rights-of-way, urban landscaping standards, RCA and open space is not used.

Planning Director Dianne Khin stated Apex’s average household size is 2.9 persons; Veridea’s potential build-out is 8,000 households that will bring a population increase of 23,200 persons; at 8 employees/ 1,000 persons, the potential employees needed are 185.6. Some of the recommendations from the Planning Department are:

- Expiration date for an SD Plan.
- Follow UDO Sections 2.3.6 and 2.3.7 [Site and Subdivision Plan procedures/approval process]
- Prohibit vinyl siding.
- Follow UDO Architectural Sections 9.2 and 9.3.
- Disclosure to be signed by all purchasers of property and create Veridea-wide property owner’s association.
- Parking Management Plan with alternative parking standards at each Stage, Site or Subdivision Plan.
- Compliance with UDO Sign Ordinance.
- Transportation Management Plan including – ride and car sharing, telecommuting, bicycle and pedestrian planning, park and ride facilities, parking management, shuttle bus, buss rapid transit, and light rail transit.
- Alternative to proposal for NC 55.
- Add Table 5 “Lighting” back into the SD Plan with language added to meet Section 8.6 of the UDO.

Councilman Schulze stated the approval process [as proposed in the UDO amendments] is extremely light; the Town Council is held accountable and he would like to have a heavy approval process. Councilman Jones concurred.

ENGINEERING AND CONSTRUCTION MANAGEMENT

Transportation Engineer Russell Dalton:

- We will have some overlap with other departments, one of which staff recommends the project be subject to Sections 2.3.6 & 2.3.7 of the UDO.
- The developer needs a process in place on how deviating from Sections 7.5.9[Schedule of Installation] will be handled including disagreements with TRC.
- Recommend site and subdivisions plans be subject to Town Standards in effect at the time of submittal; the developer proposes these be locked in at rezoning to protect against changes by Town Council.
- Developer proposes alternative street concepts to replace Town Standards; staff recommends the Town Standards take priority.
- The Transportation Impact Analysis (TIA) [for Veridea] assumes high internal capture and transit reductions not approved by staff; we recommend dedication of a transit corridor and construction of a transit bridge over US 1 prior to 85% build-out.
- Staff does not agree with some of the TIA particularly with NC55; access control is needed along NC 55 to preserve and enhance safety and ensure NC 55 will work in the future.
- Need to look at interchanges at appropriate locations.

- TIA did not provide analysis of interim traffic thresholds nor a proposed timeline as requested by staff.
- Staff has recommended specific conditions that state when and what improvements would be required based on build out of major land uses.

PUBLIC WORKS

Public Works Director Tim Donnelly:

- The town takes pride in doing things right which is one of the reasons for our AAA Bond Rating.
- Veridea must follow the Town of Apex Wastewater and Water Distribution Master Plans (maps shown).
- By pumping wastewater into Middle Creek, it will leave unused capacity in the new Western Wake regional facility (WWRF).
- If Veridea begins before the new WWRF is operational, we recommend an interim pumping station with a capacity of 200,000 GDP to the current facility.
- All town-owned water and wastewater infrastructure and sediment and erosion control shall meet the more stringent Town standards, not the minimum State standards.
- Support the proposed reuse system which could reduce drinking water needs.
- The town has standard specifications and standard details that meet our needs and allows economical installation of utilities.
- Veridea seeks exemption from stream buffer protection programs due to the desire for gridded streets.
- Veridea will have enough land to meet the town's Resource Conservation Area requirements.
- The town's existing load management program should fit well within this project.

Councilman Jensen stated he does not think private streets and alleys are a good idea and we do not want them. Tim Donnelly offered that private alleys will be detrimental and money is not put aside in developments to maintain them. Developer Tom Hendrickson said the Town of Apex rules do not fit in with Veridea.

PARKS, RECREATION AND CULTURAL RESOURCES

Director John Brown:

- Based on the 8,000 units proposed, the town could receive a fee-in-lieu of \$13,824,000.00.
- Some recommendations are:
 1. Combination of land dedication, fee in-lieu and possible construction.
 2. Dedication of land for a new community center, lighted ball fields, tennis courts and a dog park.
 3. Consideration of other "public recreation facilities".
- Language in the SD Plan to include private recreation areas cannot be counted towards satisfaction of the public recreation requirements.
- Construction of public recreation facilities should occur during, not after the project is completed.
- The town should consider bonding requirement similar to public infrastructure and a mechanism to ensure facilities are built.

FIRE DEPARTMENT

Fire Chief Mark Haraway recommended the developer provide the following:

1. Public Safety Facility: 2 fire companies, 1 ALS ambulance and a law enforcement work area.
 2. Class A Pumper with a 500 gallon capacity and associated equipment.
 3. 105 foot Aerial Device with a 2000 gmp pump built on a Tiller Chasses.
 4. A Wake County ALS Ambulance; short wheel based Ford Chassis.
 5. Staffing for both fire companies: 9 Fire Fighters, 9 Engineers, 3 Captains and 6 Paramedics.
- The facility should be located on a minimum of 3 acres.
 - The approximate cost would be 2.5 – 3 million dollars.
 - Based on the types of occupancies for Veridea, the fire department will need a multi-company station consisting of an Engine, Ladder and EMS Ambulance.

Councilman Sutton asked why the developer has to provide these things and the town has purchased these before with tax dollars. Chief Haraway said the developer could provide the land; it's an expensive proposal and we have to have infrastructure in place. Councilmen Schulze asked if some of the proposed streets are inaccessible. Chief Haraway said some street designs and widths are not acceptable to accommodate the fire trucks.

POLICE DEPARTMENT

Police Chief Jack Lewis:

- The build-out process will afford the Police an opportunity to have a presence throughout the project and a build partnerships beginning with the developer, business community and residents.
- To maintain the current staffing ratio of 1.6 officers per 1,000 residents, 37 sworn positions; five dispatchers, and two clerical staff positions are necessary.
- The outfitting costs for each officer are estimated at \$9,500.00 and an additional twelve police vehicles at \$35,000.00 each which includes electronic equipment.
- The financial impact for police costs, not including the salary and benefits for the new employees will likely exceed two million dollars.
- There is a real concern in regards to the traffic and parking; we share the same concerns as the Fire Department with street widths as they relate to access for emergency vehicles.
- There is some overlap with Engineering, Planning, Public Works, Police and Fire in regards to street widths and private vs. public streets.
- The proposed parking ratios for business and residential are less than the requirements of the UDO.
- The Police Department recommends that the Veridea SD Plan only be approved if the following conditions are met:
 1. Parking will meet the current UDO requirements for business and residential properties or submission an approval of a comprehensive parking plan.
 2. Traffic Impact Analysis that addresses access and on-street parking impacting emergency responders.
 3. Developer provide a suitable Police facility, preferable in conjunction with a Public Safety Station, which contains the space needs cited in the previous overview [Fire Department].

Councilman Gossage asked Chief Lewis if he sees a different type of policing here. Chief Lewis said yes, he talked with Tom Hendrickson about a different means of delivering all policing services here. With the dense population, it takes more police staff. Councilman Jones said this is a comprehensive list of recommendations; when will the developer be ready? Tom Hendrickson said he needed a couple of days to tweak the administrative approval process.

Councilman Schulze said the developer wants many exceptions from the UDO and he asked him to look at the intent of the UDO. Tom Hendrickson stated the language was crafted from the UDO to fit the form-based code for Veridea. Mayor Weatherly said he would like the developer to work with staff instead of working out the issues at these types of worksessions.

Town Manager Bruce Radford stated the staff requirements listed tonight are the loggerhead issues. Tom Hendrickson stated there were over 30 comments and he would be happy to re-craft [the SD Plan]. Mr. Hendrickson also stated that what they are bringing to Apex will take 5,000 – 7,000 acres if developed according to the UDO and he will address as many issues as possible so they can take them off the table.

Town Manager Bruce Radford offered a tentative meeting date of October 26, 2009.

Councilman Jones stated they have to ensure the intent of the UDO is met. Tom Hendrickson stated this is a zoning case, it is exhaustive and intimidating; he recognizes some articles in the SD Plan have been rewritten several times. They will make black-line changes in the revision.

Mayor Weatherly asked Town Attorney Hank Fordham if it is advisable to go into closed session. Mr. Fordham responded, yes. Council went into closed session at 8:20 p.m.

At 8:46, Council reconvened in Training Room A.

Councilman Schulze motioned to adjourn. Councilman Jones seconded the motion. Motion passed by unanimous vote.

There being no further business, the meeting was adjourned at 8:47 p.m.

The forgoing minutes were approved on the 17th day of November, 2009.

Submitted by
Bonnie J. Brock
Development Specialist


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

October 20, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 20, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bill Jensen
Bryan Gossage
Gene Schulze
Bill Sutton

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation and extended a welcome to those in attendance. Pledge of Allegiance was led by Scout Troop #205.

PROCLAMATION

Mayor Weatherly presented Proclamations: 1) Endorsement of 2009 Scout Luminaria Project; 2) Rotarian 4-Way Test.

Invitation was extended to attend a meeting between law enforcement and the Muslim community "a step in understanding law enforcement process to build trust and respect". Guest Speaker Nawar Shora, Saturday, October 24, 2009 at Apex Mosque on Center Street, 4 – 8 p.m.

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 to approve the following.

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

1. Minutes and General Account of October 06, 2009 Council meeting.
2. Minutes and General Account of October 06, 2009 Closed Session of the Council (separate cover).
3. Minutes Special Planning Committee meeting of October 6, 2009.
4. Budget Ordinance Amendment for contributions to Police and Fire Departments, and Project Ordinance Amendment for improvements at water treatment plant.
5. Set Public Hearing: various amendments to Unified Development Ordinance on November 17, 2009.
6. Set Public Hearing: Rezone #09CZ11; amendment to Villages of Apex PD Plan on November 17, 2009.
7. Municipal Agreement with NCDOT relative to annual bridge inspections.
8. Consent to Agreement between Orange Water and Sewer Authority and the Town of Cary Regarding Mutual Aid for Water Supply (the "Cary-OASA Agreement") and authorize Manager to sign the consent.
9. Wake County Board of Commissioners Tax Report for Town of Apex approved in their regular session October 5, 2009.

End of Consent Agenda



REGULAR MEETING AGENDA

The Regular Meeting Agenda was amended with a request from Council Member Jensen to add a new business item regarding establishment of Economic Development Committee for Apex. **Action:** Council Member Jensen made the motion to set the Regular Meeting Agenda with the amendment. Council Member Gossage made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Lauren Simmons, Planner

Public Hearing #01 – Rezone # 09CZ10 - Seymour

Public Hearing and possible motion for Rezone # 09CZ10, Thomas E & Robin Seymour, applicants; to rezone 2.79 acres from Office & Institutional to Mixed Office Residential and Retail-Conditional Use, and located on S. Salem Street between W. Moore Street and near the intersection with W. Williams Street.

Staff presented the planning report (attached and incorporated as a part of the minutes) regarding five properties on S. Salem Street between E. Moore and W. Williams Street and request to rezone 2.79 acres from O&I to MORR-CU; gave surrounding land uses; rezone would keep most of the uses allowed in O&I and add residential uses to be able to keep existing homes as residences: accessory apartments, single family residential and modular homes. Planning Board met October 12, 2009 and recommended approval of the rezone with conditions stated in the report; staff recommends approval of the rezone with the conditions stated in the report; proposed rezone is consistent with 2025 Land Use Plan for mixed use-office and institutional and medium residential. Staff answered questions and advised: UDO amendments are forthcoming and will apply to accessory apartments; there are esthetic and architectural standards for infill development and would apply to modular homes.

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

Don Grimes, homeowner Salem Street Historic District, addressed 2004 Land Use Plan historic properties and keeping small town character; noted the 48 month time frame for redevelopment after demolition of a historic property; noted Unified Development Ordinance does not provide protection from alterations and/or additions to historic properties, leaving them vulnerable to destroy the integrity of the historic district and downtown; he then recommended adding historic site adaptive use guidelines and limitations or restrictions with respect to alterations and/or additions to the UDO; sees more of these properties included in residential, office and retail, and that still exists; MORR District should be able to move interchangeably with all conditions and be developed compatible with all three: accessory apartments, single family and modular homes; changes to not use anything but retail defeats purposes; ask to direct staff and perhaps include Capital Area Preservation and those who own homes in historic district to determine restrictions and guidelines for adaptive re-use of historic homes in the historic district, as it's not addressed at this point, and wants this to take place before something happens that all would regret. Khin noted adaptive re-use could become a part of the UDO, and enforceable; staff will do a presentation to Planning Board and Council and will take direction as to whether to move forward or not.

Mayor Weatherly closed the public hearing at 7:30 p.m. and referred the matter to Council.

Action: Council Member Jensen made the motion to approve the rezone with conditions as stated. Council Member Jones 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

New Business # 01 (add-on) – Economic Development Committee

Council Member Jensen stated due to the loss of the economic development position, felt Town should move forward quickly to form an economic development committee to focus on bringing business into Town; committee could do preliminary work; proposes to hire a contractor to produce brochure, DVD and general proposal letter to be sent to businesses as opportunities arise; would like to give the committee three months, not saying give the committee power to do these things without coordinating with other committees; committee would bring to council before hiring a contractor; the objective is to move ahead and eventually have an economic development position or group; recommended members: Town Manager Radford, Chamber Director Steen, himself, and Tom Colhoun, Real Estate; and any Council Member that would like to serve.

Mayor Weatherly felt the proposal had merit, and needed time to look at this, whether to have the position in-house or not, however, premature to talk membership committee; dependent on the direction they want to go, felt it appropriate for Planning Committee to look at this and formulate a recommendations; Council and others who would like to be appointed to the committee, could solicit ideas on how to approach this; also the Finance Committee if involved financially; would bring recommendations back to Council.

Council Member Schulze felt this was moving in a good direction, however needed to decide whether the economic development position would be in-house or not, and this may be where they are heading, but thinks this is a step ahead; felt the Town's existing committees could consider what direction to take in economic development, and whether to put a special committee together. Council Member Jensen stated this committee would not do anything disrupted, but could get focused, and could run this through the other committees, but to him was blurring the program, and should get the program going, knowing they are on an economic blip now; noted corporate had five year plans; owe it to the citizens to get going as fast as they can without making heavy decisions, but get the committee, to get the foundation down and committee could focus on economic development, and work with the committees and get this going so they can bring business to town and bridge the 80-20 percentage of commercial and residential faster than proposed Veridea, 10 years or so away. His intent was to have Council approve this tonight, even if it were not on the printed agenda. Mayor Weatherly noted it broad, and not prepared to adopt it tonight, and once approved, would have adopted those things contained in his proposal; felt all should have time to consider these items, may be additional ones, some may be good and some not, and wanted a chance to reflect on this.

Council Member Schulze agreed with Council Member Jensen, but felt goals should be established on how to get there; he certainly appreciates the necessity of an economic development director however all may or may not agree that this is the direction everyone wants to take.

**New Business continued**

Council Member Jensen debated the need for the committee to do field work, noting other town's have economic development in place, noting Holly Springs has the position in house. Mayor Weatherly again restated the broad reaching authority of the committee, to hire a contractor, develop a screen procedure, and nothing to bring anything back to Council; and needed more thought time, and if it had been on the printed agenda would have allowed for thought time. Council Member Jensen was willing to add, all comes back to Council, and should have added it up front; he asked to hear from the Manager.

Council Member Jones agreed with the thought process, interim steps with economic development noting competition with those around us; not only new businesses, but should also decide how they would promote and supplement existing business in current environment; felt staff and those involved could gather information and ideas, interim steps, maybe brochures would be one of those, and then a plan on how to go forward. He saw no problem with committee bringing back information and would be the November meeting, and was ok in asking staff's help or anyone else to bring back a proposal. Mayor Weatherly addressed need to decide on a commitment level, noting Cary resources \$300,000 for a director's salary and a minimum by end for someone that goes to trade shows, asked if the Town wants to go forward or think about it as there were lots of issues to address before launching.

Council Member Gossage liked that this gets the conversation started; noted the importance of getting them headed in a direction they need to be going, however not sure this was the best direction, hearing the consensus that its worth considering, but there may be other ways to work on this and could be changed as they talk/tweak the edges or more substantially but need some time to maul over this but not bury it, and have more time to think over this.

Mayor added, if not considered by a Council Committee, at least have staff thoughts. Council Member Jensen work with staff, Chamber, and Tom, but wanted to find middle ground and saying yes to hire a contractor to do a brochure, and mostly what he wanted to see and a deadline a month away. Council Member Sutton felt an ad hoc economic development committee would be useful, Manager, member of Council, real estate person, and chamber would focus on a recommendation, brings it back to Council and goes away after Council makes the decision; noted it a jumpstart to the list of recommendations.

Council Member Jones was thinking 60 days for ad hoc committee would bring proposals, surveys, may be involve Ken Atkins, State Department of Commerce, to look at some quantitative evidence and results of those that have invested in such. Council Member Jensen agreed maybe they would need 60 days to look at other investments; and felt it a small investment to get things going; this has a global application for everyone in town; perhaps

30 days an interim report could be given, and 60 days for a final report; wanting to compress this; slim chance on 350 jobs lost with the town; he wants to see more jobs; felt it's a quality of life issue and the town's responsibility to provide live/work situations here; he wants to speed up the process to get this done as soon as possible. Mayor Weatherly recommended the Town Manager facilitate and call a meeting within the week, not to exceed eight members, discuss ideas and return to Council with a recommended direction for economic development. Council Member Schulze expressed his desire to be involved in the process. Mayor Weatherly called for a motion.

Action: Council Member Jensen made the motion to create an ad hoc committee to consider several aspects of economic development including policy, personnel and return recommendations to the Council, with the Manager facilitating. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

End of New Business



WORKSESSION

There were no Worksession items for discussion.

CLOSED SESSION

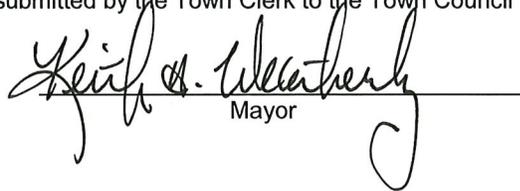
Mayor Weatherly called for a motion to move into Closed Session to receive legal advice from the Town Attorney. **Action:** Council Member Gossage made the motion to move into Closed Session at 7:45 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move back into regular session at 8:15 p.m. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:16 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Schulze made the second. Motion carried unanimously.

The minutes of the October 20, 2009 Council Meeting was submitted by the Town Clerk to the Town Council for their approval at the November 17, 2009 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

November 17, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 17, 2009, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Council:
Mike Jones
Bill Jensen
Gene Schulze
Bryan Gossage
Bill Sutton

Web site: www.apexnc.org

COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Jones gave the Invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance, and congratulated the newly elected officials: Incumbents Mike Jones and Gene Schulze, and newly elected Lance Olive.

PRESENTATION

Alix Thomas, Apex High School Science Technology Engineering and Math Club (STEM), offered details regarding a science environmental project, where a floating island would be placed in the Town Campus retention pond to test its water quality, monitoring and maintaining it over a period of time while increasing its bio-mass.

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 to approve the following items.

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

1. Minutes and General Account of October 20, 2009 Council meeting.
2. Minutes and General Account of October 20, 2009 Council Closed Session (separate cover).
3. Minutes and General Account of October 12, 2009 Work Session: Council and Planning Board.
4. Minutes and General Account of October 12, 2009 Council Closed Session (separate cover).
5. Minutes and General Account of October 26, 2009 Personnel Committee.
6. Minutes and General Account of the October 28, 2009 Finance Committee meeting.
7. Statement of Apex Town Council October 20, 2009 meeting, and Ordinance for Rezone #09CZ10 Thomas & Robin Seymour, petitioners, for property located at 0, 300, 306, 310 & 314 S. Salem Street, from Office & Institutional to Mixed Office-Residential-Retail Conditional Zoning.
8. Capital Projects Ordinance Amendment for improvements at water treatment plant.
9. Award construction contract for: U-5118AA; Traffic Signal for SR1011 (N. Salem Street) at SR1010 (Center Street); 100% reimbursement from NCDOT under approved municipal agreement of June 18, 2009.

Consent Agenda continued on page 2



10. Authorize Town Manager to execute White Goods Grant Program Agreement with Wake County.
11. Close certain Town streets for Christmas on Salem Street, Friday, December 4, 2009 and the Apex Christmas Parade, Saturday, December 5, 2009, and subject to approval of the Chief of Police.
12. Personnel Committee recommendation to adopt proposed revisions to Apex Personnel Policy and Town's Drug and Alcohol Testing Policy.
13. Approve Tax Report for Town of Apex, approved and accepted by Wake County Board of Commissioners in regular session on November 2, 2009

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was set with an amendment prior to taking action on the following items to include a presentation regarding organizing a youth council in Apex. **Action:** Council Member Gossage made the motion to add this item. Council Member Jones made the second to the motion. Motion carried unanimously. The Regular meeting agenda was set with the amendment.

Presentation: Youth Council

Students from Cary Youth Council made a request to form an Apex Youth Council, allowing youth voices to be heard in local government and the community. Director of Parks and Recreation presented a packet from NC Youth Advocacy and Involvement Office outlining steps for organizing a youth council, commenting on the positives and successfulness of other formed councils; the youth led group would require staff time and not so much budget. After brief comments indicating support by the Mayor and Council Member Gossage, the PR&CR Commission was charged with considering this at their next meeting, and bringing back advice to Council at their December 14, 2009 meeting.

End of presentation

PUBLIC HEARINGS

Presenter: Lauren Simmons, Planner

Public Hearing #01 – Rezone # 09CZ11 and Major Site Plan

Review: Planning Board met November 9, 2009 and recommends approval with conditions; staff recommends approval of the PUD-CZ rezone to allow for parking reduction and approval of the Village Summit Major Site plan with conditions.

Public Hearing and possible motion regarding Conditional Zoning #09CZ11, Peter Crossen, and Apex First Development, applicants, requesting to rezone from Planned Unit Development-Conditional Zoning (PUD-CZ) to planned Unit Development-Conditional Zoning (PUD-CZ), changing a condition within the PUD document and Major Site Plan for Village Summit Apartments; location US Hwy 64 and Windy Road.

Staff presented the planning report and background information regarding the proposal for the conditional zone request to accommodate the major site plan for Villages of Apex, proposing 208 apartment units, and request for PUD amendment to allow a 10% reduction in parking; report is attached and incorporated as a part of the minutes. Planning Board reviewed the request and recommended approval with conditions; staff recommends approval of the rezone to allow for the parking reduction and for approval of Village Summit Major Site Plan, as it fits the character of the area and is esthetically pleasing, consistent with the 2025 Land Use Plan, and with conditions: the lighting plan, mail kiosk details, pool and clubhouse details, and HVAC unit placement be approved during the construction plan process. Town's Traffic Engineer finds no significant impact with traffic access (off Windy Road) and circulation on site; the TIA was based on the original 375 total apartment units, and proposal is for 208 apartment units and allows units to be built out in the future. Council discussed parking, the original request, cross section view, buffer widths and plantings including US 64 right of way plantings. Mayor Weatherly opened the public hearing at 7:35 p.m. Pete Crossen, Jones and Crossen, stated support of the project within Villages of Apex. No one spoke in opposition. The public hearing was closed at 7:36 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Sutton made the motion to approve the conditional rezone and major site plan stating it an appropriate location for apartments. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01



Public hearings continued

Presenter: Brendie Vega, Principal Planner

Public Hearing #02 – UDO Amendments

Review: Planning Board met November 9, 2009 and recommends approval; staff recommends approval

Public Hearing and possible motion regarding amendments to the Unified Development Ordinance. Staff presented the planning report for proposed UDO amendments which is attached and incorporated as part of the minutes:

1. Amend UDO Section 4.3.5(D)(4) "Office, business or professional" to add "contractor's office without storage yard" as a typical use.
2. Amend Supplemental Standards Section 4.4.6(D) Office and Research to add supplemental standards for Contractor's office without storage yard.
3. Amend Section 8.3.6(D) Surfacing and Maintenance to add standards for gravel parking lots.
4. Amend Section 4.5.6 Accessory Apartment to amend the size requirements for accessory apartments.
5. Amend Section 4.3.5 Commercial Uses for 4.3.5(G)(4) Convenience Store and 4.3.5(G)(5) Convenience Store with Gas Sales to remove the limit on the size permitted for the establishment.
6. A grammatical correction in UDO Section 8.7.8 – change the word "Chapter" to "Article".
7. Amend UDO Section 6.1.12(B) for stormwater calculations to comply with the latest version of the NC DWQ BMP supplement.

Planning Board met November 9 and recommended approval with the following changes:

1. Section 8.3.6(D) add wording "where allowed in other zoning districts" after words "Entertainment, Outdoor."
2. Section 4.5.6(B)(2) add word "heated" between "800" and "square feet". Staff recommends approval as recommended by the Planning Board. Town Manager presented alternative amendment to Section 4.5.6 Accessory Apartment: B) single family homes or lots outside the small town character overlay district where parcel is 10 or more acres, accessory apartments shall be no larger than 40% (vs. 50%) of the heated square footage of the principal single-family dwelling. Brief discussion followed regarding the land size and percentages, and noted amendment would also accommodate those living within the ETJ.

Mayor Weatherly opened the public hearing at 7:47 p.m. With no one speaking in favor or opposition, the hearing was closed at 7:48 p.m., and matter referred to Council.

Action: Council Member Jensen made the motion to approve the amendments as presented with the alternative amendment to Section 4.5.6 Accessory Apartment. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

OLD BUSINESS

Presenter: Lauren Simmons, Planner

Old Business # 01 - Adaptive Reuse

Review: Council at its October 20, 2009 meeting requested presentation; Planning Board saw the presentation at their November 9, 2009 meeting, and recommends moving forward with next steps to consider Adaptive Reuse Ordinance.

Staff presented a slide show on Adaptive Reuse: protection for historic structures and redevelopment of older buildings, while discouraging uncharacteristic additions and alterations, for purposes other than those initially intended. Full presentation is attached. Staff noted there may be UDO amendments; redevelopment of structures must meet Secretary of Interior Standards for Rehabilitation, and the rehabilitation standards of the Building Code. Examples of Reuse properties were offered: Town Hall (Halle Cultural Arts Center); Depot (Chamber Offices); Seagroves Farm house. Planning Board saw the presentation October 20, 2009 and recommends Council move forward with next steps to consider an Adaptive Reuse Ordinance. Staff recommends forming an AD HOC Committee to look at any related issues and possibly draft an ordinance for consideration by Council. Discussion evolved around restrictive activity of interior standards and property rights. Capital Area Preservation requires architectural review for all additions to historic buildings. Mayor and Council charged staff to return with a structure for forming the committee, and their planning strategies.

End of Old Business # 01

Presenter: Town Manager Bruce Radford

Old Business # 02 – Economic Development

Manager Radford gave an update on Efforts in Economic Development; presented a draft economic development port folio designed for companies who place interest in locating to Apex. Tom Colhoun, Real Estate Agent, reported his findings regarding economic development programs and expanding on Cary's program (pays Chamber \$300,000 a year) and Holly Springs program (works in house); noted available properties within Apex; would like to close the gap between the ratio for residential and commercial. Mayor and Council felt this was a good start. Committee of the Manager, Council Member Jensen and Colhoun will continue with their efforts.

End of Old Business # 02



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: Lee Smiley, Director of Finance

New Business # 01 – FY09-10 Financial Summary

Review of 1st Quarter FY09-10 Financial Summary indicated performance is at 25% for revenues and expenditures. Significant variances were noted; report is attached. Audit has been finalized: General Fund: \$500,000 surplus; Electric Fund: \$1 million surplus; Water and Sewer Fund: deficit of \$350,000. Report was accepted as presented. End of New Business # 01

Presenter: Attorney Hank Fordham

New Business # 02 – Apex Town Code

Town Attorney Fordham presented an Ordinance to amend Article III of Chapter 20 of the Apex Town Code that would transfer the responsibility for administering the removal and disposition of abandoned and junked motor vehicles from the Public Works Department to the Police Department, and supports the move noting Police expertise in handling such matters, and noted the move requires no additional manpower to enforce the ordinance.

Action: Council Member Schulze made the motion to adopt the ordinance as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business # 02

Presenter: Councilman Bryan Gossage, Chair Personnel Committee

New Business # 03- Employee Suggestion Program

Review: Personnel Committee met October 26, 2009 and recommends approval of the Program.

Personnel Committee reviewed guidelines and recommends implementation of an Employee Suggestion Program on a one-year pilot basis; Human Resources Director gave background information regarding design of the program, to encourage employees to submit ideas to generate cost savings or improve work processes in areas not directly related to their job. The program provides for management review to determine if ideas could be implemented, and employees would be eligible to receive 25% of the actual one year cost savings not to exceed \$500. Discussion evolved around higher reward costs, which had been discussed, however, not recommended by the committee.

Action: Council Member Gossage made the motion to approve the recommendation from the Personnel Committee. Council Member Jensen made the second to the motion. Motion carried unanimously

End of New Business # 03

Presenter: Councilman Bryan Gossage, Chair Personnel Committee

New Business # 04- Apex Personnel Policy

Review: Personnel Committee met October 26, 2009 and recommends approval of the amendment.

Personnel Committee reviewed the guidelines regarding this policy and recommends revision to Apex Personnel Policy, Article V. Section 7: Acceptance of Gifts and Favors (attached); noting inappropriate language, and tightening employee accountability; not to take away from staff's judgment. Discussion followed regarding flexibility, fear of inconsistency with interaction of vendors, setting limits of value, cumbersomeness of record keeping, federal government guidelines, and desire to see other local government policies (Cary and Holly Springs).

Action: Council Member Jones made the motion to refer this item back to Personnel Committee for further research and specifics. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business #04

End of New Business



WORKSESSION

There were no Worksession items for discussion.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for routine personnel matter related to the Assistant Town Attorney. **Action:** Council Member Jones made the motion to move into Closed Session for the purpose stated at 8:25 p.m. 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 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.

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

The minutes of the November 17, 2009 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the December 1, 2009 meeting.

Handwritten signature of Georgia A. Evangelist in cursive.

Georgia A. Evangelist, MMC
Town Clerk

Handwritten signature of Keith H. Weatherly in cursive.

Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

December 1, 2009 Council Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 1, 2009, 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



Website: www.apexnc.org

Council Members:

Bryan Gossage
Bill Jensen
Mike Jones
Gene Schulze
Bill Sutton

Council Member Elect:

Lance Olive

COMMENCEMENT

Mayor Weatherly called the meeting to order.
Invocation: Pastor Phil Qualls, Apex Baptist Church.
Presentation of Colors and Pledge of Allegiance: Scout Troop # 205.
Mayor Weatherly extended a welcome to those in attendance and recognized special guests.

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 Jensen made the second to the motion. Motion carried unanimously.

1. Minutes of November 17, 2009 Town Council Meeting.
2. Minutes of November 17, 2009 Town Council Closed Session (separate cover).
3. Annexation Petition # 446, Randy and Kay Keeler, owners/petitioners, petitioning to annex 1.619 acres including public right of way into the Town's corporate limits and located on 7575 Apex Barbecue Road;
1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk, and
3) Resolution setting date of public hearing for December 15, 2009.
4. Set Public Hearing December 15, 2009 for Conditional Zoning #09CZ12: Steve and Renata Williams, applicants, request to rezone .76 acres located at 215 Templeton Street behind the Halle Cultural Arts Center, from Medium Density Residential to Mixed Office Residential and Retail-Conditional Use.
5. Set Public Hearing December 15, 2009: Designation of Wake County Historic Landmark in Apex.
6. Resolution authorizing sale of Town owned property located at US64 and Lake Pine Drive intersection for \$200,000 subject to upset bid procedure.

End of Consent Agenda

OLD BUSINESS

There were no Old Business items to be considered.



Ceremonial Proceedings of the Apex Town Council

Mayor Weatherly called for a recess of the Apex Town Council at 7:05 p.m. and presided over the Ceremonial Proceedings. Mayor Weatherly recognized Council Member Bill Sutton for his service to the town, noting his accomplishments during his tenure: Town Manager 1993 – 2001; Council Member 2005- 2009. Council Member Sutton gave parting words and retired his Council seat.

Oaths of Office were administered to the elected Council as follows; all expressed appreciation to those that supported them during their campaign, to their families, and look forward to serving the citizens.

Council Member Michael L. Jones: Oath administered by Georgia A. Evangelist, MMC, Town Clerk, Town of Apex; after signing the Oath Council Member Jones took his Council seat.

Council Member Eugene J. Schulze: Oath administered by the Honorable Paul Stam, Minority Leader, North Carolina House of Representatives; after signing the Oath Council Member Schulze took his Council seat.

Council Member Elect Lance Olive: Oath administered by the Honorable Paul Stam, Minority Leader, North Carolina House of Representatives; after signing the Oath Council Member Olive took his Council seat.

The Organizational section of the ceremony began with Mayor Weatherly opening the floor for nominations for the purpose of selecting the Mayor Pro tempore.

Action: Council Member Jensen made a motion to nominate Council Member Gossage. Council Member Olive made the second to the motion. Mayor Weatherly asked if there were further nominations to be made.

Action: Council Member Schulze made the motion to nominate Council Member Mike Jones. Council Member Motion died for a lack of a second. Mayor Weatherly called for a motion to close nominations.

Action: Council Member Jensen made the motion to close the nominations. Council Member Olive made the second to the motion. Motion carried unanimously. Vote on the original motion: Council Members Jensen, Gossage and Olive voted yes. Council Member Schulze voted no. The Clerk did not hear Council Member Jones vote; the silence of a vote is recorded as a yes vote. Motion carried four in favor and one opposed.

Mayor Weatherly made appointments to Standing Committees and Liaisons as follows; in doing so, expanded each of the committee's membership from two members to three:

Finance Committee: Council Member Jones, Chair, with Council Members Schulze and Gossage

Planning Committee: Council Member Olive, Chair, with Council Members Jones and Jensen

Personnel Committee: Council Member Schulze, Chair, with Council Members Olive and Gossage

Mayor Weatherly recommended the formation of an Economic Development Committee.

Action: Council Member Jones made the motion to form an Economic Development Committee as recommended. Council Member Schulze made the second to the motion. Motion carried unanimously. Mayor Weatherly appointed himself Chair with Council Members Schulze and Jensen.

Liaison Appointments were made as follows:

Apex Chamber of Commerce: Mayor Weatherly

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 Olive

Transportation Advisory Commission: Mayor Weatherly
and Alternate: Council Member Jones

The Organizational meeting ended at 7:25 p.m.



REGULAR MEETING AGENDA

Mayor Weatherly called the Apex Town Council meeting back into Session at 7:26 p.m. and presented the Regular Meeting Agenda to be set.

PUBLIC HEARINGS

There were no scheduled Public Hearings.

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

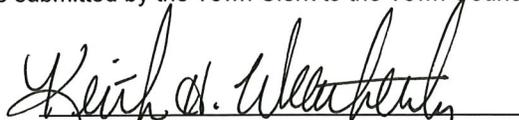
There were no Closed Session items to be discussed.

ADJOURNMENT

Prior to adjournment, Mayor Weatherly recognized Council Member Gossage, who recognized his family, and looks forward to serving as Mayor Pro tempore. Council Member Jensen expressed enjoyment in serving the citizens of Apex. Mayor Weatherly recognized students from Law and Justice Class Apex High School and commented on future discussions Council may have to include growth, budget and Veridea project. With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:30 p.m. Mayor Weatherly invited attendees to the reception honoring the Mayor and Town Council in the Atrium of the Town Hall following the adjournment of the Council. **Action:** Council Member Jensen made the motion to adjourn. Council Member Olive made the second. Motion carried unanimously.

The minutes of the December 1, 2009 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the December 15, 2009 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor



Ceremonial Proceedings of the Apex Town Council

December 1, 2009
Mayor Keith H. Weatherly Presiding

RECOGNITION OF COUNCIL MEMBER

William M. "Bill" Sutton
Council Member Sutton retires his Council seat

CEREMONIAL OATHS

*Family members may join Elected Officials during the
Oath of Office Ceremony and participate by holding their Bible.*

Council Member Michael L. Jones

Oath Administered by Celia P. Jones
Notary Public
Signing of Oath with Town Clerk
Council Member Jones takes his seat with the Council

Council Member Eugene J. Schulze

Oath Administered by the Honorable Paul Stam
Minority Leader
North Carolina House of Representatives
Signing of Oath with Town Clerk
Council Member Schulze takes his seat with the Council

Council Member Elect Lance Olive

Oath Administered by the Honorable Paul Stam
Minority Leader
North Carolina House of Representatives
Signing of Oath with Town Clerk
Council Member Olive takes his seat with the Council

SELECTION OF MAYOR PRO TEMPORE

Mayor Weatherly will open the floor for nominations for Mayor Pro Tempore.
Mayor Weatherly will call for a motion to close nominations.
Mayor Weatherly will call for the appointment of Mayor Pro Tempore.

APPOINTMENTS OF STANDING COMMITTEES AND LIAISONS

Mayor Weatherly will appoint Standing Committees and Liaisons.
(see next page)

END OF THE ORGANIZATIONAL MEETING



APEX TOWN COUNCIL

APPOINTMENTS TO COMMITTEES AND LIAISONS

December 1, 2009

COMMITTEES

Finance Committee:

Council Member Jones, Chair, with Council Members Schulze and Gossage

Planning Committee:

Council Member Olive, Chair, with Council Members Jones and Jensen

Personnel Committee:

Council Member Schulze, Chair, with Council Members Olive and Gossage

Economic Development Committee:

Mayor Weatherly, Chair, with Council Members Schulze and Jensen

LIAISONS

Apex Chamber of Commerce: Mayor Weatherly

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 Olive

Transportation Advisory Commission: Mayor Weatherly

Alternate: Council Member Jones



APEX TOWN COUNCIL APPOINTMENTS TO COMMITTEES AND LIAISONS

Current Chairs and Members

COMMITTEES

FINANCE

**Chair Council Member Jones
Member Council Member Sutton**

PLANNING

**Chair, Council Member Schulze
Member Council Member Jones**

PERSONNEL

**Chair, Council Member Gossage
Member Council Member Jensen**

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 Gossage**

**TRANSPORTATION ADVISORY COMMISSION
MEMBER Mayor Weatherly
ALTERNATE Council Member Jones**