TOWN OF APEX, NORTH CAROLINA

Apex Town Council Minutes of the meeting held on Tuesday, January 3, 2006 at 7:00 p.m. in the Council Chambers, Town Campus, 73 Hunter Street, Apex

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting of the Apex Town Council to order and noted this was a historic event being the first official meeting as Town Council, effective January 1, 2006. Council Members Jones, Schulze, Jensen, Gossage and Sutton were present. Council Member Gossage gave the invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and ask for a call for action.
Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda. Motion carried unanimously.

1. Minutes of December 20, 2005 Board of Commissioners Meeting.
2. Minutes of December 20, 2005 Board of Commissioners Closed Session (separate cover).
3. Minutes of December 15, 2005 Planning Committee Meeting.
4. Annexation Petition # 386 Thomas M. and Mary J. Garrity, petitioning to annex 1.632 acres including public right of way into the town's corporate limits, and located at the intersection of Greenlea Drive and North Salem Street; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for February 7, 2006.
5. Award construction contract for Laura Duncan Sidewalk project.
6. Fixed Price purchase Contracts for electrical conductor purchases on behalf of ElectriCities Members participating in a Member Cooperative Bid Agreement for Joint Purchasing of Utility Material, Supplies, and Equipment.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set, and with no amendments, the agenda was set.

PUBLIC HEARINGS

David Rowland, Director of Planning

Public Hearing # 1 – Annexation # 385

Public hearing and possible motion concerning Annexation Petition # 385, Robert J. & Judy A. Lanahan, owners/petitioners, petitioning to annex 1.00 acre into the town's corporate limits, and known as Lot 20 Salem Woods, Phase 1 and located on 1003 Pinedale Road (satellite annexation).

David Rowland, Director of Planning oriented to the location of 1.00 of land, a voluntary annexation; owners have well problems and need town water; a satellite annexation with map attached showing primary corporate limits of the Town. Mayor Weatherly opened the public hearing at 7:04 p.m. and with no one speaking, closed the public hearing. **Action:** Motion by Council Member Jensen and second by Council Member Jones to approve the annexation by adopting an ordinance to extend the corporate limits. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Council Member Jones

Old Business # 1 – Finance Committee Recommendation

Finance Committee will meet on January 3, 2006, 4:00 p.m. to discuss this item and to formulate a recommendation.

Possible motion regarding a recommendation from the Finance Committee regarding proposed adjustment to the Energy Adjustment Rider.

Council Member Jones, Finance Committee Chair, reported Committee met and reviewed information regarding impact on average rate payers. Letter from Mike Couch, Electric Department to Tim Donnelly, Public Works Director, regarding NEMPA Energy Adjustment Rider increase ($0.0074/kWh) is attached. Committee reviewed Electric Fund for 2003/04/05 total revenues and expenditures, power sales and purchases, and kWh purchased over the last 12 months. Cash balances reflect current commitments and cash remaining. Committee made the decision to pass along the rate increase to the rate payers effective February 1, 2006.

Action: Council Member Jones presented his statement in the form of a motion, with a second to the motion made by Council Member Sutton.

Council Member Jones led the discussion and noted Electric Fund revenues were over expenditures by $561,000 with an increase by $1.7 million; a loss of $1.2 million if the town doesn't pass along the 10% wholesale rate increase or 8% to the customers due to the fact the town doesn't bill for every KWH purchased; Committee does not propose town absorb the cost. Town saw a 4.2% increase July 1; in the 80's and 90's a decrease in electric rates has been held for a long time; slower growth and upgrades of the systems and buying of transformers doesn't leave much in reserve, with expenses occurring faster than revenues; looking at power sales/purchases notes a significant drop with the town having absorbed the increase. Council Member Jensen noted Town was trying to whole the line and not give increases, however, has to stop or will definitely in the red; noted United States sells coal to China with them building more coal plants. Council Member Schulze noted previous increase of 4% and 8% now reasonable to him. Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Your comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

Fire Chief Mark Haraway

New Business Item # 1 – Surplus Fire Apparatus

Fire Chief Mark Haraway and Volunteer President Billy Gilbert requested the Council approve an offer by Apex Volunteer Firefighters Organization to purchase through private negotiation the surplus 1984 Ford Quality Fire Apparatus for $500, and then present apparatus to the Town of Waveland, Mississippi Fire Department as part of a disaster relief package. Waveland was where Hurricane Katrina made landfall and the town's fire department lost all five of their existing apparatus to the storm. Proposal has been reviewed by the Town's Attorney and meets all legal considerations. Manager Radford commented on efforts made to make a legal contribution, a humanitarian effort, and there was none, with the volunteers making this possible. Mayor Weatherly commented on the efforts being made along with Council Member Schulze. Attorney Fordham stated the process would go through normal surplus disposal channels.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the request and declare the 1984 Ford Quality Fire Apparatus as surplus property and accepting the offer through private negotiations with the Apex Volunteer Firefighters Organization for $500, and apparatus further being delivered to Waveland, Mississippi. Motion carried unanimously.

End of New Business Item # 1

Assistant Town Manager Mike Wilson

New Business Item # 2 – Solid Waste/Recycling Services

Brent Kirchhoff, Branch Manager, Waste Industries requested an adjustment in compensation for solid waste and recycling services due to unanticipated fuel expenses in an attached letter to the Town Manager of December 13, 2005. Assistant Manager Wilson stated Town approved 5 year contracts with Waste Industries in June 2005 that froze residential solid waste and recycling rates for 2 years and allowed a CPI increase for each of the 3 remaining years. Commercial dumpster rates were frozen for 1 year with CPI increases for the other 4 years. Request is for a fuel adjustment charge increase per month of $ .07 for recycling and $ .10 for residential garbage and $1.28 commercial dumpsters of all sizes. Manager Radford viewed the request reasonable due to fuel prices being up and if they were to come down to the base price $1.95 could consider adjustment in rates. Manager Radford further recommended the adjustment in price be made in the customers monthly bills. Mayor Weatherly commented on the index on a monthly basis and perhaps should place a CAP on prices. Council Member Schulze was reluctant to renegotiate a contract, however could appreciate the condition they were in; thinks they should abide by the contract and consider change in price with the next contract; not liking change in contracts. Council Member Sutton understands the electric increase and stated the request for increase seems reasonable for good service. Council Member Jensen agreed with Council Member Sutton, and agreed with Mayor Weatherly on a CAP and as prices go down adjust in those terms, that everyone was in this together and energy problems affects everyone, and doesn't see energy prices going down. Mayor Weatherly commented on competitive rates and bidding of the next contract, noting price was dependant on fuel; look at cost of fuel today and come back later and discuss this, noted six months a short window. Council Member Schulze sees future contracts structured this way, only expecting fuel prices to go up. Council Member Jensen wants to hold the line, and look at the next contract prices; work with them to keep prices and the folks, both parties would benefit. Manager Radford noted the options were to negotiate or do nothing, and suggested a six month increase and come back and look at the fuel situation to either extend or end. Kirchhoff responded they had held their prices over a considerable period of time. Council Member Gossage responded they had done more than expected and this was understandable.

Action: Motion by Council Member Schulze and second by Council Member Jensen to approve the request for an increase for solid waste and recycling services due to unanticipated fuel expenses with a proviso that should fuel return to the base price of $1.95 Waste Industries would come back and reduce rates to the original contract price and that the adjustment in price be made in the customers monthly bills, with Council Member Jensen suggesting a sunset date.

Action: Motion by Council Member Jones and second by Council Member Gossage to amend the motion to approve a sunset proviso to review the rates before June 30, 2006.

Vote on the motion to amend was four and one with Council Member Schulze voting no. Motion carried.

Vote on the amended motion was four and one with Council Member Schulze voting no. Motion carried.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following:
Action: Motion by Council Member Schulze and a second by Council Member Gossage to move into Closed Session in accordance with GS 143.318.115 to instruct town staff on negotiating position for real property. Motion carried. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Jensen and second by Council Member Gossage to move into regular session at 7:35 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Schulze to adjourn at 7:57 p.m. Motion carried.

The above minutes were approved by the Town Council on January 17, 2006.

Georgia A. Evangelist, MMC
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of the Tuesday, January 17, 2006 meeting
held at 7:00 p.m. Council Chambers, Town Campus, 73 Hunter Street, Apex

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly call the meeting to order with Council Members Jensen, Gossage, Jones, Schulze and Sutton present. Invocation was led by Council Member Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Town Council requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the consent agenda to be set and ask for a call for action. Council Member Jones requested Item #10 be pulled for separate consideration; item will be considered under Old Business.
Action: Motion by Council Member Schulze and second by Council Member Jensen to approve the consent agenda with the amendment to remove Item # 10 for separate consideration. Motion carried unanimously.

1. Minutes of January 03, 2006 Council meeting.
2. Minutes of January 03, 2006 Council Closed Session (separate cover).
3. Minutes of January 03, 2006 Finance Committee meeting.
4. Minutes of January 11, 2006 Personnel Committee meeting.
5. Minutes of January 12, 2006 Planning Committee meeting.
6. Ordinance regarding Rezoning #05RZ19, Toll Brothers, Inc., petitioners, located between Green Level West Road and Green Level Church Road, changing the zoning classification of lands described from R-40W (Wake County Designation) to Low Density Residential District.
7. Request for expenditure of $1000.00 of fine money for a plant tagging project on Campus at the request of the Appearance Commission.
8. Budget Ordinance Amendment appropriating funds in the Electric Fund to complete purchase of a transformer bank from Progress Energy and authorization for Fire Department to use donated money to put a utility body on an existing truck.
9. Personnel Committee recommends reclassification of designated positions in the Police Department and Planning Department.
10. Award construction contract for Saunders Street Parking Lot project to Pacos Construction Company, Total Bid: $182,758.25 ***(to be considered under Old Business in the Regular Meeting Agenda).***

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Attorney Fordham requested an amendment to Closed Session to receive legal advice regarding an indemnification provision of a proposed contract, and negotiations regarding termination of an easement. **Action:** Motion by Council Member Jones and second by Council Member Gossage to amend the regular meeting agenda as stated. Motion carried unanimously.

PUBLIC HEARINGS

David Rowland, Director of Planning

Public Hearing # 01 - Rezoning Case # 04CU17 (Trackside North)

Staff recommends continuation of hearing to March 21, 2006 Council Meeting per applicants request.
Council at its November 15, 2005 meeting continued this hearing to January 17, 2006 per the applicant's request

Possible motion to continue public hearing for Conditional Use Rezoning #04CU17 to March 21, 2006 Council meeting. ***Staff requests continuation of this hearing to March 7, 2006 and due to the railroad crossings for the Peakway and with the sewer that involves the project known as Trackside North.***

Action: Motion by Council Member Jensen and second by Council Member Jones to continue this hearing to March 7, 2006. Motion carried unanimously.

Public hearing continued to March 7, 2006

Dianne Khin, Senior Planner

Public Hearing # 02 - Rezoning Case # 05CU17 (The Trace)

Recall this item was heard November 15, 2005 with decision of Council to deny this request; applicant asked for reconsideration of decision at the December 6, 2005 meeting of the Council; Council voted to readvertise hearing for January 17, 2006 meeting of the Council to reconsider this request.

Public hearing for reconsideration and possible motion regarding Rezoning Case #05CU17 and Residential Master Subdivision Plan for The Trace; Tracy & Margaret Dotson, petitioners, seeking to rezone 5.6 acres located at 1621 Salem Church Road from Residential Agricultural to Medium Density Residential Conditional Use District.

Those speaking during the hearing were administered an oath by the Town Clerk. Dianne Khin, Senior Planner presented a proposed revised layout plan for the Trace and a revised staff report which is attached and incorporated as a part of the minutes. An additional lot is under contract to provide for the subdivision entrance. This property is not a part of the advertised rezoning; will be reviewed through Technical Review Committee with public hearing before the Planning Board and to the Town Council for final approval. One additional lot has been added to the project for a total of 21 single-family lots; new entrance will be full movement with a left turn lane into the subdivision. An additional condition is proposed by the applicant: Prior to the issuance of a certificate of occupancy for any home on the property, the road on the property shown on the attached sketch plan shall be constructed in accordance with all applicable governmental regulations. Original plan proposed conditions: 1) Property must be annexed prior to construction plan approval, and 2) Written determination must be made by DWQ on the stream on adjoining property and the appropriate buffers shown on the construction plan. Condition # 1 will remain; Condition # 2 is no longer a condition, having received a letter from DWQ that stream/pond does not need to be buffered and not defined on the USGS topographical maps. Average lot size is 6000 or 7000 square feet. Khin clarified there will be 21 homes and due to an existing Cary subdivision, would not be larger. Khin confirmed the road alignment would work and there were no stub-out streets and there is potential for a circular entrance; a second entrance will be looked at when the other half of the property comes in to play.

Mayor Weatherly opened the public hearing at 7:15 p.m. Speaking in favor: Mike King, on behalf of the petitioner, and stated effort was made to address the access point, and have a contract to acquire a piece of property to construct an entrance moving to the west on Salem Church Road. He noted the additional condition: prior to the issuance of a certificate of occupancy for any home on the property, the road on the property shown on the attached sketch plan shall be constructed in accordance with all applicable governmental regulations.

No one spoke in opposition. Mike Horn, Kimley Horn envisions a second access with potentially a right-in and right-out further down on Salem Church Road, with NCDOT concurring, and if the other property develops. Council Member Schulze would like to see a storage lane so traffic would not be slowed down. Horn responded it is not designed as such but would look at a right turn-taper and if it could be worked out with NCDOT in the final design. He stated NCDOT is excited about the change in the movement of the access by 130 feet. There was discussion concerning a potential island with Horn noting the need for more straight lanes for vehicles to stop; and noted the 100 feet taper, and the length of the entrance to the property, and having room to accommodate the full movement intersection; Horn stated only reason not to do this would be if NCDOT said not. Council Member Jones noted this a significant improvement and needed to be done with or without the subdivision.

Action: Motion by Council Member Jones and second by Council Member Sutton to approve the rezoning with the conditions stated. Council Member Jensen was happy to see the entrance moved, however, concerned with the small lots and would like to press developers for larger lot subdivisions, with Council Member Schulze agreeing. Motion carried unanimously.

End of public hearing # 2

David Rowland, Director of Planning

Public Hearing # 03 - Relief Case Dollinger & Tove Medical Offices

(January 9, 2006 Planning Board meeting was cancelled and a special Planning Board meeting is set for January 30, 2006; request continuance of Public Hearing to February 7, 2006 Town Council Meeting).

Public hearing and possible motion regarding a variance and a site plan for Dollinger & Tove Medical Office, Dollinger & Tove, LLC Family Medicine, petitioners. Proposed site plan includes one 6,170 square-foot office building located at the northeast corner of Old Raleigh Road and Shepherd's Vineyard Drive.

Director of Planning David Rowland asked this hearing be continued to February 7, 2006 due to the Planning Board not having met due to a lack of a quorum and will meet in special session on January 30, 2006 to discuss this item.

Action: Motion by Council Member Jensen and second by Council Member Gossage to continue this hearing to the February 7, 2006 meeting. Motion carried unanimously.

Public hearing continued to February 7, 2006

Bruce Radford, Town Manager

Public Hearing # 04 - Public Hearing for formulation of FY 2006-07 Annual Budget

Mayor Weatherly made opening comments before the public hearing to receive citizen input regarding the formulation of the Fiscal Year 2006-2007 Annual Budget.

Barbara Walters, 1029 Sunset Meadows Drive, would like to see more detailed agendas and minutes posted to the website in advance; extensive long range planning for site proposals, policies, Planning Department time tables, funding options, more information readily available on the website, adequate facilities for residence, town fund a transportation study (CAMPO), needed road improvements based on projected growth.

Female resident, 1004 Blackburn Road, appreciates the recreation programs, desires completion of the Apex Peakway addressing lack of consistency in its development, desires multi-use lanes/bike lanes; addressed safety issues on N. Salem Street.

Mayor Weatherly stated there were considerable issues with the Peakway and those could be addressed with staff. Mayor Weatherly then closed the public hearing at 7:30 p.m.

End of public hearings

OLD BUSINESS

Tim Donnelly, Director of Public Works

Old Business Item # 1 – Williams Creek Basin Force Main Route

(Planning Committee recommends staff complete the design of the Williams Creek pumping station with Option 1, but that if any cost saving developer agreements become available appropriate changes shall be considered).

Possible motion to select Option 1 as the Preferred Route for the Williams Creek Basin Force Main Route.

Council Member Schulze made opening remarks stating the Planning Committee had met and considered 5 optional routes for the force main from the proposed Williams Creek Pump Station to the Beaver Creek Sewer Interceptor at Hwy. 55 and US64. Committee concluded Option 1 was the best solution, being less expensive and offered the most flexibility; noted the issue is with the developer or the Town of Apex and with the ability to alter the plan.

Tim Donnelly Director of Public Works gave an overview of the options 1 and option 5, and stated staff had met with NCDOT regarding option 1 with the force main being the preferred route running as much as possible in the US64 right-of-way and with an extended cost of $498,950, and with option 5 having an extended cost of $792,350. Planning Committee recommended staff complete the design of the Williams Creek pumping station with option 1, but if any cost saving developer agreements become available appropriate changes shall be considered; noted this was important to the Trackside development. Council Member Jones noted with the options it was complicated where any property is developed or not and this action makes it happen. Map showing option 1 and option 5 are attached.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve the Planning Committee recommendation selecting option 1 as the preferred route for the Williams Creek Basin Force Main Route. Motion carried unanimously.

End of Old Business # 1

Council Member Jones

Old Business Item # 2 – Consent Agenda Item # 10

Council Member Jones asked the award of construction contract for Saunders Street parking lot project be discussed. Kent Jackson, Director of Construction Management stated eleven bids were received and all were under the engineer's estimate of $271,871.32. Lower bid was received from Pacos Construction Company with a total bid of $182,758.25. This company has done a number of projects in Town, a couple being Mason Street improvements and sidewalks on Salem. Completion time is five to six weeks, and allowed 75 days and must get the environmental permit. Asbestos abatement may be an additional cost at an estimate of approximately $8,000 to $10,000. Project proposes 105 spaces.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the award of bid to Pacos Construction Company with a total bid of $182,758.25. Motion carried unanimously.

Manager Radford reported on the efforts to move the stated birth house of Laura Duncan; the residence will be torn down. Two parties were interested however, was not going to happen; one attempt was with public/private participation efforts, and the other party having moved another structure. No other interest has been shown in preservation of the house.

End of Old Business # 2

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.

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

NEW BUSINESS

Lee Smiley, Director of Finance

New Business Item # 1 – FY05-06 Financial Summary

Director of Finance gave a review of the 2nd Quarter FY05-06 Financial Summary and noted the benchmark for the 2nd quarter financial performance is 50% for revenues and expenditures. Significant variances were noted. The report is attached. The Council accepted the financial summary as submitted.

Mayor Weatherly

New Business Item # 2 – Re-appointments to Various Boards

Mayor Weatherly recommended re-appointments to the Apex Planning Board as follows:
1) Tommy Morgan's December 31, 2005 term expires, and he recommends he serve a 3-year term that expires December 31, 2008 and recommends he be appointed as Chair for a 1 year term that would expire December 31, 2006. Chairman Terry Rowe's three-term limit has expired in accordance with the Unified Development Ordinance. Attorney Fordham stated this to be correct, not mandated by state law, but by Town Ordinance.

2) Lance Olive's December 31, 2004 term expired however he continued to serve this past year, and he recommends he serve a 3-year term that expires December 31, 2007 and recommends he be appointed Vice Chair for a 1 year term that would expire December 31, 2006.

3) Tom Colhoun 's term expired December 31, 2005 and serves as the Town's Extra Territorial Jurisdiction member; he recommends he serve a 3-year term that would expire December 31, 2008, and contingent upon approval of the Board of Commissioners Wake County. Clerk will advise Wake County of this recommendation.

4) Mayor Weatherly recommended the re-appointment of Mr. Jim Mead to the Board of Adjustment.
Mr. Mead's term expired December 31, 2005 and serves as the Town's Extra Territorial Jurisdiction member; he recommends he serve a 3-year term that would expire December 31, 2008, and contingent upon approval of the Board of Commissioners Wake County. Clerk will advise Wake County of this recommendation.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the Mayor's recommendations for the Planning Board and Board of Adjustment. Council Member Sutton asked the Mayor to share his selection process. Mayor Weatherly stated he entertains suggestions and lays them before the Council for confirmation with a bio of only the folks he is recommending for appointment. Council Member Sutton would like to have a complete list of names of those who are being considered for the position. Mayor Weatherly informed him he had never submitted a list and plans to continue to follow the same procedures (it was noted this was not to embarrass others not appointed). There was no further discussion. Motion carried unanimously. Notification will be sent to the appointees of their approved terms as noted.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to 1) discuss acquisition of and negotiation position regarding the Horace Johnson property, 1536 Kelly Road, 2) to receive legal advice regarding an indemnification provision of a proposed contract, and 3) negotiations regarding termination of an easement.

Action: Motion by Council Member Gossage and second by Council Member Jones to move into Closed Session for the reasons stated at 7:55 p.m. Motion carried. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Schulze and second by Council Member Gossage to move from closed session back into regular session at 8:18 p.m. Motion carried.

With the Council having moved back into regular session, the following action was taken:

Action: Motion by Council Member Jones and second by Council Member Schulze to allow for the change of the location of a guide wire easement on the Claude Bittle property. Motion carried.

Action: Motion by Council Member Jones and second by Council Member Schulze to approve the Blue Cross Blue Shield Agreement. Motion carried.

End of Regular Session

ADJOURNMENT

With no further business to come before the Town Council, there was a motion by Council Member Schulze and second by Council Member Jones to adjourn at 8:20 p.m. Motion carried.

The above minutes were approved on the 7th day of February 2006.

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

Keith H. Weatherly
Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

The Town Council meeting was held on Tuesday, February 7, 2006, *7:00 p.m. in the Council Chambers, Town Campus, 73 Hunter Street.*

Mayor Pro tempore Mike Jones presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly was absent. Mayor Pro tempore Jones presided over the meeting. Council Members Jensen, Gossage, Schulze and Sutton were present. Mayor Pro tempore Jones called the meeting to order asking Council Member Gossage to give the invocation. Mayor Pro tempore Jones led the Pledge of Allegiance and extended a welcome to those present.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Pro tempore Jones presented the consent agenda to be set and asked for a call for action.
Action: Motion by Council Member Gossage and second by Council Member Jensen to adopt the consent agenda and approving the items as listed. Motion carried unanimously.

1. Minutes of January 17, 2006 Council Meeting.
2. Minutes of January 17, 2006 Council Closed Session (separate cover).
3. Budget Ordinance Amendment and Capital Projects Ordinance Amendment.
4. Contract with Joyce & Company to perform June 30, 2006 Audit.
5. Designation of authorized representatives for investment account at First Citizens Bank & Trust Company. Resolution # 06-0207-01
6. Approve and authorize Town Manager to execute a $50,000 Grant Contract with Department of Environmental Health and Natural Resources to aid in construction of Phase 1A Beaver Creek Greenway.
7. Honor retiring Police Captain with his badge and service side arm used during his service with Town, declaring side arm surplus property.
8. Allow Personnel Committee to hear appeal of a determination and order relevant to Town's Cross Connection Control Ordinance.
9. Tax Report approved by Wake County for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Pro tempore Jones presented the regular meeting agenda to be set prior to taking action on the following items. With no amendments to the agenda, it was set as printed.

PUBLIC HEARINGS

Dianne Khin, Assistant Planning Director

Public Hearing # 1 – Rezoning Case # 05CU23

(Applicant requests continuation of this hearing to the February 21, 2006 Council meeting)

Public hearing concerning 2025 Land Use Plan amendment and Conditional Use Rezoning Case #05CU23, United Energy, petitioner, seeking to amend the 2025 Land Use Plan from Light Industrial and/or Office & Institutional to Commercial land use classification and to rezone from Light Industrial to Planned Commercial-Conditional Use district classification, the property located at 1547 and 1607 E. Williams Street containing 6.6 acres; possible motion regarding same.

Mayor Pro tempore Jones introduced the public hearing with Donald W. Grimes, Attorney making request on behalf of the petitioner for a two week postponement of the public hearing before the Town Council in the above referenced matter, to allow additional time to consider possible revisions of the application. Mayor Pro tempore asked for a motion concerning the request.

Action: Motion by Council Member Sutton and second by Council Member Jensen to honor the request for a two week postponement with the hearing being continued to February 21, 2006. Motion carried unanimously.

Public hearing # 1 continued to February 21, 2006 meeting of the Town Council

June Cowles, Planner

Public Hearing # 2 – Site Plan Dollinger & Tove Medical Office

(Item was continued from the January 17, 2006 Council meeting to allow for the special Planning Board meeting of January 30, 2006; Planning Board recommends approval of the Variance and Site plan)

Public hearing regarding a variance and site plan for Dollinger & Tove medical Office, Dollinger & Tove, LLC Family medicine, petitioner; site plan includes one 6,170 square-foot office building to be located at the northeast corner of Old Raleigh Road and Shephard's Vineyard Drive; possible motion regarding same.

Mayor Pro tempore Jones introduced the public hearing with June Cowles, Planner, orienting to the location of the property as stated in the introduction of the hearing, and stating proposed use was to be a 6,170 sq. ft. medical office. Adjacent zoning, land uses and required buffers are noted on page one of the staff report, with the report being incorporated by reference as a part of the minutes. Applicant is requesting a thoroughfare buffer width reduction variance from 30 feet to 15 feet. Within the 30 feet required buffer is an existing Town of Apex overhead electrical easement (adjacent to Old Raleigh Road). Applicant proposes to landscape under the overhead electrical easement appropriate plantings and also will plant additional landscape within the 15 foot wide buffer. The 15 foot buffer is encroached by a parking space or 67 sq. ft.; applicant proposes to plant back 72 sq. ft. elsewhere to offset the encroachment (attachment # 4).

Zoning falls under the Town's Code of Ordinances rather than the Unified Development Ordinances. The factors to be considered in determining hardship situations are listed on page 2 of the staff report with the applicant's letter providing response to the above standards (attachment # 4). Proposed landscape is consistent with the zoning ordinance with the exception of the thoroughfare buffer.

Proposed project provides 30 parking spaces (required 31 spaces). Zoning ordinance allows a reduction of 5 to 20% in order to save existing vegetation or trees. Site conditions will be taken into account. Site is irregular shape and includes an electrical easement. Rear edge of the lot will remain undisturbed. Requested reduction is 3% of parking spaces required.

Street access will be off Shepherd's Vineyard Drive with one driveway; roads exist and permitted under the Zoning Ordinance. Traffic report was not required as proposed project does not create over 1,000 vehicle trips a day. Planning Board reviewed this item and recommends approval for the proposed office variance and site plan with a vote of 4 to 1 with the one opposing vote taking into consideration the one parking space and the site conditions.

Cowles answered questions in relation to the:

- location of the dumpster, enclosure and screening in accordance to the zoning ordinance
- elevations of the building being similar to other dental offices
- buffer under the old zoning ordinance for a variance and gives full account for buffers, where UDO doesn't allow for variance
- buffer on Old Raleigh Road is proposed E type buffer with preference of B type buffer by Council Member Jensen for a more rural setting and more similar to the same area. Cowles read from the UDO the B type buffer requirements and offered applicant will address landscape.

Mayor Pro tempore Jones opened the public hearing at 7:10 p.m.
Town Attorney Fordham advised those speaking during this hearing should give sworn testimony due the request for a variance as this is usually a quasi-judicial matter. Planner Cowles, Director of Planning Rowland and Ed Tang, Engineer were administered an oath by the Town Clerk.

Ed Tang, P.E. Engineering Firm of Chas. Sells, Cary, representing the applicant, shared an exhibit of the existing powerline vs. where it will be moved and the existing powerline easement in terms of seeking a variance. Right of way dedication has to be made along Old Raleigh Road to meet the Town's thoroughfare plan; town has an existing powerline that runs partially onto this site with a 30' powerline easement; exhibit shows existing easement line vs. where they propose to put the 15' buffer line are almost on top of each other; effectively, they are not changing the location of where the tree lines are that are on the site; most of this has been cleared and maintained over the years for the powerline; they are not changing the distance you see on Old Raleigh Road to the tree line. Additional landscape will be planted within the 15 buffer and in addition to landscape of the area under the powerline easement they are dedicating to the town; buffer will be larger than 15' and closer to the 30 foot buffer that is in the code, but because of the town's powerline easement, they can't call that 15' under the powerline – streetscape buffer; vegetation will be layered so there will trees that will be shorter and not grow into the powerline within the town's utility easement, but then 15' behind them, will be more mature trees you would find in a standard streetscape buffer. Seeking a variance based on the shape and configuration of this property, with the property being about 1.14 acres, before dedicating the right of way, so effectively are down to less than one acre of developable area in this parcel. He agrees to the staff's report. Letter of Request: attachment # 4.

Council Member Jensen asked questions about the following items:

- Line on the drawing showing Old Raleigh Road and it's perception it is not being widened very much; looking further up the street has been widened in front of Wendy's much wider. Tang responded the road will be widened out at least one lane width from what's there today to meet the town's ultimate thoroughfare plan and the town's transportation department has reviewed that and are dedicating enough right of way for the future when the road is widened to a full five lane section.
- Concern with line variances thinking developers often want to put bigger buildings on to small lots; prefers with a variance on a buffer like this prefers a planting of a B type buffer vs. an E type buffer which provides more landscape for a more rural look which is what they try to keep in Town and hopes in representing the developer could commit to a B type buffer. Tang stated they would look at the landscape plan and the differences. He then committed to the planting of a B type buffer and would make them shown on the plan.

Mayor Pro tempore Jones asked questions on the following:

- Variance request is for only the Old Raleigh Road side and there's no question on Shepherd's Vineyard Way; in talking upgrade of the streetscape to a B type buffer, it would be on the Old Raleigh Road side, with Council Member Jensen stating that's what he would like.

Mayor Pro tempore Jones closed the hearing at 7:20 p.m. and referred the matter to the Council for consideration and discussion.

Council Member Schulze asked if the dumpster area would be landscaped with the brick surround; Cowles confirmed it would be landscaped.

Attorney Fordham advised the Council had not faced a variance request in a while as most of that has been moved under the UDO to the Board of Adjustment, but any motion that would include the variance would need to include addressing the variance and primarily would be whether or not one or more of the hardships exist that are listed in the old ordinance and whether it's the type situation that's due to something unique about the property as opposed to actions of the applicant. Mayor Pro tempore noted they need to look at the six factors given in the staff report, and include in their motion one or more of those. Director of Planning suggested a couple of factors that could be considered, which were the pie shape of the property and also the developable area constrained by the existing location of an overhead electrical easement. With no further discussion, Mayor Pro tempore Jones called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Gossage to move for approval with the variance because the powerline creates an obstacle that cannot be compensated for, and because of the pie shape of the lot, and with the commitment to vegetate with a B type buffer. Motion carried unanimously.

End of Public hearing # 2

David Rowland, Director of Planning
Public Hearing # 3 – Annexation # 386
Public hearing and possible motion concerning Annexation Petition # 386, Thomas M. & Mary J. Garrity, property owners/petitioners, petitioning to annex 1.632 acres including public right of way, into the town's corporate limits, with property located on 1000 Greenlea Drive (satellite area whose boundaries adjoin a previous satellite annexation G.S. §160A-58.1).

Mayor Pro tempore Jones introduced the public hearing with Director of Planning Rowland stating the property owner seeks annexation and desires town water connection. He oriented the Council to the property location as stated in the introduction of the hearing.

Council Member Jensen asked questions regarding annexation of public right of way and dedication of property for public sidewalks. Director of Planning explained usual annexation is to the center of the right of way. Council Member Jensen hopes this is applied and stated sometimes when properties are annexed and they go into the right of way, then down line, like the funeral home they come back to widen the road and install sidewalks and they come back saying they own that property there and then there's issues with that. He asked when the properties are annexed, can they not put in the agreement the right of way to the distance where a sidewalk is required is to be considered a right of way dedicated to the town at the point of annexation, so down the line, years later have a problem with someone saying they have to donate the property to the town.

Mayor Pro tempore Jones thought he understood, however it's a question whether the property line and the line of annexation are one in the same or not. He continued the property line comes to the edge of the right of way but are annexing to the center of the right of way.

Council Member Jensen thinks in looking at some of these, that the property actually goes into the right of way and there's an easement across the property. Rowland responded some legal descriptions are written where they go to center of the right of way where some legal descriptions stop at the end of the right of way and depends on the individual situation. Rowland stated they try to be consistent and if the legal description does not reach to the center of the right of way, they try to get them to include this over to the center of the right of way at the time of annexation.; he continued if the property across the street gets annexed, it goes to the center line of the right of way. Council Member Jensen asked that if the property stops at the right of way, we can't annex the right of way. Rowland responded we get them to include this in the legal description that it needs to go to the center line of the right of way.

Council Member Jensen asked how they can tell you they want to be annexed for a piece of property they do not own, if it doesn't go to the center of the right of way, with Rowland responding he's not the legal expert but they try to get the properties contiguous throughout town; policy is and has been to get property annexed to the center line of the right of way.

Council Member Jensen would like consideration when annexing properties and when they want to put a public sidewalk on the property with Rowland interjecting the sidewalk goes in the public right of way and not on private property. Mayor Pro tempore Jones added the right of way is the right of way regardless of annexation and we have the right to it. Council Member Jensen would like to discuss this with Rowland later.

Mayor Pro tempore Jones opened the public hearing at 7:26 p.m. and with no one addressing this annexation petition, closed the public hearing and called for a motion regarding the request for annexation.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve Annexation Petition # 386 by adopting an ordinance to include the 1.632 acres into the town's corporate limits. 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 Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.

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

Dr. Patrick Gallagher, 105 Lemon Drop Circle, petitioned the Council to build a bridge across the creek connecting Upchurch Street and Corenna Street to assist with the ingress/ egress, traffic flow and understood the bridge was to be built over the creek however the project ran out of money and didn't happen however the maps say it's there but it's not.

End of public forum

NEW BUSINESS

John Brown, Director of Parks, Recreation & Cultural Resources
New Business Item # 1 – Programs and Activities
(Request for consideration from Council Member Sutton in response to request from Senior Citizens)
Discussion and possible motion regarding type of programs and activities to be sponsored by the Town and offered at public parks and recreational facilities.

Manager Radford advised senior citizens had funneled a request through Council Member Sutton, and as a result of contact with those folks, the senior citizens in their programs at the community center be enabled to play bingo for cash prizes at the community center. Attorney Fordham will advise as to the legality of bingo and beach bingo. Manager Radford continued the law is specific that bingo is illegal anywhere and beach bingo has to be for prizes of $10 or less and has to be in a place appropriately zoned for it. Senior citizens appeared before the Parks and Recreation Advisory Commission and had a general consensus but did not take specific action as they anticipated this would come back to them after having asked additional questions. He turned to Council Member Sutton for his comments. Council Member Sutton asked Attorney Fordham to give his opinion.

Attorney Fordham gave the legal principles applicable to potential bingo activity at the Town's community center. NC General Statues generally prohibits gambling and basically illegal in North Carolina and defined as anything where a person bets anything of value for opportunity to win something and the outcome of the game is determined by chance. He stated bingo games for high stakes if you bought your card to play, is considered gambling. Exception of the Statute in 14-309.14 "beach bingo" is a game where the maximum prize you could win for anyone game is $10 and there are technical things – in that you can't connect anything of any value to winning that game so that in effect the value of winning that game is more than $10. It means $10 a game is the maximum prize and the only criteria for it. There is no specific amount that you can pay for the card; presumably people would not pay an amount for a card that was disproportionate to the opportunity of what one might win. As far as the zoning, any activity in Apex has to comply with the zoning ordinance applicable to the place where it would occur and in this circumstance beach bingo is a permitted activity in the Town in the B1 district by special use permit. The Town's Campus is zoned B2 and at present beach bingo would not be a lawful activity on Town Campus based on the zoning. He look further into the Town's code related to bingo and had found nothing that either prohibits or authorizes bingo; it's not addressed. He's not aware of any policy that has been formally adopted related to the use of the community center that would directly affect whether you can play bingo or not. UDO does address beach bingo, however limits it to the B1 district with special use permit. It's not a use of right in B1; a person could apply for a special use permit with a quasi judicial hearing being held to determine whether the criteria for that special use is met and compatible with the surrounding area in the public interest; it's a one time thing and no license required to play beach bingo. If you are in an area that didn't require a special use permit you wouldn't have to go and get a beach bingo license.

Another type bingo that is lawful and does require a license is a much more high stakes bingo where all proceeds have to go to a non-profit group and a fund raising activity that has been authorized by statute as another exception to gambling and doesn't think what's being contemplated here, not what he's been asked about and to operate the game requires a license and lots of auditing requirements – more complicated, but some non-profit organizations do it as a fund raising activity but go through the process to be able to do it.

Council Member Jensen asked if they could do fund raising with beach bingo. Attorney Fordham advised the person running the game can make money off the game. Criteria would be simply the prize not exceed $10. Question: if you could take the entire amount of money paid for the cards and distribute that out during that night's game – you couldn't if you took in more than what accumulated to more than $10 per game.

Council Member Schulze wanted clarification of B1 and B2 and what's allowed. Attorney Fordham deferred to Assistant Manager Wilson for the definitions allowed, however felt B1 was more intense usage than B2. Council Member Sutton recalls when town campus was built it was zoned similar to the downtown and thinks no one in town contemplated building a business on town campus. Council Member Schulze added he didn't know there was a difference in B1 and B2 in that if it's allowed in B1 why not allow it in B2. Council Member Sutton stated you can change the zoning B2 to add beach bingo. Attorney Fordham advised there could be a text amendment to it. Council Member Sutton continued or rezone the town campus to B1 whichever, feeling it easier to rezone the town campus because the town owns it. Manager Radford agreed if you consider allowing an additional permitted use in a B2 zone then you would be casting the net widely across town and making a change that would affect the entire town and might end up with a product in the long run you might not like.

Mayor Pro tempore Jones noted there was an attached letter from Angela Reincke, Chair of the Parks, Recreation and Cultural Resources Advisory Commission giving the commission's position on gambling as legally defined in State Statue at the Apex Community Center and in other public park facilities. Having spoken with her, he thinks she has done her best to summarize it based on the fact it was on the agenda, feeling there was no recommendation one way or the other, but felt it appropriate to give this response for tonight and didn't have another opportunity to review it; thoughts were split 4 to 4. John Brown stated he had nothing to add other than what was in the memo of the Parks and Recreation Commission's position with a four and four decision on an appropriate use/activity or not an appropriate use/activity. Attorney Fordham's memo is also attached regarding the legal advice given.

Council Member Schulze asked who would operate the games, with Brown responding it would be the Town. Brown responded to Council Member Schulze question about profits, using Cary as an example where they offer beach bingo at their senior center, buying $1 card, with the money being reallocated to the winners at the end of the game, and keeping within the threshold of the state statute governing the operation of beach bingo. He envisions that other groups will want to do bingo themselves; he noted where playing games and conducting activities for purpose of winning money or prizes had never been policy for the community center since it opened (noting church groups had previously asked and were not allowed where there was an exchange of money). He requested if this be allowed, that it be defined for him so he would be able to answer such questions.

Council Member Schulze stated Brown had stated he wanted only the Town to operate bingo and not have third party groups come in, asking if it can be restricted to Town operations. Attorney Fordham felt so; two different uses of the building is for town sponsored activity and the other is if you open up any part of the building for community groups, you can set the criteria by which they use it. He didn't want to give a final answer and would want to research this further, but advised you do not have to allow the same type activity; he doesn't believe in a rental policy that you would do in-house. He continued once you allow groups to rent within the type activities that you allow, there can't be discrimination, and he doesn't mean in a bad sense, but it opens up the facilities for a variety of types of uses; he doesn't feel comfortable giving a final conclusion on this at this time. Brown stated back in 2001 updates as far as how the community center is governed was brought to the council; one policy approved is part of the rental where no profit making for fund raising activity is allowed within town owned park facilities with the only exception being when town enters into a co-operative agreement with another governmental agency, 501C3 designated civic organization or public or private school system; approval of such activities shall be at the discretion of the Director of Parks and Recreation and Cultural Resources. He doesn't know if there's conflict with what is in place now, but was approved in 2001.

Council Member Sutton stated they were talking about a town sponsored event "beach bingo", like Easter egg hunts, and little league baseball; it's got to be Town sponsored. Mayor Pro tempore Jones wasn't sure what was being asked for, but in one version he saw, allow beach bingo and had led him to believe it may not be a Town sponsored or operated activity and wanted to be clear about this as well. Brown would like for the Council to be clear on this as well; if another group wants to use the facility for this, then he could answer accordingly. Mayor Pro tempore Jones stated the Council should give him clear direction.

Manager Radford responded to Council Member Schulze's question, stating there are 60 to 70 permitted uses within the B1 district and only two that require a special use permit; one is beach bingo and he read the other uses permitted from the UDO in B1 district that would require a special use permit to conduct those businesses. Council Member Schulze was asking why it would be allowed in B1 but not B2 and doesn't sound to him there's any reason; technically it could be allowed in B1 other than it would open the door to other B1; he likes the idea of complete rezoning. His only problem and he would favor it, we get into the grey area where the Town participates in a profit making venture where, say we open ice cream shop and compete against other shops; since beach bingo is allowed everywhere in B1 we would get into an area of private enterprise, but at this point he doesn't see that being offered anywhere and ok with the Town doing this.

Council Member Jensen asked if we could require the profits go into a fund for the keenagers; there is no separate fund now. Brown stated money generated to buy cards for the games would go back out; it's $10 per game. Brown stated if pursued he asked to do more research and find the best way to do this; the Advisory Commission wanted more information if this is the direction taken and wants this opportunity.

Council Member Sutton stated if we go this way, he thinks staff needs consensus that the Council is willing to change the zoning then work out the details. Manager Radford stated that is the direction he's looking for. Mayor Pro tempore stated there's a large group of interested citizens present and the group confirmed this is what they are asking for beach bingo. Manager Radford stated for prizes rather than paying out in cash, could be gift cards of certain value to a certain place and is one of the things staff would like to find out. Mayor Pro tempore stated he assumed if they move forward on this the Advisory Commission would be involved in and chance for input about frequency of offering this activity and time of day, etc. Brown stated this would be an issue as there's limited space and time and if we go this way, will have to look at space and program it in; it's not just a senior center and there has to be a balance.

Council Member Gossage would like to follow up on the allow vs. sponsor. His concern is having town or basically government sponsoring gambling at the community center vs. allowing it; he sees a difference in the two. Council Member Schulze stated it's not gambling. Mayor Pro tempore stated it sounds as if he favors the allowing rather than the sponsoring. Council Member Gossage wants more information on allowing and what it means, with Council Member Jensen agreeing. Council Member Sutton stated Brown wants the Town to be in a position of calling it; not all private organizations coming in to do it, it be Town allowed or Town sponsored whatever on the wording. Council Member Gossage stated there is a difference and he wants to know. Brown responded whatever way decided is fine and when they are ready to move forward, he asks for clear direction so he can direct staff, if Town sponsored, but would like to address other groups with the appropriate direction of Town sponsored and the direction he was given; it may never happen, but wants to be able to respond appropriately. Council Member Gossage stated from what he was hearing, there's benefit to having it Town sponsored as far as being able to control it, but personally he doesn't like the idea of Town sponsored bingo, where he prefers if this is done, it be allowed, which seems much harder than to set guidelines; that's what he wants more information on for that reason.

Council Member Sutton asked if they precede with the rezoning from B2 to B1, and direct staff to submit it to the Planning Board, and hold the public hearing and come back to the Council for public hearing, it would make it allowable use by the Town, then Brown can come back with his plan to the Council on how he will implement it. Manager Radford responded this is correct, with Brown agreeing a plan if it's Town sponsored activity is how he will implement. Council Member Sutton stated to keep this moving, need to have a motion to direct staff to proceed with a rezoning of town campus to B1.

Manager Radford responded he will also talk with the Planning Department; the department's preference might be that you allow a special use within the B2 district that would allow for bingo which would keep them from having to rezone it but would add bingo as a permitted use within the B2 with a special use. Council Member Sutton responded it's not necessarily a Planning Department call, can't he recommend to the Council they not rezone the entire town to permit beach bingo, with Manager Radford responding that the Planning Board will ask the Planning Department what their recommendation is and if we have done this to suit their recommendation then will have a better chance to get it passed at that level, with Mayor Pro tempore agreeing. He thinks staff is asking are we ok with moving forward or not, and if we move forward what are our options to make it happen. Council Member Sutton stated that moving forward means moving to the Planning Board to get on their agenda and then come to Council with a recommendation. Mayor Pro tempore Jones doesn't think they need to say that we recommend the town campus be rezoned in order to accommodate beach bingo; Council Member Sutton responded this would do it and be clear cut and no equivocation. Mayor Pro tempore wants to hear the options – pros and cons – maybe it is a special use permit; instead of giving them this direction, give them leave way. Council Member Sutton said give them direction to proceed with a rezoning to permit beach bingo; it can be adding to this zone B2 or rezone. Mayor Pro tempore stated rezone or amend the UDO whatever is appropriate, with Council Member Sutton adding move on, move it to the Planning Board, with Manager Radford adding, that's what he would say. Mayor Pro tempore stated he understood the wishes to move it to the Planning Board, asking for a motion.

Action: Motion by Council Member Schulze to give staff general direction that the Council is in favor of pursuing beach bingo on the town's campus and happy to let it be that the Planning Department make a recommendation of how they will make this happen, and let the Parks, Recreation and Cultural Resources make the recommendation on how they want to operate it with regard to a sponsorship whether by the town or third party, thinking the direction is they want beach bingo. Council Member Jensen stated he didn't hear rezone in this. Council Member Schulze doesn't want to get into this detail, just tell the Planning Department that we want beach bingo, what do you recommend to get it done, rezone or add special use permit to the current zoning. To him they do not need to give detail direction; just give direction and let them make a recommendation.

Mayor Pro tempore stated after there's a recommendation, there has to be a public hearing and ultimately the decision can be made one way or the other; at least it will offer all the options. Council Member Sutton stated Planning Board can proceed with their public hearing and it would be on their agenda.

Attorney Fordham thinks at some point somebody has to authorize the application for rezoning to be made and thinks this is this Council and before a petition can be filled on behalf of the town, to start the process, he thinks there has to be a vote that says, authorize the town to submit an application. Manager Radford added authorize him to do so and he will start the process. Council Member Schulze asked if they have to at this point say it's a rezoning or leave it open; the Planning Department may say they don't want to rezone but recommend a special use permit. Manager Radford responded they should authorize him to sign any document necessary to be able to facilitate getting the process started.

Attorney Fordham stated in his opinion a rezoning petition has to be fairly specific and if they are talking about a text amendment change, he thinks that can be fairly general that it would start through the process that the town could initiate as a potential change, but a rezoning of a piece of property has to start by the Council expressing it's intent to have the parcel rezoned and authorizing the application be submitted. Council Member Sutton asked if they can't do both, can't the Council authorize to rezone and at the same time also submit a text recommendation and get the recommendation from the Planning Board as to which they think is the most appropriate, with Attorney Fordham responding they could do that. Council Member Schulze added that's what he means, keep the options open. Attorney Fordham added you can, but it has to be specific as to changing a parcel of lands zoning designation but doesn't mean you have to go through the entire process if you decide not to go that route. Council Member Schulze clarified you don't have to follow through on it, with the Attorney Fordham responding that's right.

Council Member Sutton clarified for now, it's B2 to B1 to get it before the Planning Board to rezone; their motion would have to be and their vote to authorize or submit to the Planning Board to rezone from B2 to B1 for consideration. Attorney Fordham continued a resolution of intent to have the town's property rezoned and authorize the Manager to submit the petition. Council Member Jensen stated this makes sense doing both parallel, and can still make decision at the end to say no if they so see, or want to go one way or the other and agrees with Council Member Sutton to do this in parallel. Council Member Schulze stated this works for him as well.

Action: Council Member Schulze restated his motion to give staff general direction to move forward with beach bingo and authorize the Town Manger to submit a rezoning request to get the process going, and will do this in parallel with possible text change to the current zoning of B2 to possibly allow beach bingo as a special use permit, which means stick with B2.

Attorney Fordham didn't fully understand the motion; it sounded that the motion was to resolve to have the Town Manager submit a petition on behalf of the town to rezone the Town Campus parcel from B2 to B1 and also authorize staff to proceed forward to pursue a text amendment to allow beach bingo as a special use in B2. Council Member Schulze agreed with the Attorney's statement regarding the motion.

Mayor Pro tempore Jones called for a second to the motion with Council Member Sutton making the second. Mayor Pro tempore Jones asked if there were further discussion.

Council Member Gossage stated he was not sure what the outcome is that they will end up with, with Council Member Sutton responding beach bingo, with Council Member Gossage thinking they are putting the cart before the horse. He doesn't know how it will look and maybe in a form he doesn't ... with Council Member Sutton saying when it comes, he could then vote against that, with Council Member Gossage understanding this, but feels it's turned around and they are rushing this without the information needed and he doesn't understand why. Council Member Schulze responded they are not rushing it, but authorizing staff to get more information, with Council Member Jensen stated there are three carts in parallel and can always through two carts away at the end, with Council Member Schulze agreeing they can say no at the end.

With no further discussion, Mayor Pro tempore Jones called for a vote on the motion. Motion carried 4 to 1 with Council Member Gossage voting no. Motion passed.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Pro tempore Jones asked for a motion to move into Closed Session for the following items:

1) to receive legal advice on the new law allowing the non-disclosure of trial preparation materials, and
2) to receive legal advice concerning possible condemnation action in regards to utility easements.

Action: Motion by Council Member Schulze and second by Council Member Gossage to move into closed session at 8:05 p.m. for the reasons stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Gossage and second by Council Member Sutton to move back into regular session at 8:30 p.m. Motion carried unanimously.

With the Council having moved back into regular session, the following action was taken:

Action: Motion by Council Member Gossage and second by Council Member Schulze to adopt a Resolution that real estate appraisals obtained by the Town of Apex are trial preparation materials including in anticipation of eminent domain litigation if not yet commenced. Motion carried unanimously. RES. NO. 06-0207-02

Action: Motion by Council Member Gossage and second by Council Member Jensen to adopt a Resolution No. 06-0207-03 authorizing eminent domain proceedings related to the project for the improvement of the Apex electric system known as the Hwy. 64, Laura Duncan Road, Green level Church Road electric project. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further business to come before the Council, Mayor Pro tempore Jones called for a motion to adjourn at p.m. Motion by Council Member Sutton and second by Council Member Gossage to adjourn at 8:32 p.m. Motion carried.

The above minutes were approved on the 21st day of February 2006.

Georgia A. Evangelist

Georgia A. Evangelist, MMC
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

The Apex Town Council met on Tuesday, February 21, 2006 at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

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

PRESENTATION

Billy Gilbert, President, Apex Volunteer Fire Organization presented a video of devastation of Waveland, Mississippi and reported on media coverage of a donated 1984 Ford Fire truck, with special recognition being given to Bob Ohmann, President of St. Lawrence Homes, for his citizen support by contributing transportation and a private donation of a refurbished 1965 American LaFrance Pumper. President Gilbert, John Sparath and Sue Lynn Hinson were the volunteers who delivered the fire apparatus to Waveland. Mayor Weatherly expressed appreciation for their part in bringing Apex as showing compassion on their community. Mayor Weatherly offered a proclamation to Mr. Ohmann for his contribution to these efforts.

CONSENT AGENDA

All items on Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the consent agenda to be set and asked it be amended: Consent item # 2 Revised Closed Session minutes of February 7, 2006 and Consent item # 4 Site Plan for White Oak Villas rather than Wake Oak Villas. Council Member Jensen asked Consent items # 3 and # 12 be considered separately for explanation. **Action:** Motion by Council Member Jones and second by Council Member Schulze to approve the consent agenda with the amendments and Consent items # 3 and # 12 being considered under New Business. Motion carried unanimously.

1. Minutes of February 7, 2006 Council Meeting.
2. Minutes of February 7, 2006 Council Closed Session (separate cover).
3. Budget Ordinance Amendment and Capital Projects Ordinance Amendment. (new business)
4. Site plan White Oak Villas located off Lynch and Ada Streets.
5. Site plan Longhorn Steakhouse, Beaver Creek Commons Drive (Beaver Creek Crossings).
6. Site plan Red Robin Gourmet Burgers, Beaver Creek Commons Drive (Beaver Creek Crossings)
7. Site plan Saunders Street parking Lot, 112 Saunders Street.
8. Revised Membership Requirements and Benefits Handbook.
9. Wake County Emergency Operations Plan pursuant to NIMS compliance guide response protocol.
10. Addendum to Memorandum of Agreement between Town of Apex and NC Department of Environment and Natural Resources revising biennial reporting dates for Town of Apex.
11. Tax Report approved by Wake County Board of Commissioners at their February 6, 2006 meeting.
12. Award Construction Contract for Peakway Project (Intersection NC55) Raleigh Paving $91,539.00. (new business)

**** Site Plans #4, 5, 6, and 7 have staff reports attached and are incorporated as a part of the minutes and approved unanimously by, the Planning Board.***

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 to add a closed session regarding litigation concerning acquisition of real property by use of eminent domain. Attorney Fordham will advise on the wording at the time of the motion to move into closed session. The Regular meeting agenda was set with the amendment to closed session.

PUBLIC HEARINGS

Dianne Khin, Assistant Planning Director
Public Hearing # 1 – Rezoning # 05CU23
(Public hearing was continued to this meeting per the applicant's request; Planning Board did not recommend approval; applicant requests this item be continued to the March 7, 2006 Council meeting)
Public hearing regarding 2025 Land Use Plan Amendment and Conditional Use Rezoning #05CU23, United Energy, Inc. petitioner, seeking to amend the 2025 Land Use Plan from Light Industrial and/or Office & Institutional to Commercial land use classification and to rezone from Light Industrial to Planned Commercial-Conditional Use classification, the property located at 1547 and 1607 E. Williams Street containing 6.6 acres; possible motion regarding same.

David Rowland Director of Planning asked for the continuation of this hearing to March 7, 2006 meeting of the Council, with Attorney Don Grimes stating he would appreciate the delay at this time and would dispose of it at the March 7, 2006 meeting.

Action: Motion by Council Member Jensen and second by Council Member Jones to continue the hearing as requested to the March 7, 2006 Council meeting. Motion carried unanimously.

Public Hearing # 1 continued to March 7, 2006

Director of Planning David Rowland asked for a break in the meeting agenda schedule to introduce Transportation Planner Candace Davis and GIS Tech Will Brown. Rowland reported a Development of Apex Mapping is now on the Town's website and will be updated as projects are submitted; future rezoning projects will also be added.

June Cowles, Planner
Public Hearing #2 – Major Site Plan ATI Automation
(Planning Board recommends approval)
Public hearing regarding a major site plan for ATI Automation, HagerSmith Design petitioner, and seeking approval; site plan includes office and warehouse and would be located at 1041 Goodworth Drive.

June Cowles, Planner, presented the staff report of project data for this site plan with the report attached and incorporated as a part of the minutes. Site plan is consistent with the Zoning Ordinance requirements, the 2025 Comprehensive Plan and the 2025 Land Use Plan. Roads are existing and permitted under the Zoning Ordinance; no storm water requirements apply. Staff recommends approval. Planning Board unanimously voted for approval at their February 13, 2006 meeting.

Public hearing was held with a representative of HagerSmith Design giving support of the site plan, having met the intent of the ordinance. No one spoke in opposition. The hearing was closed.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the site plan as recommended. Motion carried unanimously.

End of Public Hearing # 2

Dianne Khin, Assistant Planning Director
Public Hearing # 3 – UDO Amendments
(Planning Board recommends approval)
Public hearing regarding possible amendments to Sections 7.5.9 and 7.5.10 of the Unified Development Ordinance.
Dianne Khin, Assistant Planning Director presented the staff report to amend Sections 7.5.9 and 7.5.10 of the Unified Development Ordinance with the report attached and incorporated as a part of the minutes. Staff proposed an amendment that would clarify when road improvements have to be done as part of a development project. Staff recommends approval. Planning Board met February 13, 2006 and unanimously recommends approval. Council Member Gossage questioned 7.5.9 C.1.a. ...very large projects... and noted C.2.a did not have this language. He asked to strike these words. Khin used the following example: if Beaver Creek Commons or Crossing came into play, it might not make sense to do all the road improvements upfront and could delete ..very large projects and would then be open for any project for Council that may feel a phasing plan would be appropriate. Council Member Jones added there could also be a small project that may have a phasing plan. He asked the impact on the final lifts of asphalt on streets within a subdivision. Khin responded the final lift would be done at the end of the project.

The public hearing was opened at 7:40 p.m. and with no one addressing the amendment, the hearing was closed.

Action: Motion by Council Member Sutton and second by Council Member Schulze to adopt the ordinance as modified with the removal of the words ...very large projects. Motion carried unanimously.

End of Public Hearing # 3

Candace Davis, Transportation Planner
Public Hearing # 4 – Transportation Plan Update
(Planning Board recommends approval)
Public hearing and possible motion regarding the Transportation Plan Update.
Candace Davis, Apex Transportation Planner, and Russell Dalton, Apex Transportation Engineer presented updates to the Apex Transportation Plan. Comments and staff report are attached and incorporated as a part of the minutes. Removal of the Urban Growth Boundary and citizen complaint brought about changes in the plan with the plan having been adopted October 15, 2002 and having been amended six times; an overview of the process to date was given and clarification made regarding the proposed amendments. Staff recommends approval. Planning Board recommends approval of the draft Thoroughfare and Collector Street Plan map by a six to one vote. The one descending vote did not feel everyone had opportunity to view the plan and to make comments. Staff asked Town Council to approve the update to the Thoroughfare and Collector Street Plan map.

The public hearing was opened at 7:50 p.m. The following spoke; each asked delay in approval of the plan and the amendments:

Jay Gibson, White Hall Manor, 1005 Cuddington Court, addressed the interchange/grade separation roadway at Peakway and South Salem Street which would take homes or there would be a retaining wall built out; both unacceptable; charged council to find community solutions and revise the plan to require an at-grade crossing and further explore options with CSX, and direct staff to conduct further study at this location prior to any transportation amendments for this location.

Barbara Walters, 1029 Sunset Meadows Road, asked Council to consider future studies before making a decision; stated changes encourage development; needed infrastructure to support growth and commented on the funding (168,000 by 2025 – staff noted this potential not build out; projected 4% growth would be 80,000 or 90,000); commented on composition of CAMPO Plan and concern with traffic patterns; commented on the future US64 study to Pittsboro to be completed in late fall; commented on the Blue Ribbon Committee (Mayor Weatherly is representative) and to look at the gaps in infrastructure and available funds; stated study gives ideas of what can be funded with everyone wanting I-540 to be funded; asked for traffic capacity analysis be prepared (Dalton noted projects for roadways are looked at individually for specific projects and not for every road, with the traffic plan being a wish list for the community and to guide developers and gives a reasonable idea based on planning information). Walters noted the distance to US64 and Jenks Road and commenting on the information received from Johnson.

Chris Hayami, 202 Wendhurst Court, Abbington, addressed projections and expects more development than less; submitted a memo for the record containing her comments noting the impact on Abbington Subdivision and calling attention to Beaver Creek Crossings Road planned onto Kelly Road at Wendhurst Court, and not wanting this to take place; noted there was no left turn signal onto US64; commented on cut through traffic, speeding, bus stops, kids play area. Stated rationale of the 4-way light at this location was outrageous – and an alternative due to resistance of NCDOT for not putting a light at Kelly and US64; wants to preserve character of Abbington, and it not bear burden from Beaver Creek Crossings and the theater traffic suggesting this be moved closer to US64 with right turns onto Kelly.

Public Hearing # 4 – Transportation Plan Update

Ann Mullin, 303 Lyndenbury Drive, Abbington, requests a public meeting to give opportunity for those attending school meeting, and pointing out deficiencies of the plan; addressing cut through traffic and the establishment of a neighborhood watch, recording license plate numbers of speeders and those running stop signs, where the bus stops and had sent letters to those and copied police department. She's concerned with traffic multiplying with a road connection and puts children at risk. Notes lack of a traffic light at US64/Kelly Road and efforts with Representatives Stam and Stevens and Lyndo Tippett Secretary of NCDOT on February 27, 2006 for a temporary light at this location thinking fatalities may occur while trying to make left turns at US64, with Beaver Creek developers wanting this light and willing to pay part of costs as traffic from there now comes through Abbington. She asked Council re-think the widening of Jenks Road noting the area as low density and that traffic would use other roads 751, Green Level West, High House, I-540 and traffic does not come to US64 to get to RTP, Cary, etc and widening would bring big box stores. She stated Planning promoted medium density residential property for big box commercial development which violated the 2025 Land Use Plan. She asked Council wait on the three major studies, and see how the full movement light at Kelly and US64 would ease traffic flow and facilitate commercial activity at Beaver Creek Crossings. She asked they not commit to widening of Jenks Road before studying accessibility for low density residential development in the area and reconsider placement of Kelly and Beaver Creek Crossings road, to watch where traffic goes then make changes, asking what's the rush.

Steven Faul, White Hall Manor, 1409 Apple Thorn Drive, had moved here from California for a better life, and expressed concerns with interchange/overpass on Salem Street and potential for a retaining wall and its impact on his residence and/or perception on lots of folks; he questioned whether he should sell his residence asking the Council to not ruin a great town but wait for the studies.

Kyndall Maynard, Abbington resident attended the school assignment meeting rather than the workshop and feels transportation needs more thought and that the studies would be useful. She talked with the state noting schools are adding the transportation component; she noted some decisions on the plan could be delayed, not all of it, however Council needed all the data. She noted NCDOT had built the left over islands at Kelly and US64 and that Apex data needs a solution, however not sure Beaver Creek Crossings into Kelly Road is a solution; she noted the communication with Representatives Stam and Stevens and NCDOT for a solution at this intersection; She doesn't see the need for four-lanes and double-divides looking at the deadened for the Peakway and certain areas and it's in pieces; developers pay for roads and not the town she appreciates; 4 lanes of Jenks doesn't go anywhere and will be pieces of 4-lanes; expect leaders to make decision based on all data; she asked why all streets that intersect with US 64 have to be 4 and 5 lanes – are not now; low density is in the land use plan and can't see this.

Randy Carson, 104 Lansbrooke Lane, Abbington, addressed issues he felt were being forced on folks including school decisions, waste treatment plat decision on New Hill, and with one public meeting being held in regards to transportation issues having had the highest attendees noted that Mayor Weatherly had hosted an education meeting at same night and doesn't want this issue forced down folks throats.

Sylvia Monocco, 805 Wimberly Road, stated it appears Wimberly is listed two different things in the legends – appears two lanes based on color with widening with comments and concern with four-lanes and unsure about the plan. She asked Council wait for the studies and not rush the process, noting signs placed on Wimberly and Jenks about the meeting had fallen down and folks didn't know there was a meeting and that folks would like to know more before a decision is made urging more time to consider what's being done; she doesn't think Jenks Road should be four-lanes, nor Wimberly that every road doesn't need to be 4-lane and especially these going to US64; she doesn't think there will be that big of a growth in this area as it's suppose to be low density and not convinced there needs to be wide roads in this area.

Ruth Wellenborg, 7617Jenks Road, stated there was not much traffic on Jenks Road and asked where the traffic is coming from thinking WalMart; that widening Jenks Road is not needed, as roadway design shows its sufficient, however Wal-Mart is not on the land use plan today; she stated going commercial beyond today's land use plan doesn't justify widening the road asking what was the land use assumption behind the plan to widen Jenks Road, not having received a good answer; from what she's heard asked if Wal-Mart isn't driving it, she doesn't know what is; noted Jenks Road was a short section from Kelly to US64 and doesn't know what traffic will drive down that road asking what was the need for four-lanes wanting an explanation, and if not needed should consider the plan currently in place; postpone action and answer questions and consider the traffic pattern – as this would be an expensive road to no where wanting them to rethink this and do this right.

Dale Marsh, White Oak Creek, is not in the town limits, however may be in the future; he goes Jenks to US64 at the light and doesn't see need for Jenks to be four-lanes. He does understand growth issues and noted the major studies being done by the state, and urged the Council to wait and see what all of them have to say before acting on this plan, adding it was much like a mortgage – it was an investment in the future and quality of life issues.

Public Hearing # 4 – Transportation Plan Update

Terry Tap, 8016 Jenks Road, recapped the process to this point, and noted the controversial issues, and not having enough public input while folks were not able to attend the meeting; asked the Council to evaluate other studies regarding the US64 corridor, the widening of Jenks Road with its potential to dead-end asking why four-lanes before voting on this plan; noted there was no money for a bridge and the plan for square loops and that plan was for NC751 not Jenks Road.

Public hearing was closed.

Engineer Dalton commented on the design as well as impacts long term from the S. Salem Street Plan interchange/intersection on White Hall Manor, stating in the plan found it unrealistic to put an at-grade crossing to connect the Peakway across the railroad tracks. Would like to have an at grade crossing with design over tracks over $4 million; the plan shows an interchange – smallest possible – substantial impacts would require a grade separation study to see if under is a better solution; have discussed this with some of the neighbors; 1st solution is to try to get an at-grade crossing; plan notes states would seek at-grade crossing but realize in future would need a grade separation to get across the tracks and is a reality; need to prepare for an appropriate right of way. Impact is a 25 foot wall, 15 feet off back of property lines across back of homes and tapers down. To go under the tracks would require construction of two structures; price of field dirt to get over the tracks about $2 million or half the project costs; under doesn't require field costs but would still have to dig out and would increase construction costs and that would go up for the separate bridge for the railroad and a separate bridge for the road itself vs. one single bridge carrying the Peakway over. Costs could be comparable. Council Member Jensen prefers if forced to go over to move the alignment more eastward to get it away from Whitehall Manor not looking at a wall rather have embankment, trees and bushes at least screen it. Engineer Dalton stated design solutions could be entertained short term and sometimes shift alignments in the plan to try and show what will happen, but shift here would impact other areas, with Peakway moving through other communities to the north and changing the alignment back quit a distance like the vertical alignment; he doesn't have a clear understanding of the properties on the east side; plan doesn't address the fine design issues.

Mayor Weatherly stated they would get to those issues when confronting the crossing, with Engineer Dalton agreeing, and Mayor Weatherly continued that's not the mission of the plan to fully develop details, but is conceptualization of the needs as known today. Engineer Dalton continued they avoided taking property to the west by putting a two-way loop on the east side and is the only thing that makes this an interchange is the fact they needed low speed access loop to get up to the Peakway from South Salem Street; shifting eastward would make it more difficult to squeeze the loop in on that side; they are having to buy right of way if they want to put that in. Council Member Jensen thinks it's worthwhile to look at this, with Engineer Dalton agreeing.

Mayor Weatherly stated the issue of Plans, being a plan for recreation, and other plans, start with the best information and as the town grows and land use changes the plan is modified, and he anticipates the transportation plan much like the land use plan always changing, and from it's date of adoption and a necessity because the community changes and Transportation is at the forefront of those changes; he doesn't anticipate whatever is adopted now or in the future to be chiseled in concrete, and should not be because this Council will not bind future Councils with the adoption of this plan or any other plan as the thinking of the community and the elected representation changes and the needs change, then the plan will change to reflect that. Whether adopted sooner or later it doesn't change the basic concept of why we do planning, it's to use the best projections the town has at the time with the best information using the best staffing we can get to pull it together and plan the way we want the community to become; but was never intended to be a one-time shot deal; and that the folks in this room are the only ones that are ever going to speak to transportation is quite the contrary on any plan ever adopted for the Town since he's been involved.

Council Member Gossage didn't have specific issues, however tonight was not ready to proceed with the plan. It seems there are three issues, at the very least if there were more public meetings they could be more informed at the very least, giving opportunity to communicate more with th e public is always a good thing. He doesn't know how much will come from the three studies, thinking staff has done a great job in local planning, knowing what's best coming down the pike, and informing Council on that, whereas with regional and state planning it's broader and doesn't bore down to the real specifics, but if Council decides to put things off that long, so be it, could probably remove three most contentious items from this and pass tonight or could punt on the whole thing for a number of months until those regional plans came; he's not comfortable passing the plan as is.

Council Member Jones felt the same, for several reasons and not comfortable to vote on this, and not sure when he would be comfortable voting on it, noting the two or three issues, and may be others, but he's not clear and maybe not spent enough time comparing the current transportation plan to what's being proposed and those differences. Concerns he's heard tonight are on our the current plan, for instance connection of Beaver Creek Commons to Kelly Road that was a condition placed on the approval of Beaver Creek Commons and was not something new being proposed on the transportation plan. He thinks everyone has to be clear on what's already in the transportation plan and what's being proposed with these changes. He was unsure of what value the CAMPO and Blue Ribbon Committee and the other feedback will be for Apex, because typically from his experience they get their information from us; the information they will use in their planning comes from staff that's presenting it to us, rather than the other way around.

The other reason he's not comfortable voting on it tonight is, that he'd gotten a flurry of emails from some of the same people here at the meeting and he hadn't had a chance to read and wants to make sure he has all the information and can hopefully be responsive to those questions before taking any action. Two things he's asking is for a bit more time, he doesn't know how much but also something that tells him the specific differences in what's being proposed and what's already in the transportation plan; he can compare the two but needs help.

Council Member Schulze felt the same way, in reviewing the plan started a list of questions and probably has a dozen questions or so and still unanswered on his part; he questions the other studies, especially when it comes to Wake County schools thinking they should rely on the town's planning and not the other way around, relying on us and not us setting site on their plan. He also has received a flurry of emails and prides himself on response to all of them, and has had too many and has not responded and apologized for those that hadn't gotten a response.

Council Member Sutton was interested in CAMPO study and maybe be a regional study but knows they are looking hard at US64 and might very well dead-end Jenks Road or may put a major intersection, he doesn't know, but would like to see what they say and the funding that comes with the study; if any state funding thinks it's important to us and would like to wait until the study is in. He admitted he has lots of misgivings about the widening of Jenks Road at that intersection and doesn't feel like the people who are building for instance Toll Brothers the new section will not use Jenks Road to get to US64, they will use Green Level, take a right and another right back on I-540 and use traffic lights or go out the other way to Cary, going to Cary, Raleigh, or RTP will not go down Jenks Road to get there; he road it yesterday with the Manager and it doesn't seem logical to him. Also Salem Street goes to Davis Drive and US64 North Salem both have two lanes widened at subdivisions, Olive Chapel with subdivisions on both sides two lane widened at subdivisions and it's not logical to him, but would like to wait for the CAMPO study.

Council Member Jensen echoed the same, he too would like more detail about the items brought up, specifically the White Hall Manor situation and if the alignment can be moved east and knows we don't want to focus down into exact design, but in some places should do that certainly so you can alleviate concerns of the folks there. He thinks Beaver Creek Commons Road over to Kelly is good thought to move it north; he's been through cut through traffic vs. connectivity and thinks that's questionable; he uses Jenks about three times a week and comes back up Old Jenks to US64 and takes a breath looking west and it's over a hill and does not know what's coming and pushes it to go east on US64 so things don't happen; he would be concerned about it and questions whether it will be an intersection and what can be done there and whether Jenks needs to be widened. Twenty years from now it will be different but at the same time is a short road and thinks it's good to wait for the studies to come in; maybe they don't have a great influence but maybe they will have a great influence on certain sections like Old Jenks Road.

Action: Motion by Council Member Jensen and second by Council Member Jones to delay decision on this item until the three studies are complete later this year.

There was discussion as to how to bring this back to the Council and when. Engineer Dalton noted a number of changes in the plan that were required to bring the plan up to date because of their inconsistencies to existing plans and roadways and would like to bring this back soon, so if there are major issues that Council thinks should be pulled, they can be, but asked the other things they think should be passed be done so as soon as possible. Noted: Realignment of roadways from coordination with the environmental agencies which no one has commented on, the removal of collector connection over Trackside which is part of their plan which is reality, the fact that NC55 Bypass connection south of town aren't shown correctly on the plan with respect to current roadways; there are a number of things that could be itemized and voted on and; they would like to come back next month with an itemized list. Mayor Weatherly stated their in-action would be to not adopt tonight and then could continue to assess the needs for parts of it to be brought forward without any kind of form of a motion to specify time; we want entertain a motion to adopt or not adopt. Council Member Jones felt as the pieces are brought to them, word gets out to those who have concerns about the issues coming before them and it's done in as open a manner as can be, as they always do.

Action: Council Member Jensen withdrew his motion to delay and Council Member Jones withdrew his second to the motion.

Council Member Schulze had a number of questions and asked the best way to get them addressed and resolved? Manager Radford suggested they take the elements that are in the existing plan and compare those to the elements in the proposed plan, determine which ones are and which ones are not controversial, which ones that have generated the greatest amount of questions and determine those that are routine and dispense with those as quickly as possible, and then study more in-depth the ones creating issues and gradually dismiss those in some frame or another.

Mayor Weatherly stated CAMPO may be waiting for some direction from the Town so they can incorporate them. Engineer Dalton stated a number of changes on this plan is being provided to CAMPO. The Mayor stated the information they are asking from us will be based on decisions they have to make, and the assumption that we should wait to do that is the other way around. As Council Member Jones had said, a lot of this will go to CAMPO Study and will rely on us to make decisions and they will incorporate that. Council Member Jones stated there are certain areas where we want to influence their planning, with Mayor Weatherly continuing, so by our in action on some of these issues, we may not be a player in our part of the CAMPO plan, with Engineer Dalton agreeing.

Council Member Gossage added at the March 7 meeting, we may want to have most of this, with Mayor Weatherly interjecting we want to make sure we are at the table when CAMPO considers the Apex portion of the comprehensive plan. We certainly want to weigh in on those issues if they are controversial, so be it, somebody is going to make the decision to stick it in the CAMPO plan for sure. At that point, we need to be there with a decision; he doesn't know what those issues are tonight that may need to be addressed but staff does, and asked if they wanted to put this back on the agenda for March 7 with some kind of strategy to deal with this.

Council Member Sutton asked what they will bring back March 7, suggested routine or the whole plan. Council Member Gossage responded, clearly not Jenks Road widening, not the intersection of N. Salem Street and the Peakway, and Beaver Creek Commons and Kelly, with Mayor Weatherly adding we will not be dealing with the White Hall Manor section for years. Engineer Dalton asked direction of the Manager; Manager Radford stated they would bring this back to the Council for routine items essential to be passed to be included as elements in the CAMPO Plan. Council Member Sutton asked about referring the agenda to Planning Committee to develop items to bring back. Mayor Weatherly asked if meeting could be held before March 7. Council Member Schulze was ok to wait to March 7 to get the no-brainer stuff out of the way, see what's at the top and what remains then do planning.

With the public hearing having been closed, there was no motion by Council and with non-controversial items tol be brought back for consideration on March 7. 2006 meeting.

End of Public Hearing # 4

David Rowland, Director of Planning
Public Hearing # 5 – Annexation # 384
(Public hearing was scheduled at least 60 days from the beginning of the annexation process of December 6, 2005 and in accordance with the Utility Service and Annexation Agreement between the Town of Apex and the Town of Cary)
Public hearing and possible motion concerning Annexation Petition # 384 Roberts Family Trust/Hubert E. Roberts Family Farm LLC, Herman Wayne Roberts, Billy G. Roberts, Thomas G. Roberts, Jean Ried Roberts and Ann R. Pearce, property owners/petitioners, petitioning to annex 66.46 acres located on the south side of Roberts Road into the Town's corporate limits
(Satellite area whose boundaries do not at any point touch the Town's primary corporate limits).

David Rowland, Director of Planning presented the annexation request and oriented to the site for a potential subdivision and expects more development in this area noting the Beckwith Farm Subdivision and doing thoroughfare planning there. The 60 day delay before adoption of an ordinance to extend the corporate limits was in relation to the Utility Service and Annexation Agreement which was mutually adopted by Town of Cary and Town of Apex. Roberts Road forms the boundary line. A waiver was accepted by Cary for the 60 day ruling on the Beckwith Farm. Cary had no comments on this annexation.

Public hearing was opened at 8:55 p.m. and with no one addressing this annexation request, the hearing was closed.

Rowland stated the town was within the limits for satellite annexations at approximately 5%. Manager Radford noted that filling in the "donut holes" reduced this percentage greatly. This area contains 66.46 acres and the Land Use Plan characterizes this area as low density residential with three units per acre.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve annexation # 384. Motion carried unanimously.

End of public hearings

OLD BUSINESS

There were no Old Business Items to be considered.
Mayor Weatherly called for a five minute break at 8:55 p.m. with the meeting back in session at 9:00 p.m.

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.

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

Tony Forbes, New Hill, addressed media coverage of the proposed sewer plant at New Hill and statement of Susan Moran, Cary stating New Hill would benefit from this facility and New Hill residents could hook up to the facility. She was told by Tim Donnelly, Public Works Director of Apex during two public meetings, the conditions residents would have to meet to tie into the facility was to use the facility residents must be 1) annexed (unlikely Apex would annex individual residents which nullifies most of them) and 2) would have to pay fees in the $4,000 to $6,000 range per resident, and there would fees to get water/sewer piping from the road to the homes, $35 per linear foot and with drives 100 to 1700 feet about $7,000 and total costs per resident over $10,000. She saw no economic benefit to this, and Donnelly's response to her was, she was right it doesn't make economic sense. She stated they do not benefit from this and can't hook to this facility until annexed, and then costs significantly. Council Member Sutton responded to her comments, in that they would have to apply for annexation and whether or when they are annexed is up to the Town; they apply but not necessarily would be annexed, you do not have to be annexed as it would be up to the Town.

Karma Lee, 2700 Holland Road, addressed the Comstock Home Master Plan Subdivision, for Holland Road, stating she was pleased with the site plan showing a natural buffer left in tack between the two properties, also a privacy fence for the safety for the residence and children, and further asked Council consider requiring Comstock Homes to extend the fence along their northern boundary westward to the point where the RCA begins; plans shows fence stopping where proposed road dead ends into their property and because the fence stops there, it leaves open and ready access to all potential dangers and liabilities she had mentioned to the Council at the rezoning meeting. There's a fence along the eastern boarder and the northern boarder but it stops short and needs to extend further along the northern boarder west past the road to the RCA and dead end at that point.

End of Public Forum

NEW BUSINESS

June Cowles, Planner
New Business Item # 1 – Master Plan Holland Farm
(Planning Board recommends approval)
Possible motion regarding Master Subdivision Plan for Holland Farm, Withers & Ravenel, Inc, petitioner, seeking approval of the master subdivision plan containing 40 acres located at Holland Road.

June Cowles, Planner presented the master subdivision plan per the staff report which is attached and incorporated as a part of the minutes. Conditions: 1) Siding materials permitted shall be brick, stone, and hard plank, or equivalent. Vinyl material shall only be allowed for window sofits, and boxing aluminum clad trim. 2) Applicant/owner shall apply for a building permit for the recreation pool site prior the 41st single family home Certificate of Occupancy. 3) A portion of the bamboo stand shall be retained.

Applicant agrees with conditions 1 and 2 only if condition 3 was rescinded and does not agree with retaining a portion of the bamboo (bamboo is a maintenance issue due to the invasive nature of the species). Staff believes bamboo to be a unique feature of the site and could be utilized as landscape background (a portion of the bamboo) to the subdivision recreation site and referred to Section 8.1.1 Resource Conservation preservation in the UDO regarding preservation and noted relocation of the pool and clubhouse. The RCA will be maintained by the Homeowner's Association. Parks and Recreation Advisory Commission voted unanimously to accept the developers' proposal to pay the full fee in lieu of $73,339.02 based on 81 units and also accept developer and Planning Department's request to allow flexibility on the location of approx 0.45 acres of additional open space for private park with the same of three large oak trees between lots 31 and 32 to be maintained by the Homeowner's Association. Conditions attached to the Holland Farm Medium Density Conditional Use Rezone was approved at the July 19, 2005 Town Council meeting and on page 2 of the staff report. A 10 to 15 foot undisturbed buffer along the eastern and northern side of the property and along Holland Road and a fence not to exceed 8 feet in height was one of the conditions (fence is not allowed in RCA). RCA is 26.5% of the site. Sewer easement is not included in the calculations of RCA. Fence runs the northern and eastern property line. Retention pond counts towards the RCA. Fence can not be allowed in the RCA. It was noted Public Works does not want structures or fences within the sewer easements. An aerial shot was shown of the site.

New Business # 1 continued

The subdivision was recommended unanimously for approval with the first two conditions as stated in the staff report at the February 13, 2006 Planning Board meeting, and that the bamboo not be saved. Staff recommends approval of proposed Holland Farm Master Subdivision Plan with conditions stated and based on consistency with the 2025 Land Use Plan, UDO and Apex Transportation Plan, and conditions placed on the project specified in the Holland Farm Medium Density Conditional use Zoning District.

Discussion took place regarding the barn structure on site; Cowles responded the barn will be torn down due to liability and decay of the structure, with Council Member Jensen desiring preservation of such barn like structures if not on site somewhere else. Council Member Gossage did not see the bamboo as a natural heritage and didn't think bamboo is indigenous to the area. Adam Ashburn, Withers and Ravenal, representing Comstock Homes, referenced a letter from Tree Connections (Dr. McGraw) and DEHNR concerning evasiveness of the bamboo and its undesirable characteristics, recommending it be completely eliminated.

Ashburn continued their plan exceeds expectations of the minimum UDO requirements, noting 81 units, exceeds lot sizes average 10,000 square feet with minimum lot size of approximately 8,600 square feet, RCA exceeds 25% minimum required, and in addition to the 10.6 acres the applicant has set aside one to one and one-half acres in the fifteen foot buffer along the Lee property and the park area around the oak trees and the recreation facility for the homeowners; additional pieces and parts are in addition to the agreement with parks and recreation to do the payment in lieu for $73,000+ ; applicant modified plan to shift lots and save three oak trees. Barns are a liability issue, not wanting kids in the barns, stating it an attractive nuisance to try and preserve some decayed buildings that might fall down and the developer doesn't want to have that liability and not pass it on the homeowners association. Fence will be brought along the back edge of the existing residences to the street stub; what town wants with the street stub will be figured during construction and thinks there will be a suggestion for some type barricade with reflectors so when cars travel there they will see this is a dead end road and no way to drive beyond that; sewer easement extends down and there's the retention pond and because there is no single family residence backing up to this location, that's why the fence is not extended. He noted the 15 foot natural buffer that continues to the west of the road and see it's shaded as part of the RCA; this is not counted as part of the RCA although is the same nature as the 15 foot area that acts as the buffer and abuts the pond; stormwater retention pond is not included in RCA in any of the calculations. This is the reasoning for not extending the fence – it was a logical place at the road behind the lots. He has correspondence from DEHNR that reiterates what Dr. McGraw had said regarding the bamboo.

Council Member Jensen noted that if they stop the fence at the road and the objective to keep the kids out of the farm to the north there's a whole in the fence and the folks owning the farm are trying to keep kids off for safety. Ashburn responded he's not sure what staff wants to do with the public right of way that will extend to the property line; it's about 150 feet and thinks it would stop at the right of way line and start it again at the western edge of the right of way line and extend it down, leaving a hole in the fence with the idea being protection from the farm area. Ashburn stated they could put up their own fence and tie into this fence; he would react on the council's decisions, however makes sense to stop at the stub. Ashburn state he didn't know if he could tell the town what they need to do with the road at the stub; maybe staff should give direction there. Ashburn stated there's nothing to prevent the farm owners from putting up their own fence; they are not encumbered by RCA yet, and they could carry it down the hill farther then they would be able to and it would be on their property and willing to listen to the recommendation of the council and react to that. Council Member Jensen stated they would have to tie into their fence at some point. Council Member Jones added perhaps the stub is not built but preserved. Ashburn responded it makes sense to stop the stub 10 to 15 feet short because they can't pave to the boundary line but there will be some slope or transition back to natural ground so if they can agree to stop the road 15 feet, actually curb gutter and pavement and then slope down to natural ground, the fence could probably run along the property line at natural ground; they would still dedicate right of way to the project boundary, but wouldn't build the road all the way. Council Member Jones felt the homeowner would appreciate that, not having a curve down that side as it would become a parking area; he wouldn't do it all the way down the side of the property; he wouldn't curb, gutter and pave it all the way to the property line. Ashburn offered they would offer that they will include this in the construction drawings for staff review that the detail of the road would be that they would stop the curb, gutter and pavement about 15 feet short or however far needed in order to transition grade back to natural ground and then would extend the fence down to the RCA. Council Member Jones added as long as they could figure out a way that it's paid for when it's eventually done and connection is made. Ashburn stated clearly they would dedicate the right of way all the way to the property line and then when and if the road were extended in the future.... With Council Member Jensen interjecting the concern for the town is if they don't do this then the folks north don't do it then there will be a patch there the town has to pick up so he doesn't know how they work it; maybe fee in lieu with Rowland adding for the last 15' with Council Member Jensen stating more than 15 feet, but thinks this would work; he didn't expect to keep barn on site but would be nice to find ways to get them onto the parks or something and knows they are attractive nuisances too. Mayor Weatherly asked staff if the road were stubbed out will our ordinances allow them to build the fence up to, with Rowland responding yes, and the applicant agreeing to the condition.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the site plan with the condition the stub street be shorten to allow a fence to pass by and so the fence can be extended to the end of the property line and pay the fee in lieu to pay for the shortness of the stub and as far as 3 conditions proposes conditions 1 and 2 and scrap 3 regarding the bamboo as approved by the Planning Board. Ashburn stated he had said it be extended to the property line and thinks to clarify it can only be extended to the RCA property line, with Council Member Schulze agreeing. Motion carried unanimously.

End of New Business # 1

Attorney Fordham
New Business Item # 2 – Release of Minutes
News and Observer requests release of minutes of the Closed Session held on June 7, 2005 and June 21, 2005. Possible action on whether or not to authorize release of minutes of closed sessions.

Attorney Fordham offered the Board may want to move into closed session prior to making a decision regarding releasing these minutes. He stated this discussion may involve discussion of the New Hill lawsuit and probably worth making sure the motion includes all those things. Mayor Weatherly stated this would be made as a part of the motion for the closed session items. No further action was taken on this item at this time.

Mayor Weatherly presented Consent Agenda Items # 3 and # 12 were considered separately:

Council Member Jensen asked for a briefing of the transfer of $40,000 and the award of a construction contract to repair the Peakway as it comes into NC55 because, he understood Town did it right and NCDOT told us to do it wrong and we had to do it wrong and NCDOT didn't like it and told us the Town has to pay to do it right and asked staff to comment on this. Kent Jackson, Director of Construction Management, explained they had tried to avoid this, however construction was by the shopping center developer and reasonably close to the standard of acceptability for the connection of the Peakway at NC55 and not severe enough to be redone; final NCDOT inspection because of the NC55 connection required additional asphalt removal because they were concerned with the asphalt from the Peakway making stormwater onto NC55 into the travel lane of NC55; they asked contractor to remove some of the asphalt to make improvements and it's almost like a ditch in the asphalt when they did that and is the condition they are going to fix with the contract and is a considerable expenditure but an improvement needed to complete the Peakway in both directions from NC55 to Salem Street north and from NC55 to Salem to the south for a smooth transition. He explained inspection process has improved over time for this type of work and thinks back in 2000 when built, inspections program was evolving and more tighter control while the structure of the road built is adequate and up to specifications, the vertical control left something to be desired and tighter control from the inspections perspective could have avoided this situation. Council Member Jones asked if we had approval for NCDOT to fix this, and no chance they will come back and mess this up again. Jackson answered, yes, and as limited a chance as they could have. Council Member Jensen was in hopes to get some money from NCDOT to fix this, but obviously will not happen, with Jackson adding that especially in this Wake County District Engineers office that deals with these things they have rapid turnover and a lot of shifting and the cast that deal with this issue in the past are scattered in different locations and not available to recreate what happened.

Action: Motion by Council Member Sutton and second by Council Member Jensen to approve items # 3 and # 12 approving the bid of the low bidder to complete this construction and the budget ordinance. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following items.

Action: Council Member Schulze made the motion to move into closed session to receive legal advice:

1) Concerning the News and Observer's request that the Closed Session minutes for June 7 and June 21, 2005 be released,
2) The New Hill Community Association's Law Suit against the Western Wake Partners,
3) Condemnation matters pertaining to railroad crossings,
4) Needed Peakway crossing of a Colonial pipeline easement,
5) Discuss acquisition of real property by condemnation,
6) Personnel scheduled review of the performance of the Town Manager.

Second to the motion by Council Member Jones to move into Closed Session. Motion carried. Minutes of Closed Session are recorded separately. Motion by Council Member Jensen and second by Council Member Schulze to move back into Regular Session at 11:16 p.m. Motion carried.

Action: Motion by Council Member Jensen and second by Council Member Gossage to release the minutes of the Closed Sessions of June 7, 2005 and June 21, 2005 to the News & Observer. Motion carried.

Action: Motion by Council Member Jensen and second by Council Member Jones to move back into Closed Session at 11:18 p.m. to discuss the remaining items as noted in the original motion. Motion carried. Minutes of Closed Session are recorded separately.

Action: Motion by Council Member Gossage and second by Council Member Jones to move back into Regular Session at 11:46 p.m. Motion carried.

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

Action: Motion by Council Member Jones and second by Council Member Gossage to approve sending notices of right of entry to assist Developers Diversified Realty and 1st Carolina Properties in the acquisition of property or easements for the extension of Beaver Creek Drive. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further business to come before the Board, there was a motion by Council Member Jensen and a second by Council Member Schulze to adjourn at 11:50 p.m. Motion carried.

The above minutes approved on the 7th day of March 2006.

Georgia A Cranfield, MMC
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

The Apex Town Council met on Friday, February 24, 2006 at 8:00 a.m. in Training Room 3A, Town Hall on Town Campus, 73 Hunter Street.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Keith H. Weatherly presided over the 2006 Retreat. Council Members Bill Jensen, Bryan Gossage, Mike Jones, Gene Schulze, and Bill Sutton were present.

Others present: Town Manager Radford and Assistant Manager Wilson, Department Heads, Attorney Fordham, and Town Clerk. Media: Shane Daily, Apex Herald and Toby Coleman, News & Observer.

Guests:
Steve Straus, Facilitator, NC State University faculty has helped with several staff training exercises and will guide Council on reaching a consensus on which projects are priority and will fit in available resources.

Tollie Mitchell, Program Director for Insight Research, Inc. will brief on preliminary findings of recent Citizen Survey

Manager Radford began that the Retreat was organized around detailing all of the capital projects either completed, underway or future projects and capital spending for those over a period of one to five years, and addressed challenges the Town faces, and gave opportunity for the full Council to express their own ideas, concerns and initiatives. Agenda and Background Information for the 2005 Annual Retreat is attached and incorporated as a part of minutes.

Director of Planning David Rowland presented the population and growth forecast based on a 4% growth rate shown on page 5. Residential projects and non-residential projects are listed pages 7 and 8 with pending projects listed on page 9. There is need for a small area plan for the growth that will occur northwest and southwest, a need for water/sewer, and transportation planning as the area growth continues in those areas. Facts regarding development: The Wal-Mart site is included in the non-residential pending projects which to date has not been withdrawn by the applicant. Trackside north and south can not move forward until the railroad crossing issues are resolved; plans will be withdrawn for now. Manager Radford will discuss an alternative for development of trackside south.

Director of Construction Management Kent Jackson reviewed the 2006 Construction Forecast pages 11 – 14. Facts: Beaver Creek Crossings should be substantially complete this year, bridge over US64 should be complete May 1, traffic signal should be working at Green Level Church and US64, working with NCDOT to complete Beaver Creek Drive over to Kelly Road with a realistic date for late this fall. Theater and shops should open spring of this year; commercial and business construction projects are listed on page 11 as well as residential construction projects that include Seagroves Farm and Creekside and others.

Director of Finance Lee Smiley gave a financial review of the projected fund balances for 2006-2007 and reserve funds listed on page 16. General Fund operating budget is approximately $8.5 million. There was a question and answer session regarding outstanding bond indebtedness listed on page 17. He noted the Town would not be in a good position for another bond issue for the next 5 years if the town keeps the current tax rate; however bank financing will be considered for park land purchases (Green Level Church Road). It was noted Apex has the lowest per capita debt than those around us. Water/Sewer Fund Rate adjustments are noted on page 18, noting projections are to pay the wastewater plant over 10 years.

Director of Public Works Tim Donnelly gave a review of the Public Works Priorities pages 20 – 32. Current projects are Point of deliver #1 and # 2, Kelly road Pump Station Upgrade, Williams Creek Pump Station and the New Hill Water Line. Maps of the Williams Creek Pump Station and the New Hill Waterline are attached; persons wishing to connect must be annexed into the town's corporate limits and pay fees for the connection; project partners will extend the waterline to the project. Clean Water Bond projects include the regional water reclamation facility, the Apex regional sewage collection improvements with explanations on pages 25 and 26. Effluent pipeline route was discussed; partners will build the gravity sewer with Apex being allowed to use it. Town of Apex pump stations will be eliminated once the facility goes on line. All partners except Holly Springs will share in the cost of the Beaver Creek Regional Pump station and Force Main. Force main will be sized to include a future Little Beaver Creek drainage basin for the area north of New Hill. Apex will build the gravity sewer along Beaver Creek taking the flow to the pump station. Facts: Town doesn't recommend oversize offsite acreage fees and credits or small pumping stations; developers should provide what's needed. Critical decisions for the regional sewage facility will be annexation by the Town and provision to provide power by the Town or Progress Energy; bring profit to the town electric funds; town rates are superior to Progress Energy; partners have hired an outside consultant to assist in power company proposals and selections. Public will weigh in on the environmental impact statement. Unfunded future needs are listed on pages 29, 30, 31 and 32. Public Works Expansion has an estimated cost of $2.4 million. Point of deliver # 3 total project costs $5.5 million. Other projects are listed with several including the Cary/Apex Water Treatment Plant and a planned Phase II for the Water Reclamation Facility not anticipated until FY2016-2017. It was noted construction price trends are rising and costs are conservative estimates for the $70 million dollar water reclamation facility.

John Brown, Director of Parks & Recreation reviewed recreational facilities, and greenway priorities pages 34 – 54 which lists completed and on-going projects, on page 34. Renovation of original town hall and performing & cultural arts center page 35 to be funded by general fund, Wake County grant, Federal Grant and private funds of approximately $1 million. Community Center renovation includes gym, admin offices, reconfiguration of some areas with the center and new storage; target date of completion July 1. Portion of Beaver Creek Greenway is complete with sub-phases on going. Land Acquisition for construction of an athletic complex is part of the adopted master plan with town focusing on 50.82 acres of land located adjacent to the Walden Creek Subdivision and hopes to have a contract by March. Nature and Environmental Park will be constructed on approximately 160 acres located south of Holland's Crossing Subdivision with frontage on Apex Barbecue Road, with a Phase II planned. Beckett Crossing Greenway is being renovated as well as Haddon Hall Greenway with a planned Phase II for Beaver Creek Greenway. Page 47 recaps the bond projects, completion dates and total costs at $12.5+ million. Operational issues for public greenways are listed on page 48 with a greenway overview on page 49. Issues cover personnel and future staffing needs, programs and facility expansion, development fees, recreation fee increases and revenue generation. Unfunded needs are listed on pages 53 and 54 and includes land for the athletic complex and its construction, Seagroves Farmland Park, restrooms and storage at the Community Park, and land purchase and development of the park in the south and southeast quadrant. It was noted Wake County handles negotiations regarding right of ways for the American Tobacco Trail access and a time frame for connections from Beaver Creek Crossings is 2010 with nature park in 2008.

Manager Radford informed the owners of Old Raleigh Road property with pond is not interested in selling at this time. Trackside south 25.86 acres is under contract with East/West partners reaching a snag to get a railroad crossing and offers Town land for a potential park that would access to Trackside North without a railroad crossing served with right-in and right-out (transportation issues). Council may consider this in prioritization of funding needs. There are concerns with a park in this location near the railroad tracks and land is most expensive. Mayor Weatherly stated the developer has made the offer and should respond to them. Manager Radford stated if the town does not participate, someone else may develop and gain access to Trackside North.

Director of Construction Management Kent Jackson gave a review of the Transportation priorities pages 56 – 64. Significant projects include signalization and safety improvements, sidewalk construction, Peakway construction, street, utility and parking lot construction listed on pages 57 – 58. An overview of Transportation bond projects to be funded by the 2005 bond issue are listed on page 59 and continues on page 60 and totals $3,199,000; projects proposed for the 2008 bond issue continue on page 61 and totals $2,378,000; proposed projects for the 2010 bond issue total $2,703,000 page 62. An aerial view shows an area for future commercial development at the ramp on the north side of SR1010. Facts: Future sidewalks will connect from NC55 to Kelly Road. No NCDOT funding will assist with the Center Street widening and sidewalks. Contracts are complete for the downtown parking lot. Manager Radford stated Wachovia Bank on Salem Street will incorporate with the Beaver Creek branch and will be vacating this building; property manager advised the bank does not own the building however lease it; Manager expressed interest in property. Review of the bond projects are listed on page 63. There was discussion regarding lane configuration and potential island on Lake Pine, Edenton at Old Raleigh Road and the cross over at Shepherd Vineyard Drive, Tingen and Salem with traffic back up during school hours, sidewalks along Old Raleigh Road and the right of way for NCDOT sections.

Unfunded Future Needs were addressed and listed on page 64. It was noted the items are not prioritized. Along with the Kelly Road Bridger Replacement, staff was asked to have a safety check of the bridge at Barbecue Road. Council Member Jensen felt the town was funding parking for the downtown folks and they should become participants in the funding efforts. Map was shown of the NC55 widening from Olive Chapel to Haddon Hall shows missing sections for a five lane thoroughfare with an estimated $800,000 to complete this project.

Fire Chief Mark Haraway made a case for a fire station # 4 showing a map and need to address fire protection services in the southern portion of town and south of US1, and depicting a one and one-half mile response area from the proposed station site on NC55 next to Dixie Pipeline page 68 and identifying the affected population and commercial areas south on page 69 and page 70. Current ISO rating impact was discussed with the primary area for concern is the south corridor of NC55. Long range planning for staff enhancement was discussed for two areas, NC55 South and Olive Chapel / Kelly Road area for current development and projected growth however have not started work towards the correction of station locations. Manager Radford reported on finding a solution to address the needs in the southern section. Based on the area map, and the urgency regarding numerous corrective action statements, identified a prime location that would afford the Town opportunity to purchase approximately 2 acres at $275,000 with an existing building that would suffice for five years or so; property is currently under contract and will know more within the next week or so. Council Member Jones continued with the planning to the west, public safety should planned for as well with Council Member Schulze see need to prepare for police, fire and rescue with potential for substations on both areas.

Police Chief Jack Lewis made a case for complete renovation of the police facility, 205 Saunders Street, which was then constructed as the town hall with a small area designed for police, however, since the police department has encompassed the entire building, the layout is not conducive to the needs of the department. Growth of the department has compounded the issues. Assessments of the building reveal renovation approach is a viable option, however Chief thinks the study by HEERY doesn't capture the demands that exist, giving an overview of the problems two being functionality and security. Design firms have looked at the needs of the facility with four firms making presentations with the chosen firm of Stewart, Cooper, Newell having the strongest experience in planning, design and construction of police facilities; are ready to present a workable facility. Photos of the police areas were shared. Chief touched on need for road widening for emergency response and evacuations, design, and traffic. Discussion followed on the effectiveness of renovation/add-on at the same time; security/storage of evidence/access/satellite opportunities.

Tollie Mitchell, Insight Research, gave a review and led discussion regarding the citizen survey and an overview of the response profile for 300 cases. 3000 surveys were distributed throughout town to find out citizen perspectives on what the town is good at, not so good at, and what was most important to help the town make better decisions on how to spend tax money. Survey results of the first 300 surveys returned is attached.

Steve Straus facilitated the portion for Council to bring forth ideas, concerns, and initiatives and those they felt needed to be examined/researched and direction, affording opportunity for all members to participate and gain understanding among themselves and to derive at a consensus of support and further direction of resources.

Initiatives were ranked accordingly with Council members having given opportunity to support their initiatives.

 # 1 - A. (6) Master plan for emergency services (Schulze)
(Emergency services are paramount and money well spent; in planning for parks and infrastructure should plan for emergency services) Council Member Gossage felt this should be a top priority.

B. 2 Provide solar energy home development (Jensen)
(at no cost except procedure for connectivity; people afforded opportunity to purchase back power)
Manager Radford thinks this is workable, having talked with ElectriCities, people will pay for green power

C. 1 Camera/surveillance system in parking lots and other high crime areas (Schulze) affords an eye on
(Chief Lewis could look at areas that allow for lawful access
(parking lots, greenways and peak crime areas were targeted)

 # 2 - D. (3) Discussion about Cash-Maynard property and regional consideration (Jones)
Why nothing happens there and the perception that Apex doesn't want things there? (Jones)
Why high end pharmaceutical would move to Holly Springs and not Apex? (Mayor)
Encourage satellite RTP; attract larger high-tech employers (Jensen) better utilization of roads
Enhancements to the US1 interchange: roads, sewer, pumping stations with Donnelly weighing in on the sewer issues, noted the regional plant will stimulate growth; will work with commercial groups on pumping station, however discourages small scale stations even for residential development.
– all infrastructure enhancements are high money issues; price of land is also a disincentive.
Hack property and Holly Springs dump site property with water/sewer were discussed.

 # 3 - E. (3) Expand housing options for larger homes (Schulze) with larger homes, consider golf courses

F. 1 Clean up certain intersections (Schulze)

G. _ Limit volumetric flow of sewer water (Jensen) town limits flow, but not volume, causes problems down stream.

Mayor Weatherly commented on the long range planning for grey water and the cost being too great to build, however off the charts for now, still would like to look at this in the future.

Council Member Schulze asked for an update of the IT technology with Director Pete LaPiana offering the town was at a crossroads with HTE and New World technology weighing in on what both offer and costs involved, Council Member Schulze was satisfied with the response.

One Year

- N.W. Athletic $1,800,000
  Land acquisition
- Public Works
  Land acquisition $ 600,000
- Fire
  Land acquisition $ 600,000

  Construction $ 275,000 Purchase
  $ 225,000 Improvements

Five Year

Fire/Pub Safety Construction $1,800,000

Manager Radford commented on the cost at $2,400,000 to purchase land and build a new center. Council Member Gossage added if they buy the land, they could build, or sale and buy elsewhere.

- Transportation Improvements
  Apex Street $ 750,000
  NC55 Widen $ 800,000

Manager Radford commented that he had offered a deal with NCDOT to do the NC55 project, however they do not have money for this project; cost may be less than $800,000. Three segments are incomplete from US64 to Olive Chapel Road: Haddon Hall will be done with the projects under construction, and the small strip north of the carwash belongs to Bellsouth, and the portion at the medical park and Wake Med.

- Police Bldg Improvements
  Retrofit interior $2,000,000
  Renovate exterior $1,000,000
  Site Improvements $ 500,000

Discussion revealed construction costs are undetermined; consensus was for costs to be spread out - $1,200,000 per year for 3 years.

Un-appropriated General Fund Balance projected to be available as of June 30, 2006 totals $8,455,000. Unfunded General Fund based on capital projects has the public safety center NC55 South (Fire) at a cost of $2,400,000. Manager Radford elaborated on the southern piece that would help with something further south could help even more. Mayor Weatherly commented on the Transportation Improvements totaling $7,390,000 projected out over a five year period. It was noted budget costs were 8% higher than revenues.

Other projects are the Police Building Improvements at $3,500,000; the Public Works Facilities at $2,600,000 and the Transportation Improvements at $7,390,000.

Park System Improvements total $14,550,000. Manager Radford advised council on an offer of the 25.86 acres of land in the trackside area ($4.8 million or $185,000 acre). This is land not paid for by the developers they had contracted for $105,000 acre). He noted this was half the total amount of money to be spent in the next year. John Brown, Director of Parks and Recreation advised this land is not on the Parks and Greenway Master Plan and the PR Advisory Commission has not looked at it. Concerns are nearness to the railroad tracks, traffic generation, unknown access. David Rowland Director of Planning stated the most recent downtown survey in keeping with the small town character had wanted to see more green space inside the Peakway, noting the residential component that would generate some type of open space. Mayor Weatherly in discussion stated he was not an advocate for this, however unfortunate for the developer in that town looses potential for a first quality project; either they can buy this piece for the rest to go or they could back away from the deal. Council Members Jensen and Jones weighed in on the cost being an issue. Manager Radford didn't hear support of this offer; he noted access to the trackside areas that would result from not getting a Peakway crossing.

John Brown, Director of Parks and Recreation advised on the park land known as the Morris tract and with build out of greenways that will connect the American Tobacco Trail, the Toll Brothers development recreation, the connection to Cary's White Oak Creek and northward. Land owners do not wish to move immediately; fee in lieu monies were discussed.

Mayor Weatherly offered there are opportunities to build toll roads, with a Resolution of support of a Study being offered by Wake County Mayors and having been discussed in CAMPO. There has been no commitment other than looking at the results of the study and without local support will not go through. He believes there is basic inequity in doing this and will forward the time of the Western Wake Expressway rather than the state offering to complete it in five years with toll; the commitment by legislature is the toll comes off when debt is repaid however noted this justifiable needs for revenue and doesn't think will come off. He can't support this without contractual obligation to require it to come off, other than good will by legislature. Reasonable trade off is to build it and get pass this issue; bond would run 20 years and includes the 55 to 55 stretch down to Holly Springs and doesn't include the Garner stretch. He feels Apex will be put out into the future with tolls in our neighborhood, and should stick with the western and southern sections. Tolls exist to pay for the southern part. Turnpike Authority is eager to do this and he can't believe the study would be negative and optimistic there will be a positive vote; however doesn't think they can rely on the legislature with the same being around in 20 years.

Manager Radford expressed appreciation to all that had worked to put the Retreat together. The Retreat was about money and the daily struggles and had given staff direction and positions that will be taken years out. Retreat was adjourned at 3:25 p.m. with the Council being invited to tour the renovated facilities.

The above minutes were approved on the 7th day of March, 2006.

Georgia A Evangelist, MMC
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, March 7, 2006
and held at 7:00 p.m. in the Council Chambers on the
2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with Council Members Jones, Gossage, Jensen, Schulze and Sutton present.
Invocation was given by Council Member Jones.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATION

Mayor Weatherly recognized Terry Rowe for his service to the Apex Planning Board December 1995 – December 2005.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.

Action: Motion by Council Member Jones and second by Council Member Jensen to approve the consent agenda. Motion carried.

1. Minutes of February 21, 2006 Council Meeting.
2. Minutes of February 21, 2006 Council Closed Session (separate cover).
3. Minutes of February 24, 2006 Council Retreat.
4. Annexation petition #387, Carl T. & Pamela R. Gray, property owners/petitioner, petitioning to annex 1.833 acres into the Town's corporate limits; property is located at 1000 Olive Chapel Road; 1) Resolution directing Clerk to Investigate petition; 2) Certificate of Sufficiency of Petition by Clerk, 3) Resolution setting date of public hearing for April 4, 2006.
5. Authorize funds for construction of Green Level Church Road Sewer Line Crossing/ Budget Ordinance Amendment No. 9.
6. Resolution adopting a cooperation agreement to participate in the community development block grant and home programs for Federal fiscal years 2007, 2008, and 2009.
7. Change in operating hours for the Apex Community Center.
8. Street closing for 2006 Peak Fest and 4th of July.
9. Authorize Mayor Weatherly to sign contract documents relative to $144,336 Special Projects HUD Grant for performing and Cultural Arts Center.
10. Authorize Town Manager to pursue discussions regarding possible purchase of real property, 225 N. Salem Street.
11. Consent to Attorney Henry Fordham's representing Town of Apex in dispute designated New Hill Community Association, Louis Smith and Paul Barth v. Town of Apex, 06 VS 02021 (Wake County) and have Mayor Weatherly sign consent document.

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. He asked to add a presentation from Lib McGowan and present a resolution for adoption supporting the recommendations of the Apex Forum Task Force.
Action: Motion by Council Member Jensen and second by Council Member Schulze to add the presentation and resolution for consideration. Motion carried.

Lib McGowan, member of the Apex Forum Task Force, a group who is concerned with the school reassignments at the high school. Concerns were with distance, growth having checked planning data for Panther Creek and Holly Springs both over capacity. The sought out locations for a 9th grade center to keep Apex high school students within the Apex Community. Resolution supports keeping the reassigned students in AHS an additional year, and accepting temporary capacity over 100% in order to allow time to construct or renovate a 9th grade center suggesting the Bespak building on Laura Duncan Road and Laura Duncan Village Winn Dixie vacated building.

Mayor Weatherly stated the recommendations of the Apex Forum Task Force and calls upon Wake County Board of Education to 1) not reassign any students from Apex High in 2006 – 07, 2) let Apex High School continue to operation for 2006 – 07 school year as it has in the pas, as a school of excellence, and 3) open a 9th grade center in one of the two currently available properties in close proximity to the Apex High School for 2007-08 school year. He thinks the proposal should be considered by the School Board and recommends its adoption.

Action: Motion by Council Member Gossage and second by Council Member Jensen to adopt the resolution as presented. Motion carried unanimously.

PUBLIC HEARINGS

Dianne Khin, Assistant Director of Planning

Public Hearing # 01 - Rezoning Case # 04CU17 (Trackside North)

(Petitioner requests withdrawal of this petition) Review: Staff recommended continuation of hearing to March 21, 2006 Council Meeting per applicants request. Council at its November 15, 2005 meeting continued this hearing to January 17, 2006 per the applicant's request; Staff requested continuation of this hearing to March 7, 2006 and due to the railroad crossings for the Peakway and with the sewer that involves the project known as Trackside North; Council voted to continue this hearing to March 7, 2006.

Public hearing regarding Conditional Use Rezoning #04CU17, Apex First Properties, petitioner seeking to rezone from Light Industrial and Medium Density Residential to Planned Commercial-Conditional Use, property located at the Apex Peakway containing 85.55 acres.

Dianne Khin was absent. David Rowland, Director of Planning represented staff stating the petitioner requested withdrawal of this petition for reasons of access, issues with the Peakway and the pumping station. This case would have to be readvertised for further consideration and the process would have to start over.

Mayor Weatherly stated with the petition having been withdrawn, no further action by the Council was necessary.

End of Public Hearing # 1

Dianne Khin, Assistant Planning Director

Public Hearing #2 – Rezoning # 05CU15

Public hearing and possible motion regarding Rezoning #05CU15, Glenda Toppe of Jerry Turner & Associates, petitioners, seeking to rezone from Office & Institutional to Planned Unit Development Conditional Use district classification, property located at 2381 Laura Duncan Road containing 20.384 acres.

David Rowland and all those anticipating speaking during this hearing were administered an oath by the Town Clerk.

David Rowland stated the rezone is for planned unit development for approximate 20.38 acres, with 115 maximum units with recreation area on site. He oriented to the location of the site. The staff report is attached and incorporated as a part of the minutes. There are 6.51 acres of RCA; there has been a PUD rezone of the property. He oriented to the adjacent zoning and land uses. There is a proposed 30 foot streetscape buffer along Laura Duncan Road and a 40 foot wide buffer along the CSX railroad tracks and because this is a planned unit development the applicant can request a reduction in some things and applicant asks for a 10 foot wide buffer reduction along the tracks (50 foot reduction of 10 foot leaves 40 foot along the railroad tracks). Recreation Advisory Commission recommends a payment of a fee in lieu with the understanding the development would set aside up to ¾ acre that would be graded flat, seeded to lawn quality and would be maintained by the Homeowners Association. RAC now desires to have such areas in residential areas. Developers of the property have agreed to ¼ and ½ acre area to be flat and seeded. TIA for this project recognizes a traffic light will be needed at the Laura Duncan and Old Number 1 intersection; this project would propose to pay up to $50,000 towards the installation of this light; and l/3 of the cost for the light from the two adjoining projects (Laura Duncan Road PUD and Laurel Park in Cary) up to $50,000 will be paid toward the installation of the light. Three sources will support looking into this light. This project would dedicate one half of the 100 foot right of way; Laura Duncan is a four-lane thoroughfare with a median planned in the future. Curb and gutter may not be installed now with the idea the three projects will have a phasing and not knowing when each will come into play and might be they pay a fee in lieu of and then all will be put together to make this happen at one time and much better coordination if the three project s come together in terms of widening the street. Architectural standards consider future development of the project with units built with a crawl space or turn down slabs which means it looks a crawl space but filled in and sits above the ground, not flat on the ground. There will be a minimum of three steps to the front door to separate the outside area from the inside area. Exterior materials will be brick, stone, wood and or hardi-plank. Guest parking would be addressed at site plan and has been a concern of the Council particularly in townhouse developments. Planning Board recommends approval with the following conditions:

1) Applicant withdraws the petition to amend the 2025 Land Use Plan (the plan allows either office and institutional and/or medium density residential development) ; ***(brown area on the LUP requires uses shown in the stripped areas to be part of the development whereas if not surrounded by brown could be either/or and in this case, could be medium density residential or office and institutional – they didn't need to change the LUP)*** no amendment was necessary to rezone to medium density residential – see letter from Westfield Homes attached with drawing their petition).
2) Applicant will provide $50,000 toward traffic signal to the Town of Apex prior to the first CO (an offer of $50,000 was already made, so this was to clarify when payment would be made).
3) Applicant will proceed on the project infrastructure within 6 months of when sewer/utility is available form the Town of Apex. The project infrastructure will be complete within 3 years once sewer/utilities are provided. (The Planning Board wanted firmer dates with the phasing plan) ***(with initial submittal of this application there was a very structured time table and one thing in a PUD rezone you need to submit a time table and takes care of the requirements for the utility requirement).***

Rowland responded to Council Member Schulze, this project will be comparable to other projects in the area; believes Bespak site is in the middle of the property with development being similar with what's across the street in Apex. Council Member Jensen didn't agree with the reduction in buffer and thinks it degrades the development. Rowland responded staff recommends the reduction in buffer along the railroad tracks seeing no problem with past development in other desirable areas of town; it has not been a deterrent and doesn't think it takes away from the quality of the development.

Council Member Jensen stated past development put business beside house and then not bad with Rowland responding we are getting back more to this in today's look. He asked if the 30 foot wide streetscape buffer was typical, thinking they are more for business to see what's there and to him for a quality of life for the subdivision should go to a B buffer. Rowland responded this could be requested but are complying with what's required by the UDO in terms of a thoroughfare buffer. Council Member Schulze asked the minimum lot size, with Rowland responding six units per acre with minimum lot size of 7,000 square feet.

Speaking in favor of the rezoning:

Willie Good, Jerry Turner and Associates, 905 Jones Franklin Road, 27606, stated they have worked with staff on this proposal and it does meet the ordinances and requirements of the Town. They agree with the three conditions brought forth from the Planning Board and have revised the drawings and text and resubmit to the staff, with those conditions having been fully incorporated into this proposal tonight. They did the Laura Duncan PUD and have the same 40 foot buffer along the tracks; looking at the photography of the land felt they could diminish the buffer slightly but would be adding evergreen plant material and complement the buffer. Council Member Jensen asked if this were an A buffer with Good responding it will be supplemented with vegetation with the standards included in the packet; yes. Council Member Jensen asked if they would make it an A type buffer, with Good responding he thinks so, but may have already done so; he hesitates to say they have since he was sworn. They had discussed with staff that they would be adding additional plant material there and is the intent; they are selling homes there and their client will want to make sure there is adequate privacy and are taking care of that. Council Member Jensen asked staff if the buffer was suppose to be an A buffer along the railroad tracks. Council Member Jones stated typically an A buffer is a fence; it's the opacity he thinks makes an A or a B, sometimes requires a wood fence to make it depending on the width. Council Member Jensen could not see placing a fence. Good stated they had not anticipated a fence but adding shrub materials and evergreens trees that would make it opaque buffer and would be willing to stipulate this. Good stated the streetscape 30 foot buffer is consistent with what's happening with the PUD to the south and with the PUD in Cary and will have a uniform look there with the street 100 foot right of way and the median and the two street yards are equal there also.

Council Member Schulze asked if he were the developer of Bespak and if the lot size was equivalent ; Good responded they represent them and their lot size is around 5500 to 6500 square foot in that neighborhood. Council Member Schulze asked if it were the same type housing; Good responded there will probably be more townhomes on the project being discussed and more single family on the PUD below it and single family across the street so the townhomes work up towards the intersection; a nice mix and wouldn't want to do all the exact same product over all the land, you would want to make it available for several types of buyers; what they see is more single family to the south and to the east and townhomes in this area. They will be combined together and help with the recreation facility and other things to provide better and what was committed to in this plan and have done everything the Parks Board had asked plus the staff and thinks it will be a nice project.

Rowland responded it will be an A type buffer up to the railroad tracks. Council Member Jensen stated it was up to them what they put along the roads and the subdivision and if it's only required for an E type buffer along the subdivision seems to him it's not what you want to do for those folks; he drives down the streets of some subdivisions and are commercial looking with that type buffer and then you see the more toned down gently situation with the B type buffer.

Council Member Gossage asked for his thoughts on the slab vs. crawl space; he asked he elaborate on the type of slab they plan on using. Good responded they have agreed to provide foundation walls where whether they are crawl space or slab; it would not be a turn down slab, but a slab on a brick foundation wall; there will not be a slab on grade; you build a foundation wall, backfill it with soil and pour the slab – it looks like a crawl space house. Council Member Gossage asked why not do the crawl space, what was the decision there, with Good responding they haven't made that decision, it will be either/or – sometimes in townhome construction it is easier to build foundation walls and pour slabs.

Council Member Gossage asked what makes it easier. Craig Lang Westfield Homes responding at this time they have not determined exactly what type foundations the potential townhomes would sit on; what he asked is that they will have to present before the Town Council the site plan and would have a better understanding then as far as if it would be a crawl space or a slab, asking they give them this opportunity. At this moment they understand the Town would like to have crawl spaces if a single family home with hardi-plank siding; with regards to the foundations on the townhomes he would like the opportunity to be able to get more information from the building department before it's put on record. At this moment they would like to look at the medium density on this and have given themselves opportunity to have single family or townhomes on this piece of property and are evaluating everything that is transitioning around this 20 acre tract and sure they all recognize it's a little fluid now with the Wake County Schools.

Council Member Jensen asked if it's a raised slab from the outside looks the same and that thermo-dynamically if you have a slab, it functions better in terms of retaining the heat from the day so you don't have the heating and cooling; if done correct, if they insulate around the walls and pour the slab, it's better from a thermo-dynamic standpoint, you have more of a solar-home if you want to call it that then with wood plank; it's a better situation.

Council Member Schulze asked the square footage they anticipate for single-family homes. Lang responded they could range in footage from 2100 up to 3000 square feet, with a minimum of 2100 square feet. Council Member Jensen asked if he was committing to the 2100 square foot, with Lang responding he prefers not to at this time; based on the market and what they see in regard to development and potential growth in that segment of the market feel that those homes – and they have homes that will compliment the community, with the ones they are looking into day range from 2100 up to 3000 square feet.

Attorney Fordham advised they should not discuss details that are not specific conditions and should not consider them; they should consider all the potential uses under the proposal that is before them and whether or not they are in the public interest to approve it in that fashion; there's nothing wrong to ask if they will commit to something but if they do not commit, then you can't consider it.

Council Member Gossage wanted to understand the big picture, noting across the street the Bespak property, he understands the Cary Town Council has approved a residential development for that site, was he to understand that also a school could be placed there in addition. Lang responded no, it's going before the Town Council again – they have to approve an alternate use to have a school on that site; when the property was initially rezoned it was rezoned medium density. Council Member Gossage confirmed it was either residential or a school, not both, with Good adding or a combination, with Lang confirming a combination. Good added a PUD amendment was submitted to the Town of Cary and currently under review. Council Member Gossage asked if they knew how many dwelling units were proposed under the combination, with Lang responding potentially 80 single family lots – the one alternative use being looked at – a school and adjoining the school 80 single family lots. Council Member Gossage asked originally in the neighborhood of 300, with Lang confirming 300 dwelling units.

Rowland pointed out a correction to the action agenda item request sheet which reads to rezone from Light Industrial and medium density to planned commercial and should be planned unit development.

Speaking in opposition:

Lady from audience spoke about lack of schools with so many planned units.

Council Member Jones asked to talk about transportation and has talked about the right of way reservation and eventual widening of Laura Duncan Road and the railroad crossing and how we will deal with what might be a divided four lane and not knowing what will happen with the railroad crossing, whether it will be two or four lane or do we know what it might be.

Mike Horn, Kimley Horn and Associates stated at this time with the current, originally called the Laura Duncan residential piece and now with the Ellington which is currently in front of them; with the development of this tract and what they now know because they have the traffic study from the Town of Cary on this property, if it's residential as they had heard, have not made a decision on the school – with these three developments they will widen their portion or length of property for Laura Duncan Road and does not require the need for widening across the railroad track – if not needed for those developments. They can operate with the lanes that is there today; what is required is the signal and as they have heard – the Council hasn't heard, but NCDOT has current funding to signalize this intersection, what they don't have is the necessary money to put in the gates and the necessary things for the railroad crossing – that is what each of the developments are proposing up to $50,000 the three – to be able to take that and make it happen. All of this money will come together and this intersection will get signalized and the gates will be operated with that signal and is what will help this situation. The ultimate widening across the railroad tracks he thinks will happen as development continues to occur or more traffic occurs on Laura Duncan just like to the south of this it will have to be widened. Again, trying to widen across railroad tracks is a very difficult thing as they all know. However, with the current lanes and the signalization of this intersection, it will operate at an acceptable level of service with the current two lanes that are there. Horn stated 2009 will be the build out for this development which would include the Laura Duncan tract described and what is proposed for Ellington and the residential that is proposed for close to 300 units for the Bespak tract with all these three involved 2009 would provide a level service D in the morning and B in the afternoon the 5 o'clock hour and would have to find out the peak hour but its around 5 to 6 p.m. Council Member Jensen asked if the school was included with Horn responding the School has not been approved and not included in this. Council Member Jensen asked if the houses are approved, with Council Member Jones responding yes, and Horn stating he understands – he does have a copy of the Laurel Park study from the Town of Cary.

Council Member Jensen asked that in reference to the flat land that will be available and seeded – some folks have previously committed to ½ acre and that ¼ acre is zip, with Good stating they have committed to ¼ acre to ½ acre for each of those projects, and believes that to be accurate and probably providing more than that and comfortable with what is specified.

Mayor Weatherly closed the public hearing at 7:50 p.m. and referred the matter to the Council for a motion.

Action: Motion by Council Member Sutton and second by Council Member Jones to approve the rezoning request.

Discussion on the motion followed. Council Member Gossage brought up concerns when the property immediately to the south was rezoned and he voted to rezone that and he thinks he will vote to rezone this. He thinks service level D is unacceptable to him, so when the site plan comes along – he's never quite sure what criteria seems it changes a little bit from public hearings to site plans – rezoning to site plans but this one is a bit more specific then the rezoning to the south of it so he's on the fence a bit here, but as far as crossing those railroad tracks with the school and 80 dwelling units or 300 dwelling units on the Bespak property, a couple hundred dwelling units on the property to the south of this and then 100 some dwelling units in this, there is just no way that the crossing over the railroad tracks will be able to handle this. Service level D shows that, so when the site plan for these come along, that's going to have to be four lanes across the railroad tracks and in his opinion, it's not going to work. As far as zoning and what they would like to see there in the future, land use planning, and what not, that's a different issue but when it comes to site plans and the reality of this, that crossing as mentioned, this is his neck of the woods and he goes there all the time. The $150,000.00 might cover some signal, but what about the crossing itself that is in disrepair and you have to slow down one mile an hour to go over without wrecking your suspension and he has a four wheel drive truck. What funds are being set aside to fix the crossing and saying as development occurs down Laura Duncan in order to go up and fix the crossing, that's short sited and we don't plan that way in Apex. Finally with the fee in lieu and this may cause him to alone to vote against this, but if 300 dwelling units go in across the street, what he said when the other property was rezoned is that those Cary folks will be using the Apex park there, so he wants to see parks aside and not fee in lieu for these two pieces because those Cary folks will use the park and we need more land in this area. He's probably going to vote against this based on the fee in lieu part.

Council Member Schulze shares the same concerns as Council Member Gossage. Additional concerns he has is again he doesn't want to see this be another starter home project, as 2100 square foot minimum and he's not holding him to it but will be looking at the site plan and make sure it provides – it's an asset to Apex and provides housing Apex needs; that's what he will be looking for at site plan.

Attorney Fordham advised that at site plan you discretion if fairly limited, in other words the zoning casts the dye for what you can do at site plan.

Council Member Schulze responded that's what proposes him concern there; he feels in a rezoning he's not obliged to do anything, but at site plan if they meet the requirements, he does feel more obliged to pass it as long as they meet it, so, this is a predicament they have seen before, he doesn't feel he can pass this rezoning if he's going to be more obliged to... with Council Member Gossage interjecting how much is our hands tied as far as traffic concerns go at the site plan being able to approve or not approve based on concerns such as four lanes crossing the railroad.

Attorney Fordham, asked in other words you can deny a subdivision plan based on the rezoning if it met all the other criteria and your only concern was traffic offsite, with Council Member Gossage saying, created by the project, not knowing what Attorney Fordham meant by offsite. Attorney Fordham responded if it's not internal to the site or immediately adjacent to the site. Council Member Gossage asked was this not immediately adjacent to the site, the road in front of it, with Attorney Fordham responding he would let David Rowland address that, but it looks like it's just off site – the tracks are just north of this site? Council Member Gossage added it would be the main road. Attorney Fordham deferred to David for an answer. David Rowland stated other than – he showed the white area on the map as the railroad tracks and showed the area on the map that was the actual road; there is some commercial development, showing it on the map. He stated it's not actually on the site, with Council Member Jones adding adjacent to, but not on, with Rowland responding that's right.

Mike Horn stated they are talking about the railroad crossing, and that he would think the Town would know better than anyone that the railroad decides who will widen across their railroad to have a commitment to a developer that he shall or he will widen the crossing that may be the railroad does not want widened is a condition he could not fill and that's the concern here. That then, maybe no developer, with Council Member Gossage interjecting it's nothing personal, with Horn responding the don't take it personal, but they are concerned that a condition upon this project or any of the projects on Laura Dun can that they widen the railroad tracks when the railroad company may say it doesn't and he also will add that when they have done the analysis that does show that D is an acceptable level of service, he understands their concern they may not like it, but there are many, many, intersections within this county that are level service D or worse. D is the threshold, that is to be maintained, understand that's also in the year 2009 that took each of the three developments in play to look at. They have gone through, formed the study per the regulations and have shown that it works at this level service and now to require an improvement beyond that goes beyond looking at what is typically required, it being an improvement that he may not be able to do, just because the railroad may not want it.

Attorney Fordham commented that he did not hear any body say they were thinking of, and for clarification of the record of them imposing a condition, you are just considering what the situation was. Council Member Jones stated he brought the railroad condition initially, not to request this petitioner make the improvements and widen the Laura Duncan Road over the railroad crossing; it's to bring it up that it's an issue and it's going to be there as this area developments and we need to push to make something happen, we as a town, along with the owners and developers in this area. Horn added they have had discussions with NCDOT and they are working with them to see if this can happen, but to commit to it, they can not. Council Member Gossage added he understood this and was not asking to, but what he was saying from our job as a planning perspective, is it wise to continue developing in this area with two lanes across the railroad and in his opinion no. They will continue to develop right along Laura Duncan; there's some attractive land in there and we have a park right there and understands this area is great to build homes in but is looking at these railroad tracks. He doesn't like it and wished it were four lanes and this would be an easier vote for him, but it's not and he doesn't know what to say.

Craig Lang stated they would be willing to commit tonight to on this piece of property homes that were at least 2100 square feet in size, single family homes. They are not intent in building starter homes in Apex, and you can realize over time that the development, and the land values don't allow some of that to take place, whether in Apex or Cary but in this specific community they are not intent on starting with first time home buyers, but will be move up homes with people that have owned homes in the area, already, hopefully.

Council Member Gossage asked about the condition of the crossing itself, asking if there were any funds being set aside itself to improve the condition of the crossing, not at the traffic light but to improve the condition of the crossing; you've driven over it, it's at a peak, you can't drive a truck over it. Horn responded that he would tell him that part of the upgrade with the signalization of the intersection and with the gates that will be provided that they would come in and provide a better crossing; that is part of and honestly and expensive process of why the need the $150,000.00 more for that. This grade change that is being described will be there in some fashion and will not lower it, they can not lower the railroad track, they are not going to bring Laura Duncan back up, it will have that grade and they can see that the crossing itself will be improved when they improve for the gate. Council Member Gossage asked how much is being set aside to do the signalization and the improvement of the crossing. Horn responded Russell Dalton had that, some where around $300,000.00; NCDOT has about $150,000.00 and another $150,000.00 has been put towards that, if his memory, thinks $300,000.00 to signalize an intersection is a very expensive process.

Mayor Weatherly wanted to make sure he understood from the planning land use plan perspective that what they are requesting with the rezoning is consistent with the what we have on our land use plan as appropriate for medium density, this area, so as far as the rezoning it's consistent with what they have signaled folks that they would entertain medium density residential in this area, with Rowland agreeing and Horn responding NCDOT doesn't have the money to fund this signal by themselves; it's because of this development now coming forward that they are going to get the signal, which is the true help and the true need you want there. He's not going to disagree with them that the four lane of the road would be a very desirable situation, but the signal more so.

Council Member Gossage wanted to inquire about the park land set aside there and wished he knew what would happen across the street; 80 dwelling units is a lot different than 300, but if they go with what they have on the books, if they go with what's approved, they have to assume 300. Lang responded he was right, but at this moment, the site plan that has been presented to the Town of Cary is in the ballpark of about 250 homes total, single and townhomes; that's subject to change. He would like to say the residents that may live in Laurel Park won't go into that park, but thinks they will. He goes to that park and lives in Cary and it's a beautiful park. Council Member Gossage responded he hopes they do, but want acknowledge that they will. Lang continued obviously, it's a substantial difference in residence if it goes from 250 down to 80 residence; it's been their hope that if in fact the school took place, that everything, the type of homes and the theme would carry across the street so Laurel Park, the are hoping it would be called Laurel Park, elementary and not sure that's going to happen, and that Laurel Park the community would be built around it in Apex.

Mayor Weatherly stated on that issue, he's inclined to defer to the judgment or recommendation of the Apex Parks and Recreation Commission who did recommend fee in lieu and have just talked about this during the retreat, all the demands on resources to develop what parkland we've got to continue to get additional land that they don't have resources for and he deferred to Council Member Jones who follows that close, but that was the basis for the recommendation that they need the cash more than they need the land in this area. Council Member Jones stated specifically because of the park across the street and was a lot of discussion about the very issues Council Member Gossage was bringing up, but there was a unanimous recommendation for fee in lieu, along with the request for some parcel of land that would be a play space, open space, along with the RCA that's going to be on the site or in addition to the RCA. Lang added they were also offering a pool that would accommodate the residents of the overall community there. Obviously, it would not only have a bath house and green space around it also.

Council Member Jones stated there was also discussion already mentioned of the same request on the property south with Lang adding it was also their hope that they could carry those two parcels to straddle between the two PUDs, the PUD that obviously has already been rezoned and the one before the Council tonight. They have a larger open space for those people to congregate, whether it's around the pool, of course they have to work with the buffers and wetlands that have to be left undisturbed also, but he has to believe that from time to time, the children and the residents will cross the street and utilize all the ball parks and roller blade around the lake, with Council Member Jensen stated the ones that are Cary citizens. Council Member Jones added they should keep in mind, that there's a lot of County money in that park, so they can't be too exclusive about who uses that park. Council Member Gossage added not exclusive but aware of the resources and the impact.

Council Member Sutton asked to call for the question. Council Member Jensen stated the PUD planned south of this one, asked if they didn't commit to ½ acre of recreation property, he remembered one committed to l/2 acre and one committed to l/4 to l/2 and thinks Council Member Gossage and himself indicated it had to be closer to l/2 acre. Rowland added it was the one to the south, with Lang responded they had gone before the Parks and Recreation Commission the same night. Council Member Gossage asked what was set aside, with Rowland responding his understanding with Glenda is its l/4 to l/2 acre, with Toppe responding Dianne had required them to rewrite it and it was the same exact requirement. Council Member Jensen recalled one was a full l/2 acre and the other said l/4 to l/2 and his recollection was it needs to be close to l/2 and before we will feel good about it, at least some of them up here, and he would tell them the same thing. Lang responded he would commit tonight on the 20 acres up to a l/2 acre of grassed open space, with Council Member Jensen confirming on this one, with Lang responding on this one.

Mayor Weatherly called for a vote on the motion and the second to approve the conditional use rezoning as described. Vote on the motion was unanimous. Motion carried.

End of Public hearing # 2

Dianne Khin, Assistant Planning Director

Public Hearing # 3 – Rezoning # 05CU23

(Public hearing was continued to February 21 meeting per the applicant's request; Planning Board did not recommend approval; applicant requested hearing be continued to the March 7, 2006 Council meeting)

Public hearing and possible motion regarding 2025 Land Use Plan Amendment and Conditional Use Rezoning #05CU23, United Energy, Inc. petitioner, seeking to amend the 2025 Land Use Plan from Light Industrial and/or Office & Institutional to Commercial land use classification and to rezone from Light Industrial to Planned Commercial-Conditional Use classification, the property located at 1547 and 1607 E. Williams Street containing 6.6 acres.

David Rowland and those speaking during this hearing were administered an oath by the Town Clerk.

David Rowland Director of Planning filled in for Dianne Khin, and oriented to the site, noting surrounding land uses. The land use plan shows the area as office and institutional or light industrial, as the Mayor pointed out, the request is this all be changed from light industrial to office and institutional to planned commercial. The actual zone noted NC55 already zoned for planned commercial. As indicated the property request is to rezone from light industrial to planned commercial development and a conditional use rezone request in that the petitioner has removed from possible uses greenway, active park, passive park, historic site, bed and breakfast, communication towers, recycling station, bar or night club, leaving: restaurants with drive thru, convenient store, convenient store with gas sales, grocery, laundry mat, automotive parts and service, carwash, auto detailing, and vehicles sales and retail, and others, picking out some that were left from the ones taken away. They put in architectural standards that all buildings will have masonry fronts.

The Planning Board recommends to deny this rezone request because it was not consistent with the 2025 Land Use Plan which designates this area as he indicated for light industrial or office and institutional. They further went to say they did not want to see this area stripped out along NC55; they didn't want to see what would be called a Capital Boulevard like development. Staff has consistently recommended concentrating -recommended to avoid the stripped out look by focusing commercial at major intersections. Some 36 acres known as the Barker property is already been pre-zoned; they haven't come in with immediate development of that, but they are trying to be consistent in that the property has been pre-zoned and need to visualize Jesse Drive showing it on the map, and why the color of red shown on the map; this would be a major intersection in the future with Jesse Drive, the attempt being to focus commercial at major intersections. Their opinion is this is getting away from concept, that idea.

Council Member Jones asked he go to the land use map and asked if it shows the intent, the hatched area, with Rowland showing it in red, and represents commercial type development in the area and commercial/high density residential and then commercial on the salmon color area – the Barker property is already rezoned. Rowland stated the idea, again, this comprises a lot of commercial showing the area on the map, and thinks there is sufficient commercial already at that intersection and in that area. Again, the Planning Board recommended not to approve based on the inconsistency with the land use plan.

Council Member Jones noted on the land use map, at least the southern segment of this triangle, the triangle at the bottom of this piece that they are considering tonight. With the railroad gone/abandoned, with Rowland pointing to it on the map, when looking at that, shouldn't it be on the land use map the same as the Barker property, frontage along NC55. Rowland responded if it would have shaken out like this in an ideal world, it makes a lot of sense, with Council Member Jones asking shouldn't it have been shown it that way on the land use map – hindsight. Rowland responded possibly yes, and ideally, what would be the best is that the property be combined together, but it didn't come to them like that.

Council Member Jensen pointed to the area in blue to the north, asking if that's the gas tank farm, with Rowland responding yes, Dixie Pipeline. Council Member Sutton added this was not conducive to nice offices on this piece of property, the Dixie Pipeline Company, with Rowland responding no, it's an existing use and it's there and is what it is.

Mayor Weatherly opened the public hearing at 8:20 p.m.

Those speaking in favor: Don Grimes, Attorney, spoke on behalf of Haddon Clark, United Energy, Inc., who came to him in late November or December wanting to try to do a nice commercial project in Apex, in an area he happened to know was not one of the more attractive areas of town and this particularly, he didn't think it would be a tremendous exaggeration to call somewhat blighted, but in any event wanted to say he would not be here tonight if he didn't think they had something positive to present and something he doesn't think will have a downside for the Town of Apex and feels comfortable and good about it. The property they are looking at as shown is currently owned by the Sorrell family – these two parcels even though presented as two separate parcels are really only one for purposes of this hearing because the Sorrell's refused to sell anything other than the two together, and thinks maybe the town maybe got a taste of that a few years back when the town expressed some interest in buying some but not all of this property. In any event they have to treat it as one property and it's not going to be subdivided at least not until his client has opportunity to own it and do something with it, hopefully that will happen. He noted that between Hwy 55 as shown and the planned commercial property shown is 43 acres and there is a wedge of property which they are talking about. Across the street is Apex Veterinary, Murray Supply Company, propane distributor and just beyond Riggsbee Auto Salvage. He noted property rezoned last year to a commercial use, approximately 50 different uses that were permitted under the rezoning. This property is between essentially two other already zoned properties already zoned for commercial development; they are not asking for something that is a great aberration in what they have already seen there. He showed photos of the site from different views 1) veterinary clinic and shows two buildings on the site, one on the very left hand boundary and one further down to the right which is a metal building that is on the front part of the lower parcel. The properties below are the ones he mentioned across the street: Apex veterinary, the supply company, and the propane distributor. None of those are commercial uses although the land use plan does say these properties will be presumably at some point developed into the PUD that combines the commercial and office and other uses behind it.

The next exhibit photo showed the property looking back west toward Apex and toward the Dixie Pipeline Company which wraps around it from the west and north sides. Photo two is taken from the point at the bottom looking back west towards Apex and gives some indication of how narrow that area is. The trees on the right are in the old railroad right of way, and would be included in any future use of the property. Photo three is taken from the road from Hwy 55 looking directly to the north side and can see the storage tank for Dixie Pipe line. Photo four is a shot of the Dixie Pipeline entrance on NC55. Dixie Pipeline has a very prominent presence around this property. With respect to the land use plan, the next exhibit is a detail from the 2025 Land Use Plan Executive Summary and Map and there is an arrow pointing not just to activity area # 4 but to the actual location of this property, which is shown in pink or the 43 acre tract and can't distinguish this particular property they are concerned about tonight, but would suggest the pink property probably contains one-half of that, so it's an indication there that is where commercial development ought to occur. Incidentally the narrative to that says that area or activity area # 4 will include commercial and will include convenience, retail, and restaurants. The next document exhibit is a detail of the Town of Apex, N.C., and NC55 Corridor Plan Land Use Plan that was done in 2002 and done specifically and exclusively for the purpose of trying to make some sense out of development on Hwy 55 south or east he guesses. What you see is three areas indicated of commercial development; the one he is particularly concerned about is the one in the quadrant, again the 43 acre tract that they have discussed, and again does not indicate the property that they are talking about the subject of the hearing tonight, but as they can see, the property is included in that designation of commercial for that particular site. The next document shows one in which he has taken liberty of showing where the subject property is located in relation to it; so as they can see on the NC55 Corridor Plan by the Town of Apex, the Land Use Plan element shows at least half of this property within that designated commercial district or area; you can also see its right across the street from a larger commercially designated area. This is our entire plan for Hwy 55 or at least it was two years ago, and he submits there has been no material difference in the more recent plan. His point with regard to the land use plan is that they have at least half of their property, their indivisible property that is already clearly designated as commercial in the past in the land use plan and would submit that obviously it should have been included; it makes no sense to have that light industry wedge stuck in there between what is clearly designated and designed for commercial use. This is his position with respect to the land use plan that in fact although they can argue that the land use if contrary or in conflict or incompatible or inconsistent with the land use plan, in fact, it may not be at all and would argue that it isn't. Moreover if they include the lower portion which clearly ought to be commercial; if you included it without the other, it would be about a 3 acre tract completely wrapped around by Dixie Pipeline and that is not going to be an office site anytime in the next century. Planned commercial includes office both professional and business offices, so the land use plan itself says office, planned commercial includes office. The list item is the list of standards indicated for consideration of a conditional use rezoning: compatibility and consistency with the comprehensive plan they have already gone over, and he would say consistent means compatible and compatible means capable of existing in harmonious agreeable combination; he would suggest to them that there is nothing in the plan that would not be harmonious and agreeable with the use they are talking about here tonight. He believes these uses are perfectly capable of existing in harmony with the surrounding properties. Again at least half of this property adjoins in fronts, a planned commercial tract, again he would say spot zoning is not an issue in this case; we have commercial all around it. The tract according to Dianne Khin when she testified before the Planning Board is not suitable for industrial development. Her position at that time was it was too small; it could not be realistically developed as a light industrial site. That only leaves commercial and office; office he thinks is an unrealistic choice in this particular site, so although planned commercial does include office use. With regard to the other standards, it says there has to be no conflict with the zoning district supplemental standards; they submit that whatever applicable supplemental standards there are, they will comply with fully if any. The design visual environmental impacts should be minimized. They don't have a site plan at this point, but they are here to say they will work with the Town to make sure that among them and among the staff they will come up with something entirely suitable and attractive, desirable and they will all be very pleased and satisfied with; that is their goal and the only objective they are willing to pursue. There will be no particular impact with regard to public utilities; there are no residences anywhere within a mile of this facility, there is no impact there. There should be no detrimental impacts again to any of the surrounding properties; the only detrimental impact he can think of is that they might offer some competition to some other nearby businesses but has never heard anybody say competition is a bad thing. There is nothing about this particular or the uses that they contemplate that will in anyway be considered a nuisance or any kind of hazardous activity; there's nothing hazardous that will be going on that wouldn't occur in their own daily lives; that are not an issue either. At this point, he asked if there were any questions thus far.

Council Member Schulze was concerned it was such a small piece of land that will have a full entrance for it and asked if adjacent pieces of land will be used – can they get access via this piece of property or will they have an separate entrance for them and it become as stripped out look and his concern; it's not a question, but a concern and would like to wait and see the answer. Grimes responded that his client doesn't have any grandiose design for 250 acres or 400 acres of 40 acres, or whatever, he has a small parcel of property that ought to be developed and no reason for it to sit there, being an eye sore being a blight upon that area, and offices is simply not a realistic possibility there and the only other thing that could realistically happen there would be that Dixie Pipeline would buy part or all of this property in order to maybe square off their lot. He knows they have been interested in this property in the past and made some low ball offers that have not been acceptable, and he doesn't think that would be the kind of development they would want to see there.

Council Member Jensen in looking at the standards that was mentioned and the one that jumps out is the design visual environmental impacts minimized. The Planning Board was concerned, and asked if he had any thoughts of how they may enhance as a thought the buffer along NC55, raise it up to maybe 50% B buffering or what are his thoughts about how he could manage that item # 3 so it doesn't have design visual environmental impacts such as the strip mall look. Grimes responded the one thing that would make it not be a strip mall look assuming his client's plans are given affect – there's not going to be a long building with multiple units and the strip look. There will be no more than two structures; two separate structures on this property, each will be a self contained, and self sustaining entity. It will not in any way look like a strip mall, or strip shopping center; that look will simply not occur. With respect to the mitigation of some of the unsightly aspects of the property, obviously there will have to be a lot of landscaping on this property and the landscape is for the benefit of the business as well as the benefit of the patrons of the business and the Town in general. They recognize that obviously they are going to want to buffer themselves from Dixie Pipeline to the extent that they possibly can and they are fully committed to what ever it takes from a landscape point and from a architectural standpoint to be a an appearance asset to the Town of Apex and totally committed to that and obviously will want suggestions as they go along and that's a given. Council Member Jensen stated the concern is not just this property, it's the fact that it flows from the other properties to make the strip mall look and that's why he was asking if something like a 50% B buffer there would modify that, have enough opening so it functions well as a commercial zone but still has a bit of toned down look and what he's thinking about considering something along that line that would be tied to a site plan at this point. Grimes responded they would be glad to stipulate to such a standard, with Council Member Jensen adding something like 50% would be B buffer for any site plan along NC55, asking if that was what he was suggesting, with Grimes responding that would be acceptable. Grimes responded that was about it for his presentation and did want to say again he appreciates the Council's patience in this matter and thinks they had good reasons for wanting to put it off and would like to work together with the Town to make this a win-win for the Town and themselves.

Mayor Weatherly asked if anyone else wanted to speak in favor of the land use plan amendment and rezoning. He asked if anyone would like to speak in opposition to the rezoning. With no one else speaking regarding this matter, Mayor Weatherly asked if anyone wanted to ask any more questions for the record before closing the public hearing.

Council Member Gossage asked staff what the minority vote on the Planning Board was thinking and there was one who… with Rowland stating this was tough to explain and hope he can. He went back and listened to the tape of the meeting. This person he thinks with the majority of the Planning Board on their recommendation to deny, he said in affect he couldn't understand why the hesitancy to … on one hand the applicant was saying it was going to be a quality development and on the other hand we were saying we would like favorably upon maybe some type of commercial development if you could take out the drive-throughs and the gas station part, and between that thinks he was a little mixed up and thinks he was really essentially agreeing with us. He stated if you listen to the tape, it's very confusing; he tried to get out of it what this person was saying. He thinks overall he was agreeing with the Planning Board and asked they listen to the tape to try to understand it.

Mayor Weatherly asked if there were any further questions.

Council Member Schulze addressed the Barker property, asking its current zoning, with Rowland responding planned commercial. He asked what kind of uses are in this zoning, with Rowland responding office, convenient stores, restaurants, retail; a fairly large type of uses. Council Member Gossage asked if there were any conditions on this, with Rowland responding he thinks they mainly had to do with the extension of Jesse Drive, and when they come in to build it, he thinks it mainly dealt with that and not a lot of restriction on the uses. Council Member Schulze clarified the applicant was proposing the same zoning, with Rowland responding yes. Council Member Jones addressed the piece of property on the other side of NC55, colored in white on the map, with Rowland responding that is planned unit development and does have some commercial uses in it; they didn't' recommend approval of that either. Council Member Jensen asked if this was the one they put the gas station to the back, with Rowland responding yes. Rowland pointed out with the land use plan they are dealing with the current land use plan and not the other ones on there, they were concepts; what they go by and what the UDO references is the current land use plan.

Mayor Weatherly called for a motion.

Action: Council Member Sutton commended the staff for sticking with the non-stripping look, and in this case feels it's already stripped pretty much around there, what is commercial around it will be on Jesse Drive and thinks what is, is, and what will be commercial there and he made the motion for approval of the rezoning. Attorney Fordham asked if his motion includes the additional condition the applicant agreed to, with Council Member Sutton responding that's correct, deletion of those uses. Council Member Jensen added 50% will be B buffer along Hwy 55 if there is any… for any site plan, asking if that's what was agreed too, with Council Member Sutton responding ok. Council Member Jones clarified that was the only condition they were talking about. Attorney Fordham added additional that is not in the packet. Mayor Weatherly clarified the land use plan and the rezoning, with Council Member Sutton responding that was correct. Second by Council Member Jones; with all due respect to Planning staff and Planning Board and others, as his question was when they first started indicates he thinks the little wedge to the south should be a part of the commercial anyway and if they do that, then basically as he thinks he and Council Member Gossage had discussed, it sort of strands the other piece of property, the northern or western whichever direction you are looking at – the piece of this property in question would be stranded and he doesn't think an office is going to go there and doesn't think as Council Member Sutton had mentioned, it's already what it is and he doesn't think that number one our UDO and number two our planning staff and more importantly this board is going to allow a site plan that looks like a strip and makes it any worse than it is, wouldn't pass anyway. That's the reason he's in favor of it as proposed. Council Member Gossage added he would second those remarks and agrees with that. Council Member Jensen hates to go against the Planning Board too, he walked out there and certainly agrees with those remarks and just looking at it, honestly if it's properly toned down with buffering as the applicant says he will do, he thinks it's the best thing they can do is to get that piece of property developed, because right now it looks absolutely shaggy and he leans very strongly in favor of getting this thing done this way.

Mayor Weatherly asked for further discussion, calling all in favor of the motion signify by voting eye, with all council members voting and none voting in opposition. The motion carried unanimously.

End of public hearings

Mayor Weatherly called for a recess at 9:00 p.m. The meeting reconvened at 9:10 p.m.

OLD BUSINESS

Bruce Radford, Town Manager

Old Business Item # 1-Police Department Renovation Project

Presentation by Stewart Cooper Newell Architects regarding proposed renovation / expansion of the Town of Apex Police Department. Manager Radford stated from the retreat there was a discussion of the renovations to the Police Department and over the past term have sought for an architect that brought to us the best design ideas that would enable us to renovate an existing building and thinks we have found them. Chief of Police Jack Lewis introduced the architects from the firm of Stewart Cooper Newell towards the renovation of the police facility. A study was previously done and in past months invited bids with seven presenters having submitted qualifications for the project; the selection was made with the one that had the most expertise in the renovation of police facilities and lots of work in this region and have a long tenure in design and renovation. Senior Partner Jim Stewart the principal in charge and Jr. Partner Jim Strumbro the project architect gave the presentation of how the police department will come to look and what they can grow into in keeping with the downtown, offering a streetscape feeling. They have considered in the design process, access defining the entrance, security, communications, how IT and technology ran through building, how records are dealt with secured and unsecured, how evidence is handled, the security under the chain of custody of evidence, and other items important to the facility, training and class room training, investigations and work station standards creating flexible space as the department changes, looking at current and long term needs, the existing facility, keeping in mind the current study for basis of their design work; photos of the dated 70's building was shown on its current site. Needs assessment will be done with the staff of each group and costs numbers will be estimated. Funding for the phases of this project was discussed at the Council's retreat. Total contract costs have not been determined at this time.

End of Old Business item #1

John Brown, Director
Parks, Recreation & Cultural Resources

Old Business Item # 2-Seagroves Farm Property

John Brown, Director of Parks, Recreation and Cultural Resources, led the discussion that will include a possible motion regarding the out buildings on Seagrove's Farm property which will eventually be future park land. Staff has taken a look at the buildings and showed photos of five buildings on the property. The long building was noted in bad shape and useless; from a park perspective he doesn't see anything he envisions that would be incorporated in a public park. Conditions of the buildings were discussed with the Manager weighing in on the buildings. Manager suggested a short period of time to give salvageable materials to someone who may be interested and after that time, allow staff to ask developer to remove them down to the foundation and thinks a 60 day window would be adequate. Council Member Jones, liaison to the Parks and Recreation Advisory Commission was in agreement with this decision.

Representative of Westfield Homes are builder/developers of the site and concurs 100% with Brown's and Manager's building assessments and too does not have a problem with the period of window time to allow whoever and some others that see a bit of value in the lumber in short pieces and request the time period be short and not 60 days, knowing where they are in the construction period; they are under contract to remove those buildings and will be taking care of that at their costs. He asked to shorten the time period to less than 30 days, 21 to 30 days, he thinks they can live with it. Brown asked who the contact person would be since the town doesn't own the buildings, thinking liability; staff has put locks on the buildings. Mayor Weatherly suggested the current owner be the contact, with the Westfield Homes representative (Steve) be the contact with the time certain being March 31. Manager Radford felt this gave clear direction to the developer by a motion. Mayor Weatherly called for a motion.

Council Member Jensen desired in looking at the barns, was hard to tell whether the one was structurally sound and if stripped there's an example of what took place 100 years ago, etc. and thinks we are loosing history; he can see the others are maybe not salvageable. He hates to see the buildings go. Mayor Weatherly added before going down that path would want to see what the cost of making it a usable structure would be, cost of maintenance and how the parks would incorporate that into a park, and he doesn't... with Council Member Jones adding how it fits into a plan that we don't have yet and how to use the property, with Mayor Weatherly continuing within a very short window for the owner that needs to do something. He noted a working stick barn on the fairgrounds and an opportunity within ten miles of here if someone wants to see the historic value of our tobacco heritage and the curing part of it; it's maintained for regular visitors on an ongoing basis, an opportunity for folks not at our cost. Council Member Jensen would like to know the costs and seems this flows with the house preservation and the rest of the buildings being a part of the heritage, a tobacco farm, at least one of the barns would be a part of the heritage. He sees some wood salvage.

Mayor Weatherly opened the floor for a motion, if Council Member Jensen desired to make one.

Action: Motion by Council Member Jensen that time be taken to evaluate the structures, the tobacco barn structure and possibly the other ones to see what the costs would be to renovate them, to absorb them into the park. Mayor Weatherly asked for a second. Council Member Jensen noted this was a passive park where people walk and would be tied in with the other buildings and thinks once this is gone from Apex, we could be a cookie-cutter subdivision town with little central core. Mayor Weatherly asked if there was a second before they debate the motion.

Kent Jackson, Director of Construction Management asked to speak to one aspect, that being the building inspections group in their charge under the building code, GS 160A-426, would be almost compelled to declare a structure like this to designate it as unsafe and placquered that building and if they did this would start a clock of a required plan to either repair it to a condition that is safe or to demolish it or remove it in some other way; another angle that may come into play on this. Mayor Weatherly gave one more opportunity for a second, and there being none, the motion failed for a lack of a second. Mayor Weatherly asked if there was another motion to come before the council.

Action: Motion by Council Member Jones, given a March 31, 2006 period for anybody that would like to salvage any of the materials, otherwise to proceed with demolition of these buildings on the park property that will be dedicated to the town as park property. Second by Council Member Gossage; maybe the developer will consider taking proceeds from the sale of materials and donating it to the state fair to the tobacco barn there and keep that up and running for people. Representative of Westfield Homes responded any sale from any material that is off of any of these barns will donate to a use that is prescribed by the Council. Council Member Jones stated his reason is what Jackson had brought up that he doesn't want us to spend time and money salvaging a building that they will have to lock because you can't go inside of the building that is unsafe.

Council Member Jensen stated an example from Stone Mountain where they have these buildings showing the history of the area as a working farm and you can look inside but not walk inside; building like that could be reinforced and not required usable but shows the heritage of the area and what took place before we were thought of. Council Member Gossage said the second reflects the motion but if you found a historical heritage cause to donate the funds to would be appreciated. Mayor Weatherly called for the vote on the motion. The motion carried with a 4 in favor vote and a 1 in opposition vote, with Council Member Jensen voting no.

End of Old Business items.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.

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

Lissa Laws, Scotts Mill, moved to Apex from Atlanta and loves the barns, asking if we could get a few and put them together on the spot, thinking developers are fascinating and thinks in Apex the tendency has become to strip it all and build it back again. Example behind Lowes on Olive Chapel, burned a 1970's house, trees on the edge of the property were cut down; thinks others feel the same way, loving Apex as it has been in addition to what its going to be.

Her opinion and others is the school reassignment issue has become adversarial in public and private; Town could stand out and state on a positive note, thinks we are caught in a quandary and with all the housing neighborhoods we are approving the more approved, almost 400 homes tonight in the area of the Bespak, potential 800 kids; not a home in her neighborhood that doesn't have less than three children from a recent survey, found 500 children two years ago. Thinks a mix, PUD's are great but got to get a handle on all the residential. Some fuss about commercial, but have to put ourselves in their place, there's only so much land to build so many schools; she's going to give to the school board a paragraph: We have spoken with the leadership of the Town of Apex to request they help in their quest in furthering our goal to improve access for their students to middle and high school level facilities, especially in the very near future have asked for concrete actions towards land acquisition help with land or lease negotiations, reduce rates of utilities during their construction and possible refitting of a building for use of the 9th grade center, (passed resolution tonight) asked can we do something besides resolutions, can you reach out to people they know the connections, and communicate to them, to please help keep our kids in Apex, beside resolutions and arguments with the school board. It's not working. School board has become stuck and heels dug in and hate them; we have to reach out in a positive manner, do something; used New Hill resolution example in an adversarial manner, how would it make them feel. Hopes someone will be creative enough she will help; telling them their business she thinks is not the right way, lots of presentations told them what schools should be like, and look like, and asked to plant a few more trees; asking for a happy medium.

Heather O'Sullivan Caney encouraged them not to be so inclined to approve starter neighborhoods, making the focus more on the quality of the neighborhoods; a citizen and real estate broker, and for raising the value of her home and making more money, also one of the top five things citizens wanted in the comp plan for more affordable housing and as a former public safety officer, would like to also see our fire fighters and police officers live in town as well; rather than starter neighborhoods not have slab built vinyl and have a few places people could live affordably without having to go into an apartment.

End of public forum

NEW BUSINESS

There were no New Business items to be considered.

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session to receive legal advice from Town Attorney regarding a planning matter and a personnel matter to discuss Manager's performance.

Action: Motion by Council Member Schulze and second by Council Member Gossage to move into closed session. Motion carried. Minutes of closed session are recorded separately. Motion by Council Member Gossage and second by Council Member Jones to move back into regular session at 10:03 p.m. Motion carried.

End of Closed Session

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Jones to adjourn at 10:04 p.m. Motion carried.

The above minutes were approved on the 21 day of March 2006.

Georgia A Evangelist
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for Tuesday, March 21, 2006
held at 7:00 p.m. in the Council Chambers on the
2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with Council Members Jensen, Gossage, Jones, Schulze and Sutton present. Invocation was given by Council Member Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those attending the meeting.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the consent agenda. Motion carried.

1. Minutes of March 7, 2006 Council Meeting.
2. Minutes of March 7, 2006 Council Closed Session (separate cover).
3. Annexation Petition # 388, Jason & Kara Bertoncino, and Judith Barron, property owners/petitioner, petitioning to annex 9.82 acres into the Town's corporate limits; property is located at on the west side of Kelly Road (SR1163) and north of Apex Barbecue Road (2024 Kelly Road and 2024 ½ Kelly Road) and includes public right of way.
   1) Resolution directing Clerk to Investigate petition; 2) Certificate of Sufficiency of Petition by Clerk,
   3) Resolution setting date of public hearing for April 4, 2006.
4. Minor site plan for Trinity Community Church located at 910 James Street (unanimous approval by Planning Board).
5. Site Plan for FMC Dialysis Center, 1000 American Way (unanimous approval by Planning Board).
6. Contract with Western Wake Crisis Ministry to administer utility assistance program.
7. Award construction contract for Olive Chapel Sidewalk project – Barrett, Irvin & Jordan Contractors, Inc. $64,119.70.
8. Contract with Stewart Cooper Newell Architects for design and construction administration regarding site improvements and building modifications for existing Police Station at an estimated cost of $280,000.

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 a closed session item to allow him to give an update on the New Hill law suit. **Action:** Motion by Council Member Gossage and second by Council Member Jensen to add the closed session item. Motion carried. The Regular Meeting Agenda was set as modified.

PUBLIC HEARINGS

Dianne Khin, Assistant Planning Director

Public Hearing # 01 - Rezoning Case # 05RZ22

(Planning Board recommends unanimous approval having reviewed this item at their March 13, 2006 meeting).

Public hearing and possible motion regarding Rezoning Case #05RZ22, Toll Brothers, Inc., petitioner, seeking to rezone from R-40 W (Wake County) to LD (Low Density Residential) district, property located on the south side of Roberts Road between Jenks Road and Green Level Church Road, containing 66.46 acres.

Dianne Khin, Assistant Planning Director, presented the staff report and oriented the Council on the rezoning as stated above and located close to the Western Wake Freeway. Request is in compliance with the 2025 Land Use Plan. Permitted uses are listed on page 2 of the staff report with the report being incorporated as a part of the minutes. Planning Board considered this rezone at their March 13, 2006 meeting and unanimously recommends approval. Staff recommends approval.

Mayor Weatherly opened the public hearing at 7:05 p.m.

Cara Lacey, John R. McAdams Co. spoke in support of the rezoning. The proposed project is a single family residential community of no more than three units per acre for a maximum of 199 total units and consistent with the 2025 Land Use Plan, and received approval from the Planning Board who reviewed this at their March 13, 2006 meeting.

No one spoke in opposition.

Mayor Weatherly closed the public hearing at 7:06 p.m. and with no further questions from the Council called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jones to approve Rezone #05RZ22. Motion carried unanimously.

End of Public hearing # 1

Dianne Khin, Assistant Planning Director

Public Hearing # 02 – Rezoning # 06CU04

(Town Council approved the Trace Subdivision at their January 17, 2006 meeting; Planning Board reviewed this item at their March 13, 2006 meeting and unanimously recommends approval with condition applicant follows Bartlett Tree Experts recommendation; three of five members share concerns about traffic on Salem Church Road and North Salem Street).

Public hearing and possible motion regarding Rezoning Case #06CU04 and Residential Master Subdivision Plan for the Kubera Tract (The Trace). Steven Kubera, petitioner, seeking to rezone .46 acres located at 1619 Salem Church Road from Residential Agricultural (RA) to Medium Density Residential Conditional Use (MD-CU).

Those speaking during this hearing were administered an oath by the Town Clerk.

Dianne Khin, Assistant Planning Director, oriented the Council to the site, noting the remainder of the Trace Subdivision was approved by the Council on January 17, 2006 (20 lots on 5.6 acres). Public street access to Salem Church Road was shown across the Kubera Tract. This rezone and subdivision plan for the Kubera Tract will add one lot to the 20 lots already approved for The Trace and provides full movement access point away from the intersection of Salem Church Road and North Salem Street that the Town Council desired. Planning Board considered this conditional use rezone and master subdivision plan at their March 13, 2006 meeting and unanimously recommended approval with the condition that applicant follows recommendation in letter from Bartlett Tree Experts. Applicant agrees to the condition. Three of the five Planning Board members expressed concern about traffic on Salem Church Road and North Salem Street. Staff report is attached and incorporated as a part of the minutes.

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

Mike King spoke on behalf of the petitioner in support of the rezone and master subdivision plan, noting it a follow up to the Trace. Modifications to the request with the Kubera Tract are more conducive to traffic and have the same conditions of the Trace rezone on this tract. A portion of the Kubera Tract provides full access onto Salem Church Road. Request is in compliance with the comprehensive plan and addresses transportation issues raised with the Trace rezone.

No one spoke in opposition.

Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve Conditional Use Rezone #06CU04 and The Trace (Kubera Tract) Residential Master Subdivision Plan. Council Member Gossage commented that should the larger piece of land known as the Lewter property become available, he would like to see the entrance/exit location shift down or another access. Motion carried unanimously.

End of public hearing # 2

Dianne Khin, Assistant Planning Director
Public Hearing # 03 – Rezoning # 06CU06
Public hearing and possible motion regarding Rezoning Case #06CU06, DDR/1st Carolina Apex, Ph. III, LLC, petitioners, seeking to rezone from PUD-CU (Planned Unit Development Conditional Use) to PUD-CU (Planned Unit Development Conditional Use) district classification, property located at the southwest quadrant of Highway 64 and Kelly Road and the northwest quadrant of the intersection between Highway 64 and Green Level Church Road containing 130.943 acres.

Dianne Khin, Assistant Planning Director, stated staff requests this public hearing be continued to April 4, 2006 Council meeting as Planning Board was unable to consider this item at their March 13, 2006 meeting due to a lack of a quorum based on the recusal of a board member and will consider this item at a special meeting March 27, 2006. No staff report was provided.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Gossage to continue this hearing to the April 4, 2006 Council meeting. Motion carried unanimously.

Public hearing # 3 is continued to the April 4, 2006 Council meeting.

Dianne Khin, Assistant Planning Director

Public Hearing # 04 – Special Use Permit #06SUP01 and Site Plan Approval

(Planning Board recommends unanimous approval having reviewed this item at their March 13, 2006 meeting and with the same conditions as recommended by staff).

Public hearing and possible motion regarding Special Use Permit #06SUP01 Hope Chapel Preschool, petitioner, seeking to obtain a special use permit and site plan approval to allow a pre-school at Hope Chapel Church site located at 6175 Old Jenks Road.

Dianne Khin, Assistant Planning Director, was administered an oath by the Town Clerk. She oriented to the Hope Chapel site which is across the street from Salem Elementary School on Jenks Road. Hope Montessori School will cease operation there and Hope Chapel seeks a special use permit to operate a Preschool. Special Use Permit would allow Hope Chapel Preschool to have a maximum of 100 students, with no more than 60 students per day. Applicant agrees to the conditions 1 – 4 listed on page 2 of the staff report, with the report being incorporated as a part of the minutes. Planning Board met on March 13, 2006 and unanimously recommends approval of Special Use Permit #06SUP01 and site plan for Hope Chapel Preschool with the same conditions as recommended by staff.

Mayor Weatherly opened the public hearing at 7:16 p.m. With no one addressing this item, the hearing was closed.

Council Member Jensen asked the maximum number of students allowed at the Montessori school which was 55, Monday through Friday. Mayor Weatherly called for a vote on the motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the Special Use Permit #06SUP01 and site plan for Hope Chapel Preschool with the conditions stated. Motion carried unanimously.

End of public hearing # 4

June Cowles, Planner

Public Hearing # 05 – Major Site Plan Pinnacle Park

(Planning Board recommends unanimous approval having reviewed this item at their March 13, 2006 meeting)

Public hearing and possible motion regarding major site plan for Pinnacle Park, Lot 71 and 72, Pinnacle Park Assoc. LLC petitioner, seeking site plan approval for office and warehouse use and located on Burma Drive, Pinnacle Park.

June Cowles, Planner, presented the staff report which is attached and incorporated as a part of the minutes for the site plan as stated, orienting to the site which includes four phases with one 19,800 square foot building in each phase, or a total building square footage of 79,200 square feet. Site plan is consistent with the Zoning Ordinance requirements. Grade plan is acceptable. No traffic impact report was required as the proposed project does not create over 1,000 vehicle trips a day. No RCA is required under the Zoning Ordinance. Staff recommends approval. Planning Board met on March 13, 2006 and unanimously recommends approval.

Mayor Weatherly opened the public hearing at 7:20 p.m.

Trenton Stewart, representing Pinnacle Park spoke in favor of the site plan and will be the site designer for the project. Council Member Jones asked if the one entrance will support the four buildings on site. Stewart responded that would be a 30' wide drive and will connect to all the property. Cowles noted the difference in grade elevations of the property.

Mayor Weatherly closed the public hearing at 7:22 p.m. With no further discussion, he called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the major site plan as presented. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Candace Davis, Transportation Planner and Russell Dalton, Transportation Engineer

Old Business Item # 1- Transportation Plan Update

(Planning Board recommends approval with a 6 to 1 vote having met February 13, 2006; Town Council held a public hearing February 21, 2006, delaying approval of the draft Plan and map and directed staff to create an itemized list bringing the non-controversial items back to this meeting for consideration).

Candace Davis, Transportation Planner gave a review of the process up to this point which addresses concerns of the Town Council from their February 21, 2006 meeting when they considered an update to the Transportation Plan and delayed approval for the draft Thoroughfare and Collector Street plan map and directed staff to create a list of itemized changes and bring the non-controversial items back to the Council for discussion and possible motion for approval of the Transportation Plan Update. A descriptive list of changes is attached and includes three sections: General Changes, Revisions to Notes Section, and Specific Changes. Attached are the following: An approved Thoroughfare and Collector Street Construction Plan Map, a Draft Thoroughfare and Collector Street Plan map, and an Itemized list of Non-controversial Changes and a list of controversial items left unchanged in the Transportation Plan.

Council Member Sutton noted the removal of a collector street connection in Trackside north, with Russell Dalton, Transportation Engineer responding the location was at the Prince of Peace Church, and removed because they would never get a crossing there. Council Member Jensen asked if there was a date for the controversial items to be considered. Davis responded they are waiting for CAMPO information; around June 6. Town Council will consider Beaver Creek Commons Drive, May 2. Apex Peakway interchange at South Salem Street: staff has met with the White Hall Manor citizens and it remains shown as grade-separated at the railroad tracks with a connection to South Salem Street denoted by "interchange"; concept shows an overpass, with future study to determine best way to address this crossing; not sure when a study will be conducted. Manager Radford responded to Council Member Gossage's concerns at Salem Street and Davis Drive not wanting to take this off the plan, with Council Member Jones commenting on the realignment plan; Manager Radford will write up concerns to be addressed with NCDOT. Dalton responded to Manager Radford's question regarding the plan for SR1010 from Mason Street to US 1; Dalton explained it will be left on the existing plan viable with two lanes from Mason Street to the Peakway, and then four lane divided section to US 1. Dianne Khin added it is in the current adopted plan.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Schulze for approval of the Thoroughfare and Collector Street plan proposed itemized list of changes dated March 2006 which includes General Changes, Revisions to Notes Section, and Specific Changes. Council Member Jensen commented on the proposed 9th grade center and need of a dedicated right turn lane north at that intersection. Mayor Weatherly called for a vote on 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.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Jay Gibson, White Hall Manor appreciated the re-exam of the transportation plan and has continuing concerns for the dot that remains on the map asking for a designation rather than an interchange; asked right of way reservation be left open for more study; black dot will become realty; seek some direction for an alternate criteria.

End of Public Forum

NEW BUSINESS

Candace Davis, Transportation Planner

New Business Item # 1 – Allocation of Appearance Commission Funds

Discussion and possible motion for allocating Appearance Commission Funds for bus shelter project.

Appearance Commission had worked with Clearscapes to design unique bus stop shelters for the Town that would define the Town's personality. Commission believes the new shelters will help send a positive message to citizens about using transit in Apex. Melanie Brethauer, Chair, presented the prototype design for consideration and made the request to allocate fines from the Appearance Commission funds for the project. Three shelters are considered in the following bus stop locations: Hunter Street, Hughes Street at E. Williams, and Shepherds Vineyard Drive. Prototype shelter estimated cost is $21,400. Design fee $2000; retaining wall, footing, excavation $5000. Commission has worked with Triangle Transit Authority. Manager Radford provided prototypes of off-the-shelf shelters at an estimated cost of $6,500. He noted the Clearscapes design to be unique to Apex with Appearance Commission fines totaling roughly $80,000. He was not recommending voting on this tonight, however, felt it necessary to consider cost savings when considering this project. Council Member Schulze felt the shelters had a contemporary look; and desires shelters that would look more historic and thought the manager's handouts looked better. Council Member Jones didn't disagree, suggesting the other off-the-shelf shelters could be looked at and/or modified; maybe worthwhile and could also make Apex specific. Council was open for additional ideas, with Mayor Weatherly giving direction that the Commission take a look at options and return to the Council for consideration of the ideas. No action was taken.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to allow for an update of the New Hill lawsuit and to receive legal advice on the lawsuit. **Action:** Motion by Council Member Schulze and second by Council Member Gossage to move into closed session at 7:47 p.m. Motion carried. Minutes of Closed Session are recorded separately. Motion by Council Member Jones and second by Council Member Gossage to move back into regular session at 8:05 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Jones to adjourn at 8:06 p.m. Motion carried.

The above minutes were approved on the 4th day of April 2006.

Georgia A. Evangelist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for the meeting of Tuesday, April 4, 2006
held at 7:00 p.m. in the Council Chambers on the
2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with Council Members Jensen, Gossage, Jones, Schulze and Sutton present. Mayor Weatherly gave the Invocation, led the Pledge of Allegiance and extended a welcome to those present.

PRESENTATION

Mr. Tollie Mitchell, Insight Research, Inc. presented the results of the recent citizen survey. 3000 surveys were mailed with 930 having been received or 31%. A copy of the survey is on file with the minutes of this meeting. The main reason people chose to live in Apex is "they like the area." The highest and lowest rated satisfaction statements are found on page 22. The item most important to those responding was "not raising taxes." There was a significant difference in opinions and a significant predictor of general satisfaction items. An executive summary is found on page 40 of the report.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the consent agenda to be set and asked if there were amendments prior to calling for action. Council Member Sutton made a request for separate consideration of item #6.

Action: Motion by Council Member Jensen and second by Council Member Jones to honor the request. Motion carried. ***Item # 6 will be considered under New Business.***

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the consent agenda with the exception of item # 6. Motion carried. The Consent agenda was approved as amended.

1. Minutes of March 21, 2006 Council Meeting.
2. Minutes of March 21, 2006 Council Closed Session (separate cover).
3. Annexation Petition # 389, L'Hermitage at Beaver Creek, LLC., property owners/petitioner, petitioning to annex 23.464 acres including right of way into the Town's corporate limits; property is located on the north side of Olive Chapel Road; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk, 3) Resolution setting date of public hearing for May 2, 2006.

4. Annexation Petition # 391, Westfield Homes of the Carolinas, LLC, and Steven M. Kubera, owners/ petitioners, petitioning to annex 6.302 acres including public right of way into the Town's corporate limits; the property is two tracts of land located at 1619 Salem Church Road (Kubera tract) and 1621 Salem Church Road (Westfield Homes tract) and known as the Trace Subdivision; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk, 3) Resolution setting date of public hearing for June 20, 2006.
   (Note: 60 day time period to extend the corporate limits of the Town, in accordance with Utility Service and Annexation Agreement between the Town of Cary and Town of Apex)
5. Wake County Tax Report for Town of Apex approved in regular session March 20, 2006.

Item # 6 considered under New Business

6. Resolutions to authorize bank account in name of Land Matters, LLC. to facilitate right of way and property Acquisitions for projects undertaken by Public Works and Engineering Departments.

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. The regular meeting agenda was amended to include item # 6 from the consent agenda. The regular meeting agenda was set as amended.

PUBLIC HEARINGS

June Cowles, Planner
Public Hearing # 01 – Rezoning Case #06RZ02
(Planning Board considered this item at their March 13, 2006 meeting and unanimously recommended approval)

Public hearing and possible motion regarding Rezoning Case #06RZ02, Christopher & Barbara Williams, petitioners, seeking to rezone from Residential Agricultural to Medium Density Residential district property located at 704 Cash Street containing 5.32 acres.

June Cowles, Planner presented this straight rezoning case as stated, orienting to the location of the property noting its current zoning and requested zoning and its location. The staff report is attached and incorporated as a part of the minutes. The applicant lives at this site and is requesting to rezone proposing to build one additional house (bigger house). Zoning is compatible with the 2025 Land Use Plan which designates the area medium density; uses allowed are listed on the staff report page 2. Staff recommends approval based on consistency with the 2025 Land Use Plan and compatible with surrounding land uses. Planning Board recommends approval as stated.

Mayor Weatherly opened the public hearing at 7:35 p.m. With no one addressing this rezoning request, the hearing was closed.

Mayor Weatherly called for a motion.
Action: Motion by Council Member Schulze and second by Council Member Sutton to approve rezoning case #06RZ02. Motion carried unanimously.

End of Public hearing # 1

David Rowland, Director of Planning
Public Hearing # 02 – Rezoning # 06CU03
(Planning Board considered this item at their March 13, 2006 meeting and unanimously recommended approval)

Public hearing and possible motion regarding Rezoning Case #06CU03, Jim Chandler, PE – CPS Engineers, petitioners, seeking to rezone from Residential Agricultural to Light Industrial Conditional Use district property located at 2010 Lufkin Road containing 4.823 acres.

David Rowland, Director of Planning and Jim Chandler, PE – CPS Engineers were administered an oath by the Town Clerk. David Rowland, Director of Planning presented this conditional use rezoning request orienting to the location of the property, noting it current zoning and requested zoning. The staff report is attached and incorporated as a part of the minutes. The Hintons owned the property, and if rezone is approved, will look at purchase of additional property. All uses are prohibited in the Light Industrial district except for the following uses: 1) Contractor's office and 2) storage yard self-service storage. The property is residential and lies between two light industrial uses and development of the Hinton property would bring more uniformity to the vicinity. The proposed rezoning is consistent with the 2025 Land use Plan which calls for light industrial land uses in this area. Planning Board recommended unanimously to approve this rezoning. Staff recommends approval.

Mayor Weatherly opened the public hearing at 7:40 p.m.
Jim Chandler, PE – CPS Engineers, representing the client, supports the rezoning request to amend the UDO and change the zone district map. Council Member Jones clarified the two uses. The public hearing was closed at 7:41 p.m. Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve rezoning case #06CU03 with the conditions as stated. Motion carried unanimously.

End of Public hearing # 2

Dianne Khin, Assistant Planning Director
Public Hearing # 03 – Rezoning # 06CU06
(Council continued this public hearing per staff's request for continuation to April 4, 2006 Council meeting as Planning Board was unable to consider this item at their March 13, 2006 meeting due to a lack of a quorum based on the recusal of a Board member and will considered this item at a special meeting March 27, 2006 and recommended approval with a vote of 4 to 1; the nay vote was concerned with cut-through traffic).

Public hearing and possible motion regarding Rezoning #06CU06, DDR/1st Carolina Apex, Ph. III, LLC, petitioners, seeking to rezone from Planned Unit Development Conditional Use to Planned Unit Development Conditional Use (to change conditions), property located on the north and south sides of US64 at Beaver Creek Commons Drive and Green Level Church Road containing 130.943 acres.

Those speaking during this hearing were administered an oath by the Town Clerk.

Dianne Khin, Assistant Planning Director, oriented to the site; in order to change conditions of a conditional use permit, the same process as the initial rezone must be followed; the proposed rezone does not change the zone map designation PUD-CU, but proposes to change conditions from original conditional use permit #04CU01. Staff report is attached and incorporated as a part of the minutes.

Developer requests Theater in Phase III and additional 100,000 square feet of retail be allowed to open with completion of bridge across US64 and connecting Creek Side Landing Drive, associated infrastructure improvements to Green Level Church Road as well as temporary traffic signal (until I – 540 is let) at US64 and Green Level Church Road. Proposed rather than completion of Beaver Creek Commons Drive to Kelly Road (eventually will do the road). They are asking to open Phase III with the completion of basically the Phase IV improvements. Request Vision Drive not be re-striped to three lanes (original conditions) because it is not wide enough.

Planning Board met on March 27, 2005 and recommended approval with a vote of 4 in favor and 1 opposed and concerned with cut trough traffic in Beckett's Crossing and Carriage Downs. Staff recommends approval as this temporary situation for the Theater and 100,000 square feet of retail will benefit the town (going across US64; points considered by Transportation Engineer are attached; developer says theater will open in the spring and retail shortly behind and Beaver Creek Commons Drive to Kelly Road will be completed sometime in the fall; getting Phase III and Phase IV improvements that were conditioned at the original rezone and get them with the first portion of Phase III rather than one set with Phase III and one set with Phase IV.

Council Member Schulze clarified action for Vision Drive re-stripping: Khin responded will not do it at all; out parcel at this location is oddly configured and narrow; curb/gutter is already in place at this location and would have to tear out current improvements to widen at this location; during original rezone it was thought it would be wide enough to change stripping and make three lanes from the two but is not wide enough. Engineering Director Ken Jackson made the determination it is not currently wide enough to do the stripping and not planned to be.

Council Member Gossage clarified action for Zeno Road paving. Khin responded engineering staff tried to get signatures from residents that owned to the center line of the road, there was at least one that didn't sign, so Town decided not to pave Zeno, however, still on NCDOT list for paving at a future date. Russell Dalton, Transportation Engineer responded a year or two; with Khin responding as of now, it's not on the plan.

Manager Radford reported NCDOT had placed the paving on their road improvement plan and then taken off. Kent Jackson, Director of Construction Management, reported the paving of the unpaved section was placed on their secondary road improvement program of 05/06 fall or spring start date; experience of the programs is the money doesn't catch up with the planning and the schedule slips; he guesses it would be a spring 07 project.

Clarification for Council Member Schulze is the Theater will open with the bridge completion over US64 in May to the Green Level Church road side with the widening improvements of Green Level Church and the signal along with the 100,000 square feet of retail (Khin clarified this true; all the improvements before the opening of the Theater or the 100,000 square feet of retail).

Council Member Jensen addressed cut through traffic in Carriage Downs and Becketts Crossing, and noting " no through traffic sign" in Vintage Grove asking for the same in these two developments wanting to discourage cut through traffic. Khin did not know about the signs it was their decision on signs. Manager Radford understands those two "no through traffic signs" had been removed - one from Abbington Subdivision and one from Surry Meadows Subdivision; regardless of concerns about people cutting through as said on streets, they are all public maintained streets and it is an issue of connectivity rather than cut through, and not knowing what to site someone that drives through there. Council Member Jensen noted we have no ordinance and can't but would try to discourage.

Mayor Weatherly opened the public hearing at 7:50 p.m.

Chris Erb, representing DDR has worked with NCDOT for three years on this project and they are receptive to the bridge and through quicker than they thought they would; they have run into delays with Beaver Creek Commons Drive due to the alignment of I-540 corridor. NCDOT has the proposals and committed in writing and allowed them to speed up the process and went to the Army Corp and DWQ to get their signoff on the wetlands that will be impacted with the road construction; the statute of limitations have passed. They have permission to talk with the landowners and are in the process of meeting with them; roadway plans are finished and are in process to finalized curb/gutter (hydraulics); once construction begins it will take 150 days to complete the road and will take place in a month or so, as soon as they have control of the land to build the road; moving as fast as they can on Beaver Creek Commons Drive; tenants are eager to open their doors, including theater and understands if not ready virtually ready to open their doors and are waiting for them to finish what they need to do. May 1 is the scheduled date to finish the bridge and Creek Side Landing Drive as well as the improvements of Green Level Church Road south to US64 and the light is in place; hopes everything converges on May 1 so they can get the theater open as soon as possible. Other tenants and stores include Dicks scheduled for July 1 and open their doors 60 days from that; Circuit City and Old Navy along the same time line; and finalizing leases for a few other tenants; conditions worked out with staff is where they need to be and hope Council agrees.

Council Member Jensen questioned the size of directional signs, with Erb responding traffic directional sign examples are in the packets and will work with staff on the proper size, and lettering, verbiage, etc.

Council Member Sutton questioned the speed bumps (3 or 4) in Beckett's Crossing and stated to Erb they have requested they put them in. Erb understood the Town would pay a portion, Beckett a portion and Carriage Downs a portion and they offered to pick up the costs for those two subdivisions and the speed bumps needed to be approved by the Town. Manager Radford understood as a result of this discussion with DDR, Beckett's had talked about the fact that DDR would pay for all the speed bumps in their entirety at a cost of $7,200. Erb responded they were fine with this.

Council Member Jensen asked if Erb could give a drop-dead date for completion of Beaver Creek Commons Drive, with Erb responding he could not give him a date today; it was in NCDOT's hands and still needed to review their plans; they said they would work with them in getting the road going as soon as they were ready, but there is the portion that goes through the I-540 corridor they still have some say over it; they are willing to go as fast as they can to the extent they don't think any of them can control NCDOT and wish they could to the extent they hold them up; it is what it is; they are willing to do what they need to do to get the road built assuming they get cooperation from NCDOT.

Manager Radford commented we are placing an onerous burden on the developer finally allowing the movie theatre and a 100,000 square feet of retail, and traffic studies have said the amount of infrastructure they are putting in would carry 300,000 square feet; we know it to be in their best interest to get as many of their stores up and operating as quickly as they can and think this places the burden where it belongs.

Council Member Jones commented on dependence on NCDOT and understands their not being able to give a date and can talk about a range of time after NCDOT approval and something they could consider. Council Member Jensen was satisfied with this; he wanted to get a better idea and doesn't have one. Erb responded if they could get the road and land needed acquired in the next month or so, it will take 150 days from that; he can narrow it down to 150 days from start.

Those speaking in opposition: Art Clem, Beckett's Crossing representative and Carriage Downs representative wasn't opposed to change, but concerned with cut through traffic both neighborhoods since the shopping center opened, even with speed bumps. He was concerned with the opening of the theater and retail space, without the Kelly connection, would be more cut through traffic. Developer offered speed bumps and thinks appropriate, feeling it may alleviate some of the situation and cause people that do not like to go over bumps, go different ways Beaver Creek Commons or across the bridge to get to their side of town; accepts those four speed bumps and the town engineer and planning department lay out. If this doesn't solve the problem, he will come back and talk about other devices, stop signs, configurations in pavement that would help keep people from coming through the neighborhoods. He addressed the rest of the retail space and asked Council to think about the completion of the road or 150 days – retail opens around Christmas and he hopes they get the road complete and in good shape before they let the other spaces open.

Town Clerk administered an oath to Richard J. Krupp, Beckett's Crossing, stating he doesn't disagree with opening the theater; children cut across streets from sidewalks to houses and with speeding and traffic are placed at jeopardy with no stop signs, and cars going 30 and 40 mph on downgrades; heights of the speed bumps are 3 inches and fine, however width are 12 feet wide and cars do 30/40 mph, and folks found they can go faster and feel the bumps less as if they doing 20 mph; people speed more and more and going down various streets pick up speed and with the blind spots, kids could get hit riding their bikes. He asked to address speeding and cut through traffic; he had mapped down grades and speed bumps. Conditions of Fairfax are not many stop signs and a three-way stop at cul-de-sac made no sense since there are only a few cars coming from there, where there's a long run up and down the hill with no stop signs; speed limit is 25 mph; with a study of the speed bumps feels any old traffic studies are irrelevant because homes were still being built and people were cutting down other streets to bypass the traffic from the homes being built and felt they need a new traffic study and look at where they can put the speed bumps to have some kind of affect to protect the children and the kids and speeders. Council Member Jensen noted the 20 mph speed limit at Salem Oaks.

Tom Seymour, 306 S. Salem Street, shared a problem; he likes the project, hasn't complained at the past public hearings; the problem is with the exit to Kelly Road, discussed in 2002 JDN; it has been talked a lot however has never met Chris Erb; they didn't issue the plan to NCDOT until last week based on the meeting with the zoning folks; he hates to disagree – he doesn't feel – use to levels like Cary has, A, B, C, D, E, F and what is here, he's worried about what will happen on NC55 and Beaver Creek, because those will be the only two exits and thinks they need to do everything they can to upgrade. His other point: the culvert across the creek, it's two lanes and can not be widened; it's only ten foot from there to the pavement on each side. He understood it would be a major and middle a minor thoroughfare. Russell Dalton, Transportation Engineer responded all of it would be a minor thoroughfare. Seymour confirmed even with two lanes, with Dalton responding yes. Seymour stated this was not what he was told. He continued it will be brought down to two lanes through there and you have a narrowing of the road; we are aware of what happens on NC55 with a narrowing of the road; we need to address these issues now. Everything along the creek, pass the sewer line is on JDN or DDR petition; he thinks it should be talked about/thought about; it may be a bit his fault for not being here earlier; he didn't want to come but felt it's something that has to be done because of the greenway that was put in that will go all the way to the park; if you come off the greenway you will have to walk in the road to go to the theater; if his property is developed the sidewalks will begin there – there's a problem there; also, sidewalk brought by DDR/JDN was brought down to the greenway; he wants the council to look at this and think about it and see what they can do with it; he would love for them to open and wants the project to work; it's in his best interest but these issues have got to be addressed or should be. He pointed to his property on the map and noted his property in the past has been used for other measures; he noted his property is between other properties with the dividing line between the Target property is the sewer line and not the creek.

Council Member Jensen addressed signage to US64 and asking if it were possible to put a sign at Haddon Hall Drive to direct traffic to Zeno (south side) to Olive Chapel Road to try to at least direct traffic away from Beckett's Crossing; and an arrow to Olive Chapel Road. Kent Jackson, Director of Construction Management responded he didn't see how it could hurt the situation.

Russell Dalton, Transportation Engineer, had a handout out which addressed the four points considered concerning interim traffic conditions in regards to the revised interim access plan. He viewed this was a good thing and in the Town's favor and the reason he looked at this. Also, he had concerns about Beckett Crossing having driven through the neighborhood a number of times and looking at the traffic calming measures; and this plan may have some affect on that neighborhood. Point: 1) Not losing Beaver Creek Commons Drive extension (are accelerating the schedule, where before the portion to the south of US64 all of Phase 3 would have been built with a connection out to Kelly Road and would have gotten folks out to Kelly right across from the Abbington Subdivision where any people wanting to go west on US64 would be facing a problem as there is currently a left over median control at the Kelly Road intersection and would actually – as the only point of access in that direction would encourage people to by default want to cut through to Abbington; having this access across US64 to Green Level gives people the ability to get to a traffic signal to go east or west on US64. Now we are limiting what they can build in Phase 3 with the connection across to Green Level Church Road and then they can't finish up Phase 3 until they have the second point of access which goes out to Kelly Road; by that point people will be use to driving over US64 to get to Green Level and use to using the signal and will know the best way in and out off US64 and help relieve traffic on NC55). Point: 2) proposal may influence some travel patterns during the interim period; but it will influence the majority of them in a positive way and summarizes what he has talked about.

Point: 3) proposal will have little influence on cut through traffic through Beckett Crossing and Carriage Downs (it will not lower the amount of cut through in Beckett Crossing, but if you look at where people are on Olive Chapel Road, and if you are in the neighborhood immediately south of Beckett Crossing, and if Beaver Creek Commons Drive Extension was constructed now and that was the point of access in, then it would actually be a longer trip for the people in the neighborhoods immediately south of Beckett Crossing/Carriage Downs to go around and go into Beaver Creek Commons Drive Extension; that direction. Even if you built that now up front it still would not provide them the shortest route. Their shortest route would be to still cut through the neighborhood as he would assume a lot of them are doing today; if you get back to the west and start at the intersection of Kelly Road and Olive Chapel Road, all the people west and south, even with the connection of the bridge across to Green Level Church Road, if you use US64, it's a quicker route than going down Olive Chapel and cutting through the neighborhood. If you are talking about signage and information for people that's one thing we need to make people aware of – it is a quicker route even without the Beaver Creek Commons Drive Extension to go up to US64 with this other connection point being the first point of access). Point: 4) paving Zeno Road could marginally help reduce cut through traffic in Beckett Crossing/Carriage Downs, but primarily influences trips in that area. People immediately south of Beckett Crossing/Carriage Downs know their quickest route is to go due north and cut through the neighborhood. He assumes a lot of that cut through traffic is coming from; upgrade of Zeno Road may or may not encourage those people to travel east along Olive Chapel to use Zeno Road; he doesn't know how much impact that would make; he thinks it would make some impact and a good thing, but this proposal doesn't really influence that. The points helped him understand the phasing plan and the issues that came before the Planning Board. Council Member Jensen confirmed the plan to build out the bridge with Russell responding the original plan was to build all of Phase 3 with the connection out to Kelly Road, the extension of Beaver Creek Commons Drive so the bridge would not have to come on line until the first CO of Phase 4 and at that point all of Phase 3 will be built out.

Council Member Schulze addressed the culvert and potential widening to prepare for the possible expansion at a future date. Dalton responded at this time, the section and since the property is not developed in that area, is the reason it wasn't widened. A three lane road only provides the additional capacity where you need turn lanes, where property is developed, so the understanding at that time was whenever that piece of property develops the three lane section would be continued across that property by the developer at the time including sidewalk. With reference to the culvert he doesn't believe the culvert is on his property and would have to look closer, but may or may not need to be widened at some point in the future; we don't know – there's no where to turn, you are on a culvert and are not turning on the property and don't need a turn lane. The only reason it may be widened beyond two lanes is if the culvert substandard for water reasons or run-off reasons, which developments up stream would have an influence over that and not something immediately at their point. If we want to continue a pedestrian path across it, it might have to be widened or might be able to keep the existing culvert and do some shoulder improvements to allow that to connect.

Council Member Jones added when talking about widening the culvert, not needing a third lane and also dependent upon how close to the culvert in either direction you might have an entry into an out parcel or another development; you might have a turn lane to get to one side or other. Dalton responded that based on the speed of this road and looking at the adjacent parcels, he doesn't believe we are going to need a three lane or a transition across the culvert; he doesn't see a need to widen it for traffic reasons.

Mayor Weatherly closed the public hearing at 8:20 p.m. and called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Jensen to approve the rezone case #06CU06 and includes the four speed bumps in Beckett's Crossing, and also to remove the requirement to re-strip on Vision Drive, and specific signage at Zeno Road to direct folks to NC55 and US64. Council Member Jensen was in agreement with the bridge rather than the connection probably. Council Member Jones agreed it's a good trade however still wanted to pay close attention to what happens if there is an increase in traffic into Beckett Crossing and Carriage Downs and anywhere else, Zeno Road for that matter and react to it appropriately. Council Member Jensen still would like to look at no through traffic signs if this doesn't work. Motion carried unanimously.

End of Public hearing # 3

Dianne Khin, Assistant Planning Director
Public Hearing # 04 – UDO Amendment
(Planning Board considered this item at their March 13, 2006 meeting and voted unanimously to recommend denial of this amendment; staff recommends approval of this amendment).

Public hearing and possible motion regarding an amendment to Section 4.2.2 of the Unified Development Ordinance to allow Beach Bingo in the B2 Downtown Business zoning district by Special Use Permit.

Dianne Khin, Assistant Planning Director stated staff proposes amendment to Section 4.2.2 of the UDO to add an "S" denoting "allowable by Special Use Permit" for Beach Bingo in the B2 Downtown Business zoning district as shown on the attached table and stated in the staff report which is attached and incorporated as a part of the minutes. UDO allows Beach Bingo in the B1 Neighborhood Business zoning district with a Special Use Permit. Section 4.3.4(B) of the UDO defines Beach Bingo: B) An establishment that promotes bingo games which have prizes of 10 dollars or less or merchandise that is not redeemable for cash and that has a value of 10 dollars or less. Beach Bingo is a Class 5 use; other Class 5 uses include convenient stores, restaurants, dry cleaners, in-door entertainment, gas and fuel sales, general retail sales, specialty grocery stores, etc. These classified uses are allowable within both the B1 neighborhood business and B2 downtown business districts. Per section 8.3.2 of the UDO the parking requirement for Beach Bingo is one parking space per 50 square feet of floor space devoted to public use which is the same parking required of restaurants in one of the more stringent requirements for parking in the UDO. To approve a special use permit the council must find the following standards are being met: 1) consistent with 2025 Land Use Plan and Land Use Plan update; 2) compatibility with the character of the surrounding land uses; 3) zone district supplemental standards if applicable, which they are not proposing at this time; 4) design minimizes adverse impact including trash, traffic, service delivery, parking and loading, odor, noises, glare, vibration and not create a nuisance; 5) design minimizes environmental impact; 6) impact on public facilities including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities; 7) site development standards that includes everything in article 8 from landscape to lighting to signage, etc.; 8) any other relevant standards of the ordinance.

Planning Board considered this amendment March 13, 2005 and voted unanimously to recommend denial of the amendment for the following reasons:

- Parking issues associated with this type use
- The use is already allowed with special use permit in B1 Neighborhood Business zone district; anyone interested in this use could pursue a special use permit in B1 district
- Some of the B2 district is Town-owned/public property and the use is not compatible with public ownership
- Problem with "Pay to Play" aspect; they consider it to be gambling.

Staff recommends approval of the amendment for the following reasons:

- This use would only be allowed with a special use permit and requires Public Hearing and additional scrutiny by Town Council; special use permit would only be allowed if eight special use permit standards are met.
- This use is already allowed with special use permit in B1 Neighborhood Business zone district, a similar business district to B2 Downtown business zone district.
- Beach Bingo is a Class 5 use; many of other Class 5 uses are allowed in both B1 and B2.
- Parking requirement for Beach bingo is one of the most onerous of parking requirements – one parking space per 50 square feet of floor space devoted to public use, which is the same parking requirement required of restaurants.

Mayor Weatherly confirmed the boundaries of the B2 zone district with Khin responding it's the Town Campus generally the downtown area from North Salem Street from Chatham Street up to Center Street and does not go west to Chatham Street.

Public hearing # 4 continued

Council Member Schulze asked if there's enough parking and the timing of when this would occur. Khin responded it could be a part of the special use permit process to limit the hours to make sure that parking would not become a problem; staff is saying it would be allowed under the special use permit so if someone wanted to request this, it would have to come back through staff; back through the Planning Board and back through Town Council; this is rezoning only. Council Member Jones asked how you would apply the ordinance, saying, if they had a community center so large and that one room of that space was being used for beach bingo, would you apply that to the one room or the entire center. Khin responded it would be like a shopping center where there might be an overall shopping center with 50,000 square feet and if there is just one unit or store front being used for it that is the only parking requirement for. Council Member Jones could see it as a problem when it says space devoted to public use. Khin responded she's not sure why it was worded exactly that way except in restaurants they do not count food preparation and food storage areas and restaurants and guesses if someone wanted to do beach bingo and have concession area and that type thing.....

Council Member Sutton asked why staff recommended adding this to B2 rather than change the zoning of the Town Campus to B1 where it's already allowed. Khin responded the Town Campus they thinks wants to affiliate ourselves with being downtown almost like this being he new center of Apex and thinks at the time she understood we were looking at downtown being one wing of downtown and possibly Trackside would be the other wing; she thinks the philosophy was to keep this as a downtown business district; technically it's government service and not retail or something you would normally think of in downtown business anyway; she's not sure we would want to change it to neighborhood business thinking we were trying to affiliate ourselves with the downtown; that was the idea behind some of the projects, like the strollway project trying to connect this campus to downtown.

Mayor Weatherly opened the public hearing at 8:30 p.m.

Speaking in favor:

Helen Robinson, Cameron Glen Drive, asked the council to vote to rezone town campus to accommodate beach bingo. Original petition of 40 residents signed for Town to offer a program to play bingo for fun and mingling with other seniors.

Ann Mullen, Lendenberry Drive, enjoys recreation programs offered by town, and speaks in favor to allow apex citizens the opportunity to enjoy beach bingo in the Community Center; it would benefit a significant portion of town citizens and fears of gambling are unfounded; beneficiaries would be Apex senior citizens providing fun and benefits to social life and happy seniors are important to the health of Apex; seniors benefit Apex when they spend their money in town businesses every time they volunteer in classrooms, library, and support fund raising activities for local and national causes; volunteer for town festivals, vote for bonds and taxes that benefit apex; they are a benefit; senior tax dollars contribute to the construction of the town hall, community center built with bonds paid off by taxes by senior citizens. Apex council should support a valuable part of the Apex community and support senior citizens. They buy, volunteer, vote, build town facilities with tax dollars; they should be able to enjoy the town facilities. While some on the planning board fear the town will be sponsoring gambling, she hopes they will agree with a past senator that said, "We are entitled to our opinion, but not entitled to our own set of facts." The fact is beach bingo is not gambling and according to the state of North Carolina. Beach Bingo is no more risky than spending $8 for a movie that turns out to be a stinker; beach bingo is no more risky than driving down NC55 the day after they change the lanes – been there and barely survived that. Beach bingo is not gambling, it is recreational, which is sometimes the same as driving down NC55 and seniors have the right to determine how and where they will spend their recreation dollars and prefers that they spend them in Apex rather than Holly Springs or Cary. Beach bingo is an opportunity for Apex citizens to use Apex facilities for a safe and secure afternoon of fun with their friends and thinks they deserve that and would like their support and consideration.

Richard Bankey, Pendula Path, couldn't understand what damage or significant negative impact this would have on the Town or seniors to engage in this social activity which is barely something that would hurt them. He loves the town, having been here six years, a senior and would enjoy using the facility on campus, if possible and if not would urge them to come up with an alternative. He thinks it would be deplorable if our seniors were to go to Holly Springs or Cary in order to socialize with a game of Bingo; that would be absolutely terrible. He urged to consider seniors, please leave politics out of this decision, and vote in favor of our citizens that elect them and pay taxes in town.

Speaking in opposition:

Amy Flannery Smith stated it's not politics for her; she's Methodist and Democrat and has nothing to do with what she has to say. The Planning Board recommended unanimously to deny this amendment and reason because it's not about seniors; this amendment would give permission to any group to come and ask for a special use permit to play bingo, regardless of the affiliation of that group. Because of this, it's more a global issue than a narrow one that has been presented before her. She stated whether Methodist, Democrat, or member of a Bronco group, playing once monthly for $5 and on private property and not on town or state owned property. She thinks that's a distinction and a large segment of our population that is opposed to this. From her perspective were it not about town property this would not be an issue; she doesn't have a problem with folks getting together to play bingo, spending a dollar or $9.99 cent under the statute. The comment about an afternoon of fun is a concern to her as a parent of small children, to the extent she's in a position where she explains to her child where there's money changing hands in the community center when bringing her for gymnastics or some other activity; this troubles her and knows the comparison was made that we do keep score for our athletic affairs, but don't bet on the outcome. She requested the Council deny this UDO amendment.

Council Member Gossage asked to the extent this has been in the context of a service or program for seniors, ask he give a run down of programs offered for senior citizens asking if it were a small list or a few options; he is not aware of how long or short a list it is. John Brown Director of Parks and Recreation stated it's not an infinite list, it's a list they try to balance with other programs being offered and trying to offer a wide variety of programs as they can for the seniors and all participants, keeping in mind they have a limited amount of space in the community center. The majority of the programs for seniors are offered at the community center, with the biggest exception being the senior trips the town sponsors throughout the year. He wouldn't say it's a small list, but is not endless, and gave examples: arts, crafts, exercise, games, seminars, music, line dancing, ty-chi, belly dancing.

Council Member Schulze asked the thoughts on how the program would be run. Brown responded the Advisory Commission was split on whether to offer this, and asked staff to come up with two plans, one how it was administered if the campus was rezoned and beach bingo allowed, two was if it did not occur, and still wanted to offer bingo as one of the senior programs, with the town providing at some level the prizes as opposed to the monitory offerings. Staff proposes and what the advisory commission approved was a plan that this activity would be limited to senior programs sponsored by the town. He handed out a copy of the beach bingo plan.

Attorney Fordham advised the primary issue before the council is whether to change text to the zoning ordinance, so any impact it would have on town property and what the town might choose to do in terms of it's property interest in regulations is secondary and isn't directly involved in this decision. If you change the text amendment, it would apply to all those areas presently zoned B2 downtown, the downtown district, so this is a text amendment to the zoning ordinance, and thinks it's ok to look as to how it affects town campus as one example, but should not be determinative of whether you vote to adopt this or reject it; it should be based on its overall impact to the town and to the public's interest throughout the whole town. It's a separate issue, if this was to pass, would be completely separate issue to determine whether you are going to allow it on the Town Campus; right now the zoning ordinance doesn't permit to even consider it.

Manager Radford added John Brown has had this prepared for a number of weeks, and he asked to not include this in their agenda as a result that he saw this as being operational rather than anything material to the rezoning itself; in the event this comes back at a later date, and the proposal is specifically to discuss the zoning of or the use of the community facilities as a place in which you can have beach bingo, then he would want to say operationally this is how they would do it there.

Council Member Sutton asked if rezoned, it would have to come back to council as a special use. Rowland responded it's not a rezone, but a text amendment, but if approved it does have to come back through for a request for a special use permit. Attorney Fordham advised a special use permit is not something you would have a lot of discretion about; if the person meets the test of the ordinance, then you have to grant the special use permit; it's not a policy event, it's to see whether someone meets the criteria of the ordinance in relation to the adjacent properties and similar to a site plan. Zoning ordinance determines policy whether you approve a site plan is determined by whether a person meets the test in the ordinance.

Council Member Jones asked theoretically if we approve the text amendment, could they restrict the age or anything else of the participants in beach bingo as might be proposed. Attorney Fordham advised that has nothing to do with zoning, but he thinks they could probably target programs to particular age groups; in other words the question is: is it an equal protection violation to have a program for seniors. He would say no. Council Member Jones asked or if ACME Bingo Company came in and wanted to rent your spot to play bingo. Attorney Fordham didn't know whether a private company could do it or not; there are different laws that might apply to private businesses; he asked do you mean limit it to seniors. Council Member Jones wasn't saying limit it to seniors, he was saying that the attorney had said it had to be open to anyone who met the criteria, with Attorney Fordham responding that was for a special use permit; in other words if somebody for a building downtown came in and wanted to get a special use permit to do beach bingo, if they meet the criteria of the ordinance, then you would have to approve it.

Khin pointed out one of the eight standards are the supplemental standards in the UDO and if they wanted to restrict the hours of operation, she thinks that's where it would go in the UDO and that way when you get a special use permit request, that would be something they would have to meet. She's not sure you could restrict the age on a supplemental standard but could for the hours of operation.

Council Member Jensen added Holly Springs and Cary have these programs asking Brown if he had checked out from theirs the positives/negatives of their approach. Brown responded he knows they do offer it and doesn't know that positive/negative is the right term, but doesn't know if he could talk about what was handed out, but will tell them in staff processes of doing what the Advisory Commission asked them to do, which was look at how they thought it would best fit into their programs, just like everything else, they tried to tailor their program or what they would propose to operate it to be similar to the way those two communities operate their programs primarily because they didn't hear anything negative that this or that didn't work or they'd do something differently, and thinks some of the folks interested in this particular program have visited one or more of those communities and participated and see to use that as the standard or the way they would like to see it implemented. Council Member Jensen confirmed beach bingo is allowed in B1 with special use permit, with Khin responding it is with a special use permit. Council Member Jensen asked how many application have we had for this and what was the positive or negative affects in the B1. Khin responded they had one application for the old flee market at Apex Peakway and SR1010, however denied (they applied for regular bingo which was not legal), but no applications have been filed in B1 District. Council Member Schulze asked how bingo was regulated during Peak Week under the tent. Brown doesn't know; the Downtown Business Association runs that in a bay of the Fire Department.

Action: Motion by Council Member Schulze to approve the amendment to the B2 Downtown Business zone district to allow for Beach Bingo. Second to the motion was made by Council Member Sutton. Council Member Schulze as far as money changing hands, he considers this no different than signing up for any other recreation program, you pay to play, and thinks it has to do with the way we were brought up and our cultural differences, etc. but doesn't consider bingo as a cd activity, some do, he doesn't know but to him it's another game and no one is going there to play to get rich so it's just a fun activity, not only for seniors but people under 60 and he has no problems with morals of it, other than that he would have issues with parking, the logistics of it and questions of that, but thinks they will cross that bridge when they get to it; overall, he has no problem with it.

Council Member Gossage appreciates the work of the Planning Board and particularly agrees with points 2, 3, and 4. As far as the staff recommendation, a point of information, that point 3 – many of the other uses are allowed in both B1 and B2 and thinks it's dangerous thinking generally from a policy standpoint that we allow certain things in other uses and other areas where it's zoned this way, so why not here; we don't operate that way and clearly as a town we draw distinctions with conditions, with Khin interjecting and that's their distinction to draw, she was showing there are several that are in both. Council Member Gossage responded it's not regularly a conclusion drawn by staff that… enough said.

Mayor Weatherly added he was sure the folks that spoke and people who play bingo are fine people, but would have to say whether someone supports having bingo in a town owned facility is the test whether we support senior citizens or not is certainly a stretch and not the case and thinks our recreation programs amply show that we support our seniors and have a great diversity of programs for the community at large and hope we always continue that. He strongly agrees with the entire membership of the Planning Board that this is not an appropriate activity that the town should be sponsoring and doesn't believe that the State of North Carolina should be sponsoring a lottery; he thinks at some point we have to … we do draw a distinction and maybe it was the way he was raised. He doesn't have a problem with people playing bingo, if you choose to do that, but the town … it's premature own sponsorship of any game of chance, that is gambling if you wager money, cash in hopes of winning a prize of value that has to be Webster's definition of gambling and this is so. Whether this will obviously bring Apex in disrepute, that's for each individual to decide, but he doesn't believe the Town of Apex should be sponsoring this activity as a part of its official recreation programming and as he said, he wouldn't have the problem and would certainly give a fair hearing to private businesses that choose to do so, and want to do that, in the Town of Apex, it's the town's sponsorship that he has a problem with and very frankly disappointed that it has come to this, but if it does, then it's certainly the will of the majority will out on this issue, but he is compelled to express my personal opinion and there it is, he has done so.

Council Member Sutton added while he was supporting this, he noticed on the survey of tonight – one of the areas was we could stand improvement in was more recreational programs for seniors and a little below average in that and this is a good opportunity to provide a recreation program for the seniors that the General Statute says is not gambling, if we go by the General Statutes of North Carolina, but mainly it's to help our senior citizens to have recreation, fun and social activities; our chance to help somebody and believes that's what government should be, it should be here to help people and not restrict them.

Council Member Jensen thinks in looking at this, the State Legislature and the General Statutes have looked at this situation and said it's government's job to protect people against dangerous things and spending a dollar to try and win ten dollars is dangerous item for an individual, is it going to drive them into bankruptcy; he can't imagine how that would do that and there's a lot of other things we do on a daily basis that would probably drive us into bankruptcy a whole lot faster, so he thinks that is what governments responsibility is, it's to try to provide protection and at the same time as Council Member Sutton said, we need to provide and give people opportunity to have recreation. The number of people who have come down to visit us, the elderly, indicates this is something they would like to do. Secondly, we can try this and if Alcapone moves in, we can shut it down; we have that option at a later date, but his feeling is, let's give this a try and go forward and make decision down line if we make mistakes.

Public hearing # 4 continued

Council Member Jones was first concerned that gambling would lead to dancing, but doing dancing, and shares some of the concerns mentioned; former town manager taught him he could count to three, but he hopes as this comes to preishon they will pay close attention to how they issue a special use permits and under what conditions they do that. He thinks this is more social activity than recreational activity and we do offer quite a few recreational activities already. He's hopeful maybe someone else will step up to the plate and offer it rather than the town, but will see.

Mayor Weatherly called for the vote on the motion to amend Sec. 4.2.2 of the UDO. Vote was 4 in favor and 1 opposed, with Council Member Gossage casting the 1 opposing vote. Motion carried.

End of Public Hearing # 04

David Rowland, Director of Planning

Public Hearing # 05 – Annexation Petition #387

Public hearing and possible motion regarding Annexation Petition # 387, Carl T. & Pamela R. Gray, property owners/petitioner, petition to annex 1.833 acres into the Town's corporate limits; property is located at 1000 Olive Chapel Road.

David Rowland, Director of Planning oriented to the site as stated, giving surrounding land uses, and stated the owners are having water issues and would like to tie onto the town water system.

Mayor Weatherly opened the public hearing at 8:55 p.m. and with no one addressing this annexation request, closed the public hearing.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve annexation petition #387 by adoption of an ordinance to extend the corporate limits by the I.833 acres. Motion carried unanimously.

End of Public hearing # 05

David Rowland, Director of Planning

Public Hearing # 06 – Annexation Petition #388

Public hearing and possible motion regarding Annexation Petition # 388, Jason & Kara Bertoncino, and Judith Barron, property owners/petitioner, petition to annex 9.82 acres into the Town's corporate limits; property is located on the west side of Kelly Road and north of Apex Barbecue Road and known as 2024 and 2024 ½ Kelly Road and includes public right of way.

David Rowland, Director of Planning oriented to the site as stated, giving surrounding land uses, and stated the reasons for annexation is 1) it's outside our planning jurisdiction (ETJ) and to be considered for any kind of development opportunities must be brought into the Town's corporate limits, and 2) it enables them if annexed to get town water and sewer.

Mayor Weatherly opened the public hearing at 8:56 p.m. and with no one addressing this annexation request, closed the public hearing.

Action: Motion by council Member Jensen and second by Council Member Schulze to approve annexation petition # 388 by adoption of an ordinance to extend the corporate limits of the town by the 9.82 acres. Motion carried unanimously.

End of Public hearing # 06

OLD BUSINESS

There were no Old Business Items to be discussed.

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.

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

No one addressed the Council during public forum.

NEW BUSINESS

New Business Item # 1 – Request from Council Member
Council Member Jensen requested consideration of a Resolution on Solar Energy and Building Orientation. In presenting the resolution stated this is a suggestion for long term planning and headed towards a benign energy policy, with President Bush having pushed this with solar energy itself. If we don't asked folks to look ahead to construct structures that will lend it's self to that down line, there will be lots of structures that will be not adaptable to future type of energy policy being done. This doesn't carry any weight of requirement.

Council Member Schulze questioned the position of the roof for potential use of solar, with Council Member Jensen responding yes; this is a guidance and the more homes we have oriented towards this. It would be certainly for a home owner very desirable to have an option to incorporate this into his roof structure and good for the nation; a small step to help solve our energy problem; make awareness.

Action: Motion by Council Member Jensen to adopt the resolution, with a second on the motion by Council Member Sutton. Council Member Jones said as Council Member Jensen said, it was an idea and put it out there, obviously, they can't enforce it, but something we should encourage. Council Member Jensen added we recommend that's all we are doing. Motion carried unanimously.

End of New Business item # 1

Item # 6 considered under New Business and requested by Council Member Sutton
Resolutions to authorize bank account in name of Land Matters, LLC. to facilitate right of way and property Acquisitions for projects undertaken by Public Works and Engineering Departments.

Council Member Sutton requested the Town's Attorney to explain the signature requirements and not use to someone else signing checks for the Town.

Town Attorney Fordham explained this is a change to what is being done presently because the person the town is contracting with has changed. For the last year the town has contracted with DESI (Diversified Energy Services, Inc.) now services by Mr. Ricky Harper who formed his own company and to continue the same circumstance, need to change the contracts. The first time they looked at whether it would be possible to have the right of way agent, who is not an employee of the town but a company that acts and provides right of way services to the town, have a bank account that they can have handy to deal with land owners during negotiations. If you can write a check at that time, they are more willing to give an easement then if you can't write the check then; that's the primary reason for doing this. Secondary reason is logistically if Mr. Harper has to requisition a check for each thing he does, it takes a lot of Mike Couch's time and a lot of staff time. Lee Smiley was involved the first time they had looked at this type arrangement. At present the account was in DESI's name and in process of being closed after last check clears.

Lee checked with the Local Government Commission and Lee said this was o.k. and folks he talked with was o.k. with this; it's something you do want to keep close tract of and the amount of money is limited and Mr. Harper will have to provide copies to Mike Couch of the bank statements every month and he gives the Attorney a slip for each check that he writes and a copy to Mike Couch also; it's important to keep track of the money. The Council needs to be aware of this and keep track of this; Lee needs to keep track of this, and Mr. Harper keeps close track of the account. It has worked well; the primary purpose is when he is sitting with a check book and the person is trying to decide whether or not to agree to sell us an easement, particularly the small ones, the big ones are less important to have to write the check then, but if it's $3,000 or so, then can move along.

Council Member Sutton asked if this were done under the former arrangement, with Attorney Fordham responding yes, and DESI had a checking account and had gone through the process to make sure it was legal and Mr. Harper wrote the checks while working through DESI and now has formed his own business and pleased with Mr. Harper's performance and wants to continue contracting with him even though he was no longer contracting through DESI.

Council Member Sutton added in theory, if something went bad wrong, Mr. Harper if leaving town could write a check to someone for $75,000 and beat feet! Town Attorney Fordham responded this was true; you have $75,000 at risk at any one time.

Council Member Jensen asked how we set the limits on the purchase of these easements, asking who makes the decision. Town Attorney Fordham responded that we start with 50% of the tax value and had very few that they have had to do much more than that or gotten an appraisal. If we had one that would very much from the appraisal it would have been brought back to the council. There are a large number to be gotten and down to the short rows on the initial project and may be some that may need to come to Council to discuss for amounts of deposit and condemnations, etc. If more than 100% of tax value, has to have Town Attorney approval.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve this item. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session 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, there was a motion by Council member Jones and second by Council Member Jensen to adjourn at 9:15 p.m. Motion carried.

The above minutes were approved on the 18th day of April, 2006.

Georgia A Evangelista
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for the Tuesday, April 18, 2006 meeting, held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with Council Members Jensen, Gossage, Jones, Schulze and Sutton present. Mayor Weatherly extended the Invocation and led the Pledge of Allegiance and welcomed those in attendance.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.
Action: Motion by Council Member Jones and second by Council Member Gossage to approve the following items on the consent agenda. Motion carried.

1. Minutes of April 4, 2006 Council Meeting.
2. Annexation Petition # 390, Town of Apex, North Carolina property owner/petitioner, petitioning to annex 1.48 acres of public right of way into the Town's corporate limits; property is located at on the west side of NC55 and known as Haddon Hall Drive; 1) Resolution directing Clerk to Investigate petition; 2) Certificate of Sufficiency of Petition by Clerk, 3) Resolution setting date of public hearing for May 2, 2006.
3. Budget Ordinance Amendment.
4. Findings of Fact and Conclusions of Law and Ordinance regarding Rezone #05CU15, Ellington Place, Glenda Toppe, Jerry Turner & Associates, petitioners, property located at 2381 Laura Duncan Road.
5. Findings of Fact and Conclusions of Law and Ordinance regarding Rezone #05CU23, United Energy, petitioners, property is located at 1547 E. Williams Street.
6. Site plan for Carolinian Townes located at Green Level Church Road and Creekside Landing Drive.
7. Site plan for Old Mill Village Recreation and Pool, Portrait Homes, Inc. Old Mill Village site at southwest corner of Apex Peakway and Old Raleigh Road.
8. Site plan ABC Liquor Store located at 1791 W. Williams Street (out parcel Peak Plaza).
9. Resolution accepting offer of dedication of public greenway at Beaver Creek Commons.
10. Award construction contract for NC55 traffic signal upgrades (2): Olive Chapel Road/Hunter Street and Apex Peakway.
11. Wake County Tax Report approved April 3, 2006 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. With no amendments to the meeting agenda, it was set as printed.

PUBLIC HEARINGS

Dianne Khin, Assistant Planning Director
Adam Stephenson, Senior Engineer Construction Management Division
Public Hearing # 01 – UDO Amendment
(Planning Board recommends unanimous approval having reviewed this item at their April 10, 2006 meeting).
Public hearing and possible motion regarding possible amendment to Sections 6.2 "Flood Damage Prevention Overlay District", and 12.2 "Definitions" of the Unified Development Ordinance to become compliant with state and federal requirements.

Adam Stephenson, Senior Engineer Construction Management Division reported those communities who participate in the National Flood Insurance Program have to adopt floodplain regulations to comply with and to meet the minimum federal and state regulations for floodplain management which includes adoption of the New Flood Insurance Rate Map. Ordinance amendments must be adopted before May 2, 2006 for the Town to be compliant. Dianne Khin, Assistant Planning Director added the Planning Board unanimously recommended approval of the UDO amendment. Stephenson reported the August 2000 UDO adopted language did not allow residential development in the flood plain and exceeded the regulation; however is allowed in the flood plain under state and federal guidelines. Mayor Weatherly opened the public hearing at 7:05 p.m. and no one addressed the amendment. The hearing was closed.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the amendments as stated. Motion carried unanimously.

End of Public Hearing # 01

OLD BUSINESS

Town Manager Radford
Old Business item # 1 - Special Use Permit Process
Discussion and possible motion to authorize the Town Manager to process a special use permit application to allow for beach bingo in the Apex Community Center.

Manager Radford stated the text had been changed to allow beach bingo to be played in the B2 district with special use permit. This application would allow the Town to operate beach bingo from the Community Center on Town Campus. The application has no ability to restrict participation to only seniors and there have been no other interested parties since the approval of the text. Mayor Weatherly clarified a public hearing would be held and criteria followed for the Town to be an advocate for a permit. John Brown, Director of PRCR, stated the description of hours of operation, employees to administer the program, and description of duties and number of daily customers listed on the application were discussed by the Parks, Recreation and Advisory Commission as guidelines, and the questions on the permit application address questions from the UDO; approval of the application would bind these guidelines to those if granted an application. Hours of operation will not conflict with other programs or other towns that offer bingo. Seniors approve these recommendations.

Action: Motion by Council Member Schulze and second by Council Member Jensen to authorize Town Manager to process this special use permit application to allow for beach bingo to be played in the Apex Community Center on Town Campus.

Mayor Weatherly opened the floor for discussion. Council Member Jones was not strongly opposed, and was of his personal opinion, that he would like to give opportunity for someone else to step forward to provide this activity other than the Town Recreation Department with Council Member Schulze agreeing. Council Member Jensen agreed this permit process gives more control and could change down line if need be. Council Member Sutton noted bingo could be played anywhere in the B2 District, and with the community center was a free place for the seniors to play. A public hearing has been scheduled for May 16, 2006.

Mayor Weatherly called for a vote on the motion. Vote was 3 in favor and 2 opposed with the opposing votes cast by Council Member Jones and Council Member Gossage. Motion carried.

End of Old Business item # 1

Town Attorney Hank Fordham
Old Business Item # 2 – Decision Regarding Haskell Appeal
Consider recommendation of the Personnel Committee regarding the Haskell Appeal.

Town Attorney Fordham stated facts regarding the Greg Haskell appeal:

Personnel Committee had been authorized by Town Council to consider an appeal of Mr. Greg Haskell regarding backflow prevention and testing with Mr. Haskell having agreed to this decision. Personnel Committee met on March 27 to hear the appeal, hear evidence and arguments from Mr. Haskell and the Public Works staff; further to consider the recommended Determination and Order issued by the Public Works Director on December 22, 2005 regarding a suspension to act as a tester in Apex. Council would not have to hear the argument but would proceed based on the Personnel Committee decision. Mr. Haskell failed to meet the requirements of the Town's Cross Connection Control Ordinance. Personnel Committee met April 18, 2006 to finalize in written form the decision and order regarding the appeal and to issue their minutes.

Background: Mr. Haskell is a certified backflow prevention assembly tester and is an independent contractor and works on the behalf of the owner of the irrigation system and certifies to the Town and is not contracted by the Town. Attorney Fordham advised the Recommended Determination and Order finds Mr. Haskell had failed to keep proper records of his testing and failed to provide them within stated timelines, and failed in completing crucial information on test reports with the recommended disposition ordered to cease and desist all backflow assembly testing activities in the Town of Apex for a period of one year, and that he be subject to a four year probation period. He may reapply after December 21, 2006 and if approved as a tester after the one year period, must fully comply with the terms of probation outlined in the Recommended Determination and Order. Should he violate the terms of the probation as outlined, he shall be suspended from performing tester activities for a period of four years within the Town; further, if convicted and found responsible for speeding offense he shall be suspended from performing tester activities for a period of one year from the time of the conviction or being held responsible.

Old Business #2 continued

Council Member Gossage, Chair of the Personnel Committee stated the process had worked as it should and the issue he believed to be solved satisfactorily by both staff and Mr. Haskell. Mayor Weatherly had asked if there were discussion regarding any employment related work issues in other jurisdictions, and that might make this a pattern. Council Member Gossage stated it didn't seem material to the Order that was written by the Public Works Director. Attorney Fordham advised this is not a town employee however an independent contractor that serves subject to a certification to the Town that he can continue to do these tests that are in the field of actual equipment that prevents backflow. Council Member Gossage stated through this decision and his probation, should it be a pattern would become immediately apparent if and when he returns to work as a tester for Apex. Mayor Weatherly asked if there were a state certification board that certifies these folks that may keep such records of other complaints logged against his work and would it be appropriate to check. Council Member Jensen responded there is a certification board where he has to pass an on hands test and written test to become certified, with Council Member Gossage and Jensen responding he had passed those. Commissioner Jensen's response to, did he have other problems with other towns, he's not sure that came out within the meeting they held; does he, and this is his opinion he believes is yes. He reported the Committee tried to balance between allowing him to come back to work at the same time scrutinize him when he comes back to the extent, if he does wrong he's out and he fully understands this. He continued maybe they were a bit lineate on the number of days or one year suspension, maybe it could have been longer, but feels the solution with the probation and the way it's written, he could come back but will be the most stellar checker there ever was if he stays. Council Member Gossage agreed the thought if they upheld the five years recommended by the Public Works Director, he would have appealed to the Wake County Court system as was his right and he doesn't believe Mr. Haskell will appeal the decision to the courts and thinks he probably agrees the decision and order to be reasonable and will conclude this at least for the time being. Mayor Weatherly didn't want to second guess the decision as the Committee had spent a considerable amount of time, and that he's had no time to look at this issue, but whether it might be appropriate to check any prior work history, with his question relating to doing the test to take this seriously and doesn't want to penalize industriousness, someone being able to do more obviously indicates industry.

Council Member Gossage stated a complete transcript that supports evidence of the Personnel Committee hearing will give Council a better sense of how the hearing went. Attorney Fordham reviewed the terms of the probation: All reports of testing activity in Town must be timely, accurately, and completely submitted totally in accordance with the ordinance; he must complete each test on site. His reports and paperwork are subject to inspection at any time while in Apex performing his duties. He must fully comply with Town's Cross Connection and Control Ordinance in all respects. There is the condition he has to obey the speed limit and he would receive a year of suspension if he gets a speeding ticket while performing these tasks because evidence could come out that he was being over industrious in terms of getting from one site to another; so, Committee wanted to protect the public interest in this regard as well. Mayor Weatherly wanted to know who would be liable for safe drinking water, as the backflow device doesn't allow impure water to come back into a residence or business, would it be him or the Town. Attorney Fordham advised it would be hard to come up with facts to find the Town at fault, unless it ignored some specific circumstance where the valve was defective. Mayor Weatherly added by our allowing a certified tester, presumption is we did due diligence with Attorney Fordham responding yes, and would fully satisfy that test, in terms of in the future whether this was lawfully significant enough punishment in relation to his paperwork, however, would not provide any grounds to be held liable for his future conduct. Council Member Jensen added it was difficult to prove he didn't run all tests because some tests he could run in seven minutes and move to the next spot. One test did look off chart in that he made tremendous errors. Council Member Gossage thinks they held him to account for that which the evidence they heard supported; he thinks enough said on this; again there are full minutes, if interested, that details the hearing and his recommendation would be to obtain a transcript and read those.

Public Form continued

Council Member Jensen added the four years of probation will protect the town and would keep eye on him if he makes a slip, suspects he will be very careful and if not, he's gone. Mayor Weatherly asked if we normally work with one contractor in this regard or are there others, with Attorney Fordham responding hundreds he understands. Manager Radford reiterated this gentleman nor the other testers are employees of the Town, they work as independent contractors on behalf the owner of the person who has the irrigation system. They are required to certify to us. Council Member Schulze was missing this, and with hundreds doing this asked why they didn't get rid of him, with Manager Radford saying he doesn't work for us, he certifies to us. Town Attorney Fordham added he's regulated by the Town but not contracted with the Town. Council Member Jones added it's not solely irrigation systems it's any backflow prevention device, with Manager Radford concurring.

Council Member Gossage asked if a motion would be in order to approve the decision and order. Attorney Fordham stated the motion was to adopt the recommended decision and order as the Town Council's final decision and order in the Haskell appeal matter.

Action: Motion by Council Member Gossage and second by Council Member Jensen to adopt the Recommended Decision and Order as the Town Council's final decision and order in the Haskell appeal matter. 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. Your comments must be limited to 3 minutes to allow others opportunity to speak.

Richard Crump and wife Ann Crump, residents from Beckett Crossing addressed placement of speed humps in their neighborhood, awarded as a condition of DDR development due to cut through traffic from Beaver Creek Commons, and advised they were not notified about placement of the humps scheduled to be installed Wednesday. Concerns expressed: danger on blind curves, speeding, no stop signs, cut through traffic, additional traffic from the theater and shops, child safety addressing a handicapped child and no sidewalks on both sides of the streets, and school bus stop areas. Map of the community and photos showed existing streets, stops, speed humps and proposed placement of additional humps with no humps proposed in the most dangerous area. They contacted the HOA and asked for possible removal and relocation of one speed hump and told the Town made the decision on placement and to them the proposed placement did not make sense. Further, on blind curves cars tend to gain speed and take turns wider and more dangerous. They asked how the decision was made for the placement of the speed humps and why it happened so quickly and noted the community was not notified and had no input to position the speed humps.

Mayor Weatherly response was the traffic experts on staff probably sited the locations, but was a condition of the developer to put the speed humps in. He asked Crump if he were coming as an authorized representative of the HOA. Mr. Crump responded he was not; he was representing people in the community that live on Fairfax Woods. Mayor Weatherly stated, he could understand the Council's position, that if they have a divided neighborhood or a segment of neighbors, asked, how would he suggest they decide what would be appropriate unless he's a bonified representative with authority to speak for the whole neighborhood.

Crump felt it best to have someone involved with traffic do a survey and look at the issues and see what the problems are, instead of placing the humps in places that are only traveled by folks that live in the community and not by cut through traffic. Crump identified the position of the current humps and stop sign locations and further the humps proposed for placement noting they were only notified last week. He noted on the one proposed for Celandine Drive, sees no cut through traffic, as he lives on Celandine Drive and Fairfax Woods Drive. Pencil markings on the map reflected where DDR proposes to place new humps and seems to him these areas are suffering from cut through traffic that exists with the Lowes, etc. and growing traffic that will come with the theater, etc. There are three existing speed humps in Becketts Crossing and one existing speed hump in Carriage Downs. One speed hump is proposed near play ground and makes sense to them.

Mrs. Crump identified locations of speed humps on Red Barn Way, Fairfax Woods Drive near Celandine Drive and one further down Fairfax Woods Drive and has been there approximately one year. She's not seen a huge effect from those humps; in negotiations with the theater opening, it was agreed upon that Becketts Crossing and Carriage Downs would receive four additional speed humps and those humps are proposed for the top of Fairfax Woods Drive coming in off Olive Chapel Road, above a four way stop and one proposed on Celandine Drive which is an internal street and one proposed on the back of Fairfax Woods Drive and an additional one proposed on Red Barn Way in Carriage Downs.

Original humps were placed when she served on the HOA Board and statistics were considered given by Captain Mike Wilson of the Police Department in that all humps were being placed on Fairfax Woods Drive and not one on Celandine, with his explanation that statistics show traffic is not going to take an internal road to avoid going over speed humps; statistically speed humps are ineffective on internal streets because that's not where the traffic flows, it's going to maintain on the exterior roads. She asked about the back of Fairfax Woods Drive and says it takes folks to far out of their way and again, they are not going to go that way; concern of the neighborhood is they have a blind curve from Celandine corner down past Argus Court and a bus stop at the corner of Argus Court with most traffic in the a.m. and where kids gather. The propose to put a speed hump after a four way stop and before an entrance onto Olive Chapel Road and don't see the need for it; don't see need for one on an interior road or Celandine as traffic is not cutting through there. She proposes they see another one placed on the curve to slow down traffic and barely slow down for the ones there now and to give another one will force them to slow down; off one and onto another one.

She noted some internal strife in the neighborhood and the town wouldn't know that but spoke with Kent Jackson and he told her the developer contacted an individual in the neighborhood and they made a recommendation for placement of these humps. Town did adjust where the humps are going by a matter of feet meeting requirements for driveways and grade. Neighborhood was never asked where humps should go or what was going on. They did ask if HOA could pay for an additional fifth hump and have a hump placed by Argus Court and Town suggested no perhaps that is not the best solution because Town hasn't made recommendations for these humps to begin with, but was an agreement to get a developer to get a CO without connecting down through Kelly Road. She asked why they couldn't remove the speed hump from Celandine Drive and place it near the dangerous curve and he stated it was feasible solution, however, question was not proposed to him by the HOA.

Concern was that they were not fairly represented by HOA board and were never asked as a neighborhood, only to get an email that they get four speed humps and this is where they are going; it was not fair representation of the neighborhood. She noted an email where one of the Board members did not think it an extremely dangerous situation; if it is get the one off Celandine Drive and get it onto Fairfax and if in the future they need one on Celandine, let the HOA pay and come to the Town and request one to be placed there; don't spend time playing catch up as they have identified a huge problem here and are being told they go in on Wednesday and not sure they are addressed properly, because obviously the Council did not make the decision where they are to be placed. She noted the Council was their last resort noting the child in the wheelchair, Lot 115, and noting there was not a lot of folks in the audience to support this, not having time to get together.

Mayor Weatherly asked Manager Radford to report on the design and site selection for the speed humps. Manager Radford asked Kent Jackson, Director of Construction Management to come forward and noted his involvement of his design and placement. He continued they arrived due to the special use permit request from DDR in order to be able to open the theaters without making connection to Kelly Road and based on the fact they were willing to provide the bridge across US64 in lieu of that connection. The suggestion was made in that public hearing by Mr. Art Clem who was here that evening. Mr. Crump stated he was there, and didn't realize placement was ready and asked if they could get a traffic specialist to look at the problem and come up with a solution. Manager Radford continued they did do that and had in house traffic specialist do that and Jackson would explain that.

Mr. Radford asked Ms. Crump to identify the three or four stop signs in the neighborhood. She identified a four way stop at Avalon Court and Fairfax and a three way stop at the bottom of Celandine and Fairfax and a three way stop at Red Barn and Fairfax which can say most role through. There are no stop signs down to Red Barn to turn and go towards Lowes. Manager Radford's point was currently there are three or four way stops in their neighborhood and knew there are more stops and calming devices in their neighborhood than any other neighborhood in Apex, by two times as many. She noted three speed bumps currently and approved four more, and will have seven total speed humps, and eight if they include the one in Carriage Downs, which will mean they will have between two and three times more speed humps in their community than in any other subdivision in Apex; he's been through there and it's speed calmed as much as the can short of building moguls for people to drive over in his estimation. He thinks from the engineers perspective they feel the same way and their concern to place a hump in the curve he can appreciated they feel the traffic is going to fast on the curve, however, from the engineers perspective that placing a speed calming device in a curve is bad engineering practice as one would be unable to see it on an approach and you would have to put the sign within a certain distance of the hump itself and the hump would be on the inside of the curve as well. If the sign is placed too far ahead of the bump, people forget it and cars are typically going in at an angle which would create more problems than anticipated. He asked Jackson to make additional statements. Mr. Crump felt after the curve it straightens out and a sign indicating speed humps would cause traffic to slow down before they approach the curve and make it less dangerous, they were talking Lot 52 or 114. Mrs. Crump stated if they don't see the speed humps, they don't see the children either that are standing at the bus stop and folks walking; she'd rather they hit a speed hump than a child. Council Member Jensen added on the curve it tend to through the car off and don't want to do that. Mr. Crump added it would be after the curve.

Kent Jackson, Director of Construction Management felt Manager Radford had summarized the technical aspects accurately. In this matter when asked about the fifth speed hump, it became more an issue of practicality than a technical issue. He stated there was the four of the approved condition of the zoning a couple of weeks back and at some point needed to fall back on policy Council had previously approved related to speed traffic calming and his response when asked about the fifth speed hump. Mrs. Crump asked if there really needed to be a speed hump on an internal road when people are statistically stating cars will not take interior roads to avoid humps.

Mayor Weatherly asked the Manager if the two interior humps were there to reach the number agreed upon or a rational benefit to reduce speeding from cut through traffic, keeping in mind his question related to the reason they are requiring this anyway is cut through traffic from the development occurring outside the neighborhood. Jackson stated the request described to him was that there was concern that with the speed humps on Fairfax Woods or the main street there would people who would circumvent to speed humps basically taking a route that didn't have a speed hump would drive back through the other streets to get around the speed humps. Mayor Weatherly asked if this were his professional opinion in this case this would occur, with Jackson responding no.

Mayor Weatherly noted it hard to deal with ad hock groups of neighbors, next week another, and from his experience gave an example of a neighborhood requesting four way stops and as soon as they were put in, another delegation same size and quite passionate that they had fouled up and not represented their neighborhood correctly and demanded the four ways be taken out and relocated; he really thinks this whole thing … could have a delegation representing the HOA, the fairly elected to represent their neighborhood, he would find it something to deal with, but frankly he doesn't know how to deal with a relatively small group and next week maybe another group.

Council Member Gossage added no matter how reasonable their concerns are. Mayor Weatherly didn't know he could deal with groups of neighbors and puts the Council in the middle and from his position has to take staff's expert judgment, those who have training and experience; he couldn't tell anyone where to put speed humps.

Council Member Jones followed up on the Mayor's points in that they had agreed to place traffic calming devices at the request of some of the neighbors at the meeting they had attended and was requested as a condition to what they had approved to the opening of the theater, and does put the Council in an awkward position where at one meeting someone asks them to do something and the next meeting someone is not and doesn't know who officially is speaking for, if there is such a thing, the majority of the neighborhood.

Another citizen Tom Coda, Argus Court, not on the main road, for HOA Board member, realizes the are placed in a funny position and thinks everyone when initially heard speed humps were going in their neighborhood – there wasn't much public notification, but word of mouth got it through, assumed they would be on the thoroughfare where people cut through, and recently when folks were here two months ago, or a month ago, the information on the actual location wasn't made known to the neighborhood and no way they could….. HO boards are elected to make sure pool is running, landscape is done, and those kinds of things and not elected as representatives of the community. They are tax payers and voters and here as voters asking they respond to that and realize they can't go out to everybody. He agrees with what was said and appealed to the Council for their logic and expertise of staff they will make the right decision at this point. Proactive suggestion notes Cary and lots of towns when "Google search" their policy comes up and Apex doesn't have yet and may consider before traffic calming devices are put in the representatives of the neighborhoods, HOA or what show up with 60% of the neighborhood on board. Council responded there is a policy.

Public Form continued

Mayor Weatherly stated they were doing something for them in making this requirement not to them and now they see they were doing something to them. He thinks policy would help, with Council Member Jones noting in policy the HOA may pay for a portion of it.

Council Member Sutton addressed Jackson, asking what policy he had followed in this case. Jackson said he had said they should fall back to the policy and is the policy he described, that Cary also has, Apex has a policy adopted three years ago that establishes a petition process, speed survey by the Police Department, and then a petition from the folks on the street, along with endorsement of the HOA.

Council Member Gossage asked how they move forward with this, again looking at tomorrow and at least two speed humps he looks at that shouldn't go where they are designed to go. Manager Radford addressed the one on Celandine Drive and if they look at the other speed humps in that neighborhood, that the one on Celandine which is the middle of the heart shaped spear is the longest straightest stretch of road that is not speed calmed in some measure or another out there. The same holds true for the street adjacent to it to the right or Fairfax Woods Drive. Manager Radford responded to Council Member Schulze question asking if there were problems with cut through traffic on those two streets, with the Manager responding not from cut through traffic but find from their neighbors.

The President of the Home Owners Association Les Soden stated two weeks ago when their addressed speed humps and approved as a compromise between the developer and the Council, that was when the process of placement of the humps began as he understood. Jackson and his staff, Russell Dalton and others were out the week following the last council meeting to place those where they felt they should belong. Their suggestion was to put them both on the downhill stretches because they do represent a split community. They have a group of homeowners who are very strongly opinionated and have a vested interest because they live there. They have their children there and as a home owner are concerned about their safety also. On the other hand, they have home owners who have indicated speed humps detract from the desirability of Beckett Crossing as a place to live. Home owner doesn't want to go across moguls or multiple speed humps; from a home owner's standpoint they are trying to balance this out. Their main concern is to reduce the speed of traffic that is coming through their development and all they are asking Council and Town of Apex to consider; how do they reduce speed.

Mayor Weatherly responded they had agreed to do this and conditioned the developer to do this. Soden continued they had no problem to eliminate the one on Celandine and moving it to Fairfax if appropriate that the town agrees too. Mayor Weatherly asked if he were speaking in his position as President of the HOA, with Soden responding yes. Mayor Weatherly asked if this could be done. Manager Radford talking to Jackson, asked if the removed the one from Celandine and put it on Fairfax Woods Drive asked how close it would be to the next nearest speed hump. Jackson didn't know but does know on Friday of the later week, it turned out after Soden had spoken with Dalton about the swap, Jackson had staff engineer Rich Harrison review the plans again and he determined there is a spot in the general vicinity of Argus Court (Lot 115 and 54) where the grade flattens out enough where a speed hump could be placed and be reasonably in conformance with the usual policy.

Council Member Sutton asked if they fell back on Council policy, which they are suppose to carry out, what would they do at this point; we would stop the speed bumps from going in on Wednesday and can be done easily, with Jackson adding just a phone call. He continued police would do a speed survey, if it passed that test, then a petition would have to be received from the homeowners along the street or at least 70% of the neighbors agreeing to the speed hump placement, and would have to receive a letter from the Home Owners Association concurring with that petition and agreeing to pay 10% of the costs. Council Member Sutton recommended to the Mayor they follow their policy.

Council Member Gossage asked if this would affect the CO at all if the speed humps aren't in place, with Manager Radford responding no. Council Member Jones commented that we were asking for to go out and determine if something meets the criteria and meets our policy that we have already mandated. Mayor Weatherly asked if they could be bonded to do the work and meet the test of the requirement. Attorney Fordham responded they would probably need to amend the condition, other words the condition was fairly specific.

Coda asked what they needed to do to pass the requirements, with Jackson responding test is for speed and not for cut through, or anything else, they have to have "x" percentage of vehicles clocked so to speak by the police, and having to be exceeding the posted speed limit by more than five miles per hour and it's a tough test to pass. He continued there were a number of neighbors who have failed. Soden noted a recent test in Carriage Downs had failed the test for proposed speed hump. Jackson guessed it would be next to impossible for Fairfax Woods to pass the test with the existing speed limits.

Mayor Weatherly wanted them to understand they were not in a position to make a unilateral decision based on the information tonight based on differing opinions about this and clearly have an opinion from the town's professional staff, and doesn't know how they could make a snap judgment decision of one opinion over another at this point. He thinks they are stuck on status quote unless they figure out a way to. Coda asked if they have a traffic study available that could be done along the stretch of Fairfax Woods Drive to possibly pass the test necessary to add an additional speed hump. Manager Radford noted it available to them and will have it done with a written request to Jackson to do a study. He added the question is, "what do we do in the mean time".

Mayor Weatherly asked the Manager if they could extend the work planned for Wednesday and at least pause and see if there's a better way to proceed and if they can't and it ends up messing something up then we will proceed as planned before, but for a brief pause, asked if he were going in a direction … with Council Member Sutton responding follow our own policy. Council Member Gossage felt absolutely we have to not have these installed on Wednesday, but doesn't want to miss up DDR's CO. Mayor Weatherly added we are making them do this and is unreasonable to say we have to do this, you have to have so many to get the CO, and now we come back and say we don't know what we are doing.

Council Member Jensen asked if getting bond to do this adequate to allow them to have their CO, and thinks it would be. Attorney Fordham would want to review the conditions. Mayor Weatherly asked if it wouldn't be the same in doing the work if we get money in hand. Attorney Fordham would want to read the conditions exactly, asking wasn't the condition before the CO could be granted basically reducing cut through traffic, these be installed. Mayor Weatherly asked when he anticipated this needed CO to be issued when they want it to be before the movie theater opens May 6. Jackson responded it was first of May, with Manager Radford understanding May 6.

Soden advised one of the home owners reminded him they seemed to have reached an agreement they could take the speed hump on Celandine, with the home owners agreeing and the board agreeing and he speaks for the board to take the one on Celandine and move it to the location of Fairfax which appears acceptable to town staff, asking if there was need to pull the whole thing back to do a traffic study. Mayor Weatherly responded if that would be a reasonable compromise or solution… with Council Member Gossage interjecting he didn't want to have the home owners from Lots 53 and 115 in at the next meeting saying…. with a lady from the audience speaking saying they had spoken to lots of the neighbors that live on this curve and believes Lot 115 is the couple with the handicapped child and assures there would not be an issue putting it in there and have spoken to all the neighbors that live on this curve.

Council Member Gossage asked who lives at Lot 114 – lady from audience stated the Bowers, a sales agent for the community. Council Member Gossage asked who lives in Lot 52 – Devlins - lady from audience stated she had spoken with the Devlins as well. Lot 53 they don't recall.... with Council Member Gossage wanting to know because it may jog their memory – lady from the audience stated they had spoken with them as well. Lot 54 ..... with Council Member Sutton interjecting and addressing Jackson, stated we Council had not follow our own policy in getting this far; and Art Clem had been before the Council who was the President's predecessor, president at one time of the Home Owners Association and took fact that he was representing the HOA, but obviously we didn't get a petition for the speed humps and didn't do a police check, our own procedure, with Jackson agreeing. Council Member Schulze thinks the reason might be that the developer was paying for them; if we were paying for them, we probably would have done that. Council Member Sutton noted it a gift from the developer, but still didn't follow procedures.

Council Member Jensen was not sure we needed the speed study as much as we need the petition from the home owners and in fact should get a petition from Carriage Downs as seems to him, one of these humps could go in Carriage Downs if they requested it before and asking if this makes sense and on the cut through road. Council Member Sutton stated you rely on the police to know something about the traffic control.

Mayor Weatherly confirmed this was a condition upon the approval of the site plan to issue a CO, asking could they issue a conditional CO that when they get to the time, if this is the only hang up would it be permissible under our ordinance to issue a conditional CO and the condition is to meet the condition that's already in there; would this completely stop them dead if we decided to take a pause and consider this thoughtfully, and don't want to hurt DDR's deal, asking can we go ahead and issue a conditional CO for this if this is the only thing that would hold them up, with Jackson responding "yes, it could be", with Mayor Weatherly asking if this could be done administratively, we don't have to take action to do this, asking staff if this were reasonable way to address this, with Manager Radford responding yes it is.

Mayor Weatherly added they may come out with the same plan once they deal with this, but will stop what they have planned if they can do that, and if anyone wanted to suggest they go back and follow policy on this issue before they decide, say so now, but otherwise would ask staff to stop what plans are in progress to put the humps in place, until staff can come back with a suggestion and maybe consultation with the home owners association and Jackson, whatever in his judgment, suggests that as a reason on how to proceed.

Lady from the audience was under the impression that these speed bumps were being put in and paid for by the developer of the Lowes Movie Theater and with the condition we allow them to open up early, asking if she were correct. Mayor Weatherly stated it was an access issue, with the lady continuing if the movie theater opens on May 6, then they basically will have a major influx of increased traffic in their area; Fairfax Woods Drive cuts through right into the movie theater. Mayor Weatherly responded they were either going to try to fix it reasonably or proceed with this, asking which is, please tell him. As he said before, they thought they were doing something for them to put condition on the whole development on getting the humps, they did that, and then they get complaints that they put the humps in at the wrong places, now, it looks they are not going to be able to .... with the lady wanting to move the one on Celandine, with the Mayor responding no, either we are not going to do what we are going to do Wednesday, until the get a staff recommendation on how to proceed and may get a recommendation from the council on how to proceed, but his suggestion and he doesn't make the decision there, he suggests, they cease and desist work planned for Wednesday that will not impede the development opening whenever they are ready to do so, because they were ready to fix this condition

tomorrow, asking if they understood that, so we should not hold them hostage for this indecision that frankly they are taking credit for tonight, but for them, and hopes they understands this. He continued they would come back and allow this work to be done when we can somehow get the Wisdom of Solomon to split this baby! Council Member Gossage agreed it seemed imprudent to make another decision tonight with at least taking a step back and seeking more input from the neighborhood and from our staff. Council Member Schulze added to look at traffic for a few weeks and make a decision. Council Member Jones added what it sounds like, from what they are hearing, is that they want some traffic calming devices, but we don't want them on our street; we want them on Fairfax Woods, and not on Celandine and Duluth of Fairfax Woods, and noted they were confused basically because they are getting conflicting information, conflicting opinions. Council Member Sutton added it was not the Council's job to pick traffic locations with Mayor Weatherly and Council Member Jones agreeing.

Soden stated the HOA was satisfied with the placement of the four – 3 additional in Beckett and the one in Carriage Downs, what they were coming to Jackson and staff was, asking if there was possibility of another one or some other traffic calming device around the blind curve. Council Member Gossage responded it's possible. Council Member Jones asked if he were offering, and didn't come to them that way, the presentation tonight didn't start out that way – started like they didn't want one on Celandine and Fairfax; but are willing to trade one of those for the one you think you need. Soden responded that was an option they had discussed and the homeowners paying for. Council Member Jones agreed with the Mayor they shouldn't start in the morning, (Wednesday), they have the materials ready he's sure and should make the phone call – if two days from now, there's an agreement of where they should be, then go ahead and proceed; it doesn't need to come back to the Council – we didn't decide whether the first ones went. Mrs. Crump thought it agreed they could move the one on Celandine onto Fairfax and everybody was pleased with that. Council Member Jones responded and it sounds as if it is, he thinks it deserves due consideration like the other four locations. Council Member Gossage added it had come up tonight perhaps the location of these four were rushed and certainly does not want in a matter of hours to make a decision about the placement of another one when they had weeks before; he thinks that would be a very legitimate assertion by someone to say you made that one quick; you decided at 8:15 and the next morning it went in; that's a bit fast. Council Member Jones stated if Jackson and the home owners association agree that's an appropriate place, he's fine with it as well as Council Member Gossage.

Mayor Weatherly asked if staff understood; that the consensus all agreed this is a staff issue about placement and do not want to set precedent, we don't direct where these are going to be, but ask the contractor not to do this Wednesday and ask if the Council wanted to empower the manager to make the decision based on consultation, with all that's a part of this. Manager Radford will follow through with this direction and be in touch with the official leadership of the HOA of Beckett Crossing. Manager Radford stated he and Jackson would do this tomorrow (Wednesday).

Council Member Jensen again, wanted to bring in Carriage Downs because the cut through road goes through there and maybe we don't need all four in Beckett, with citizens advising there is only three in Beckett and one will go in at Carriage Downs. Soden stated they are in contact with the board at Carriage Downs.

Mayor Weatherly stated no motion was necessary; we will direct staff to do this. Mayor Weatherly told them folks to spread the word they had better be a part of this conversation they are having in the neighborhood because one the Manager decides a decision is to be made; they would not second guess him with the Council agreeing.

End of Public Forum

NEW BUSINESS

Lee Smiley, Director of Finance
New Business Item # 1 – Finance Summary
Lee Smiley Director of Finance gave a review of 3rd Quarter FY05-06 Financial Summary. Benchmark for the third quarter financial performance is 75% for revenues and expenditures. Significant variances were noted. The summary is attached. The Council accepted the Financial Summary as presented.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session to discuss potential purchase of property located at 225 N. Salem Street. Council Member Sutton asked if the Town Attorney would include information regarding pending litigation on the New Hill Law suit. Attorney Fordham responded he could and should add this item to the closed session.

Action: Motion by Council Member Jones and second by Council Member Jensen to move into closed session at 8:20 p.m. to consider both items as requested. Motion carried. Minutes of closed session are recorded separately. After consideration of the Closed Session items, there was a motion by Council Member Jensen and second by Council Member Gossage to move back into regular session at 8:38 p.m.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Jones to adjourn at 8:39 p.m. Motion carried.

The above minutes were approved on the 2nd day of May 2006.

Georgia A Evangelista
Town Clerk

Keith O. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for the Tuesday, May 2, 2006 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Pro tempore Jones presided over the meeting, calling the meeting to order as noted with Council Members Jensen, Gossage, Schulze and Sutton present. Mayor Weatherly was absent.

Invocation was given by Council Member Gene Schulze.
Mayor Pro tempore Jones led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATION

David Wasserman, NCDOT, presented planning initiatives for US64 and anticipated US64-NC49 Corridor Study Phase 2A. Apex financial contribution towards this study is $25,000. Phase I evaluated the regional traffic patterns and looked into the future with Phase 2A, and determined from the first phase of the study, with the proposed to extend from US 1 and US64 in Cary to Pittsboro Bypass approximately 19 miles. As the area continues to grow traffic volumes will increase. Phase 2 envisions US64 as a "super street". The study will take approximately 12 months with public workshops. Other items to take into consideration with the study were existing traffic on NC55, I540 Corridor, sidewalks, signals, and bridges over US64, including consideration of crossings for pedestrian traffic.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was set prior to taking action on the following items. **Action:** Motion by Council Member Schulze and second by Council Member Jensen to approve the consent agenda. Motion carried unanimously.

1. Minutes of April 18, 2006 Council Meeting.
2. Minutes of April 18, 2006 Closed Session of the Council (separate cover).
3. Budget Ordinance Amendment #11 and Capital Project Ordinance Amendment.
4. Ordinance regarding Rezone #06RZ02, Christopher and Barbara Williams, petitioners, property located at 704 Cash Street, changing the zoning from Residential Agricultural District to Medium Density Residential District.
5. Findings of Fact and Conclusions of Law and Ordinance regarding Rezone #06CU03, Jim Chandler, CPS Engineers, petitioner, property located at 2010 Lufkin Road, changing the zoning from Residential Agricultural District to Light Industrial Conditional Use District .
6. Funding Agreement with Wake County and Town of Apex for FY06-07 budget to pay for 2nd year Heery work in conjunction with Wake County Public Safety in 2004 allowing Wake County to move forward with repairs to Fire Station 1.
7. Purchase Agreement with NC Canine Emergency Response Team and Town of Apex for FY06-07 budget to allocate funds to purchase existing rescue equipment.
8. Authorize private sewage pumping arrangement for American Ballet School on North Salem Street.
9. Decision and order by Town Council upon recommended Decision and Order of the Personnel Committee regarding finalization of the Haskell appeal.

End of Consent Agenda

REGULAR MEETING AGENDA

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

New Business add-on: Council Member Jensen asked consideration of flyer materials to be placed in utility billings.
Closed Session add-on: Attorney Fordham asked Closed Session amendment to include: receive legal advice from the Town Attorney regarding a planning matter, and to receive update regarding a letter received from ACLU.

Action: Motion by Council Member Jensen and second by Council Member Sutton to amend the agenda as noted. Motion carried.

PUBLIC HEARINGS

June Cowles, Planner

Public Hearing # 01 – Rezone Case # 06CU05

(Planning Board recommends unanimous approval having reviewed this item at their April 10, 2006 meeting).
Public hearing and possible motion regarding rezone of 9.8 acres from Wake County Residential (R-40W) to Medium Density Conditional Use Residential District, property located at 2024 Kelly Road.

The Town Clerk administered oaths to those speaking during this hearing.

June Cowles, Planner, oriented the Council on the conditional use rezoning request from Wake County Residential R-40W to Medium Density Conditional use Residential District, orienting to the location of the property, and stating conditions on page 2 of the staff report: maximum density of three dwelling units per acre; detached single family units only; no vinyl siding is allowed; all homes shall have crawl spaces – no slab on grade is allowed in home except for garages. The staff report is attached and incorporated as a part of the minutes. Planning Board met on April 10, 2006 and unanimously recommends approval for the rezone.

The hearing was opened at 7:25 p.m. David Lasley, Piedmont Land Design, Raleigh, supports the rezone of the 9.8 acres for a residential subdivision with maximum density of three dwelling units per acre, and a minimum of 25% of the site preserved in Resource Conservation Area. The hearing was closed.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the rezone. Motion carried unanimously.

End of Public Hearing # 01

David Rowland, Director of Planning

Public Hearing # 02 – Annexation Petition # 389

Public hearing and possible motion regarding Annexation Petition # 389, L'Hermitage At Beaver Creek, LLC., property owner/petitioner, petitioning to annex 23.464 acres including right of way into the Town's corporate limits; property is located on the north side of Olive Chapel Road.

Director of Planning David Rowland introduced the voluntary Annexation, Petition #389 for the L'Hermitage Subdivision designed for single family homes and townhomes, and needing water and sewer.

The public hearing was opened and with no one addressing this request for annexation, the hearing was closed.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve Annexation Petition #389 by adopting an ordinance to extend the corporate limits of the Town. Motion carried unanimously.

End of Public Hearing # 02

David Rowland, Director of Planning

Public Hearing # 03 – Annexation Petition # 390

Public hearing and possible motion regarding Annexation Petition # 390, Town of Apex, North Carolina petitioner, petitioning to annex 1.59 acres of public right of way into the Town's corporate limits; property is located at on the west side of NC55 and known as Haddon Hall Drive.

Director of Planning David Rowland introduced the voluntary Annexation, Petition #390 for the public right of way of Haddon Hall Drive recalling a territorial issue with the power system, and with Apex serving this area can annex the area.

The public hearing was opened and with no one addressing this request for annexation, the hearing was closed.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve Annexation Petition #390 by adopting an ordinance to extend the corporate limits of the Town. Motion carried unanimously.

End of public hearing #3

OLD BUSINESS

There were No Old Business Items to be discussed.

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.

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

Lindy Brown, candidate for District 2, Wake County and Don Mile, candidate for District 1, Wake County introduced themselves to the Town Council and look forward to working with Apex in the future addressing issues throughout Wake County. Both are pleased with the progress Apex has made.

Kathy Dyer, Real Estate Broker, 206 S. Salem Street, asked Council to reconsider their position on open house signs and real estate off premise signs, as they are the best direction signs to get to open houses, and feels they have been thrown into other business signs; suggested thinking of them as yard sale signs for short periods of time. Cary allows them with restrictions. She noted the signs show pride of Apex and promotes Apex. Mayor Pro tempore Jones responded, as they continue to review policy will take this into account.

End of public forum

NEW BUSINESS

New Business Item # 1 –Flyer Program for Utility Bills

Council Member Jensen introduced this opportunity for businesses to provide a flyer in the town's utility bills for energy and water conservation devices either free or with large discounts, and with guidelines to be followed, with a maximum of inclusion of five flyers, and profits from this program going towards town purchasing energy conserving or energy producing devices. This program would be at no costs to the taxpayers. He has not spoken to the commercial businesses however asked council try this program, and allow staff to give more specifics as necessary to implement it, and if there were complaints, then stop. After discussion and legal interpretation from the Town's Attorney, it was consensus of the Council to try this program and have staff look into and come up with the implementation rather than council giving specific direction.

End of New Business Item #1

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Possible motion to move into Closed Session for the following:

- to receive an update from the Town Attorney regarding the New Hill law suit.
- to receive legal advice from the Town Attorney regarding a planning matter.
- Update from a ACLU letter.

Action: Motion by Council Member Gossage and second by Council Member Schulze to move into closed session as stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Gossage and second by Council Member Schulze to move from Closed Session into Regular Session. Motion carried unanimously.

ADJOURNMENT

Action: With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Schulze to adjourn at 8:22 p.m. Motion carried unanimously.

The above minutes were approved on the 16th day of May 2006.

Georgia A. Evangelist
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of the Tuesday, May 16, 2006 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with Council Members Jensen, Gossage, Jones, Schulze and Sutton present. Invocation was given by Council Member Jones. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

Mayor Weatherly presented the following Proclamations:

Nicky Winstead, Chief/Administrator Apex EMS: Emergency Medical Services Week May 14-20, 2006
Ed Tindal, Athletic Director at Apex High School upon his retirement: Ed Tindal Day June 3, 2006

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was presented to be set prior to taking action on the following items. Council Member Schulze asked to consider Items 7 and 8 separate from the consent agenda. **Action:** Motion by Council Member Gossage and second by Council Member Schulze to consider the items under new business. Motion carried. **Action:** Motion by Council Member Jones and second by Council Member Gossage to approve the consent agenda with the exception of Items 7 and 8. Motion carried.

1. Minutes of May 2, 2006 Council Meeting.
2. Minutes of May 2, 2006 Closed Session of the Council (separate cover).
3. Minutes of May 3, 2006 Personnel Committee Meeting.
4. Budget Ordinance Amendment No. 12/ Capital Project Ordinance Amendment (Recreation/Community Center).
5. Site Plan for Pantry 1410 W. Williams Street, convenience store at existing unmanned gas station site (next to Daniels Pizza/Pasta, Hwy 55). ***Recommended for approval by Planning Board having reviewed this May 8, 2006).***
6. Revisions to existing refund policy pertaining to programs offered by Parks, Recreation and Cultural Resources.
7. **2006-07 / 2007-08 Non-Parks Grounds Maintenance Contract Jones Landscaping and Maintenance.**
8. **2006-07 / 2007-08 Parks and Recreational Facilities Grounds Maintenance Contract Jones Landscaping and Maintenance. (Items 7 and 8 are considered under new business).**
9. Recommendation from Personnel Committee: 1) Revision to Article III, Section 9 of the Personnel Policy Manual 2) Increase of employer-paid life insurance to one times salary 3) Grant Town Manager authority to reclassify existing positions within the same or a lower salary grade 4) Allow EMS employees to be members of the Town of Apex group health plan 5) Adoption of the Position Classification Plan for FY 06-07.
10. Tax Report for Town of Apex approved by Wake County Board of Commissioners.

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 01 – Rezoning Case # 06CU06A

(Planning Board unanimously recommended approval having reviewed this item at their May 8, 2006 meeting).

Public hearing and possible motion regarding rezoning Case #06CU06A, Town of Apex, petitioner, seeking to rezone from Planned Unit Development Conditional Use to Planned Unit Development Conditional Use District (to change condition only); the property is located on the north and south sides of US64 at Beaver Creek Commons Drive and Green Level Church Road.

The Town Clerk administered oaths to those speaking during this hearing.

Dianne Khin, Assistant Planning Director, gave a review of action taken from April 4 Council meeting where Council approved eliminating striping at Vision Drive and allowing the opening of the theater and an additional 100,000 square feet for retail shops in Phase III at Beaver Creek Commons without the connection of Beaver Creek Commons Drive to Kelly Road with the following conditions: 1) construction of the bridge across US64, construction of Creekside Landing Drive, improvements from Green Level Church Road from Creekside Landing Drive to US64, and the US64/Green Level Church Road traffic signal must be completed and operational prior to the theater or any of the retail shops opening; and 2) construction of speed humps within Beckett Crossing and Carriage Downs prior to the theater or any of the retail shops opening. It was understood the speed humps were requested by Beckett Crossing Subdivision.

Beckett Crossing residents attended April 18 Council meeting expressing speed humps were not wanted in the proposed locations. Given the neighborhood could not agree, Council directed Town Manager Radford to make the decision regarding the speed humps; he had determined speed humps should not be a condition of the Beaver Creek Crossings rezone and required Beckett Crossing to follow the standard procedure for obtaining speed humps within their neighborhood. Traffic Study was conducted by the Apex Police Department; findings demonstrates 4.3% of the total vehicles exceed the posted speed limit by 5 m.p.h. or more; threshold for allowing speed calming devices is 25%, therefore, Beckett Crossing does not qualify. This rezone request is being held solely to remove the condition regarding the placement of speed humps in Beckett Crossing and Carriage Downs.

A protest petition was filed with the Town Clerk regarding this rezone, and was deemed invalid by Laurie Hohe, Assistant Town Attorney. Planning Board considered this rezone at their May 8 meeting and unanimously recommended approval. The Protest Petition, Planning Board Report to the Council, and the Planning Staff Report are attached and incorporated as a part of the minutes.

The public hearing was opened at 7:17 p.m. No one spoke in favor of the rezone to change the condition solely regarding speed humps. Speaking in opposition to the rezone to change the condition solely regarding speed humps was:

Art Clem of Beckett Crossing had said at the last meeting he represented the home owners association board of Beckett Crossing and speaking for the folks of Carriage Downs and having taken oath that he did that, he now speaks for himself and had thought this issue was concluded six weeks ago with the developer paying for speed humps and the town would allow them to go in outside the policy; even with both communities not happy would satisfy the concerns of the cut through traffic; there were misunderstandings and communications and now felt let down by the Town with the agreements in place, still wants speed humps, but now would have to follow town policy, with no negotiations having been reached to resolve issues, they will lose the speed humps and have more cut through traffic with the opening of more retail space in the area as its finished. He stated data for the study was taken from a machine that did not work all the time, the sign was designed to slow traffic down and doesn't give an accurate account, and further clocked traffic making left hand turns. If diverted and have to follow the policy for 25% they will not get the speed humps. He appealed to Council to reject the petition and work out the speed hump arrangements as to where they would go.

Les Soden, President, Becketts Crossing HOA, represented the Board of Directors, and the majority of the residents; he gave support to additional traffic calming devises and opposes the petition. Comments followed: commercial growth out paced the infrastructure and the road development within town; lack of planning and development of access roads caused neighborhood roads to carry traffic to the largest shopping center in town. Believes this was not the scenario Planning Board envisioned, one they live with daily. For years cut through traffic has been their concern, having worked with the town and met with developers regarding the area. 1st Carolinas Properties informed staff they were requesting change to the CO with staff recommending they contact neighbors as they knew there would be concerns in this matter. They were able to work with them and agreed to a compromise whereby they would remove their objection to the CO change in exchange for developer to provide traffic relief in the form of speed humps; Council at the public hearing agreed there were issues and agreed to this comprise as an acceptable solution. Staff developed a map for the approved speed humps with them reviewing the plan for a well balanced approach to calm traffic through their communities. Argus Court revealed additional traffic concerns with residents suggesting one additional speed hump be added in Beckett's Crossing at the spaced identified, with Council denying the request because they believed there was no suitable location for the speed hump in the curved area. Residents recommended an additional one be placed at the curve; concerns were misunderstood causing Council to question conviction of the community, and canvassed overwhelming support with 106 of the 120 homes are in favor of the speed humps and having signed a petition; residents were in attendance to show support for the additional traffic calming devices. Request: 1) developer provide 4 speed humps for Beckett's Crossing and the 1 speed hump for Carriage Downs at locations approved by town staff; 2) Town staff acknowledged there was a viable location for the previously denied speed hump for Beckett's Crossing, appealing approval and installed at their own expense to address concerns expressed at the April 18 meeting. He recalled they had agreed to the plan and the only change were concerns were raised and miss understood, and asked Council not let it stand in the way of doing the right thing; sharing consistency in their fight for the traffic calm devices and concern for the safety of their children.

Bob Dumas, 1201 Chapel Ridge Road, didn't address speed humps, however the extension of Beaver Creek Commons Drive, with comments as follows: some had visited his property, and expressed appreciation, while understanding growth explained his situation, with no contact by the developer. He shared with this development have been awakened by heavy equipment before 6 a.m., generators running 24/7, workers urinating on their property behind their buildings with children outside, wall cut to close to their trees and busting through his fence and not having been taken care of to contain their animals, trees cut without consent to come on their property, and workers not letting them know when they were coming on their property. He purchased his home in 2003 and heard about the development and Beaver Creek Commons Drive (paper showing 3 potential routes with 1 through his property) from a neighbor; he had contacted the Town and had not received any clear answer and just through-out the entire procedure. He understood progress and nice to drive down to the Target and not go to Cary; Council has responsibility to take care of the citizens while making their decisions about this shopping center, even if he's in the ETJ. He contacted an attorney and in talking with the developer had not received a clear answer; attorney's understanding was developer would decide where the road would go and NCDOT would decide where the cross would be over the creek. Without consent developer came on his property and stacked it; he contacted his attorney contacted the developer and acted as if he had no prior knowledge of it; not knowing; allowed them to come back and get answers; developers appraiser came on property and stated this was poorly done and could not make heads and tails of this and was going back to the county maps to look at what was being done. He spoke with planners and didn't' get an answer; Town says NCDOT is responsible, and NCDOT says they are responsible for the bridge only. The place he has spent his biggest investment is going down the drain and no one can give him answers. Today, more surveyors were surveying drainage areas and back to do the other areas. Letter from Ricky Harper stated this would take place on the 11th and no one asked if they could come back; they come back as they want too. He asked Ms. Khin about the road and she told him her understanding is NCDOT has the final alignment, with NCDOT saying not them - only responsible for the bridge, that's the Town of Apex, nothing to do with them. Mr. Harper, Agent for Town of Apex met with his wife and attorney and could not answer questions they had, other than he wanted to sever the land and take a quarter acre the town or developer was not going to pay for and put on the other side of Beaver Creek Commons Drive; he thought this unacceptable. Council Member Sutton and Jensen, Yates, Parrish and Rowland and Radford came to their house, with Council Member Sutton saying if he knew it would looked this would not have approved it; if most looked at their back yard, you would not have approved it. They understand progress and know this will be a good thing for the Town and not trying to stop that. He asked this be continued until NCDOT member decision maker and Town Manager and developer or representative for Carolina 1st Properties is there and can find out where the road is supposed to go and why it's going the way its going. He received from Mr. Harper a letter, who couldn't answer his questions – when folks came to his home, they were told there was nothing they could do about the placement of the road, it's all been decided and nothing they could do about it, it was in NCDOT's hands. Letter from Mr. Harper with map showed the amount of area they plan to cover, drainage easements, etc. and told it's non-negotiable. May 10 a second letter said disregard the last letter, this is where the easements would go.

Mayor Weatherly was not sure Mr. Dumas concerns were within the scope of this public hearing; conditions being talked about in this hearing, asked if they encompass what's being talked about as far as concerns of the rout e of Beaver Creek Commons Drive. Khin responded in the previous rezoning there was discussion about Beaver Creek Commons Drive Extension and this hearing was specific to speed humps in Beckett's Crossing and Carriage Downs. Dumas stated he was told to come today and Khin explained Beaver Creek Commons Drive over which went through his land; he asked as they receive countless letters from representatives of the town, they have yet to hear from the developer and was told it was between them and the developer; they would like to talk and figure out what is going on, and thinks this should be continued so they could make an educated decision which affects their lives and the biggest investment he ever made.

Manager Radford addressed Mr. Dumas' concerns: He stated when he first heard of the road over to Kelly was from a neighbor who gave him a flyer. Mr. Dumas responded not a flyer a rumor, hearing it was going through his property. Manager Radford wanted it to be for the record; that he was indeed contacted through his Attorney who is listed as Macey's Trust. Mr. Dumas responded he would be glad to give him a list of those he got and none of those are on there. Manager Radford advised there was record of those being mailed and wanted to make clear to him they did do what they believed they were to in regard to contacting the property owners within 300' regarding this property, and wanted to make sure that was clear. Mr. Dumas stated he'd be glad to give him the name and he could find out what he has. Mr. Radford further advised in regard to Mr. Dumas ability to speak, he had right to address the concerns although it doesn't have anything to do with this conditional use in front of them regarding speed bumps in Beckett's Crossing. He continued his request to meet with the developer – he could make that happen. Mr. Dumas wanted to meet with the developer and the person at NCDOT, town and everybody there so there is a clear understanding of where this is going and what th April 18 Council meeting e impact is going to be asking they make an educated decision as a group. Mr. Radford promised Mr. Dumas that he would put every human that has anything to do with this project in the same room at the same time and get… with Mr. Dumas interjecting, he would like them in his back yard. Mr. Radford continued they would meet as quickly as they possibly can and get him an answer. Mr. Dumas wants to know what's going on and no reflection on Mrs. Khin, who has been very nice to him, and he's never talked with Mr. Radford personally, left messages, but the point is that one finger is pointing to another, and someone else pointing to them, the bottom line is it ends here and why he wanted to come and make this decision; when his wife came before she talked about berms and there's nothing that has been done other than a shopping center put up and at their back yard, will have a heavy flow of traffic and they need to discuss it, and asked if he get in touch with him after the meeting and do that. Mr. Radford responded he would be glad to do this, and continued the site plans that were approved as they are approved were part of the record his attorney was sent that told him when to come and…. with Mr. Dumas interjecting, no sir, that was wrong; he'd be glad to give him that information and would invite all the council if it took two weeks or a month to be there to make an educated decision and would appreciate their coming out to see this and get it taken care of.

Mayor Weatherly felt this was a separate issue from the subject of the hearing. Mr. Dumas responded they looked on the agenda and it talked about Beaver Creek Commons and he understood.

Mayor Weatherly asked if there were others that would like to speak in opposition to the condition that they are talking about removing.

Ann Mullin stated she was in favor or the speed humps, and continued if this is going to be raised where Beaver Creek Commons Drive comes out to Kelly Road…. Mayor Weatherly interjected no that it will not be a part of this public hearing. She understood, asking but at this meeting, there's a bunch of people from Abbington Subdivision that would want to be at the meeting, and were told by Russ Dalton, Transportation Engineer for the Town of Apex, that this was already decided by NCDOT. Dalton responded it has been, but the question was in respect to the alignment and not where it will come out exactly on Kelly Road, but how its goes through his property. The Lady continued but if no body is making that decision… with Dalton interjecting there are a number of groups that are working together to make that decision and the lady stated they wanted to be in on that too.

The public hearing closed at 7:45 p.m. Mayor Weatherly asked if there was a motion to be made.

Council Member Jones made a point in reference to the Beaver Creek Commons Drive, stating the original rezone of April 4 was to allow a partial or phase of Beaver Creek Shopping Center to open without Beaver Creek Commons Drive; that was not involved on April 4, or 18 or tonight's rezoning discussions. Mr. Dumas stated he was told to discuss that and what he did, with Council Member Jones stating that's fine, however wanted to clarify as to why… while they might not consider continuing it for that specific purpose, with Council Member Gossage adding it was still a good thing they came. Mr. Dumas asked why they would not continue it. Council Member Jones responded it's not a part of the discussion tonight. Mayor Weatherly thought it was mean for him to speak in Public Comment. Manager Radford commented his specific questions were about Beaver Creek Commons 3 and 4. Council Member Jones added Beaver Creek Commons Drive has been eliminated from this particular part of the rezoning discussion, it's not been eliminated, still a part of the equation, but is not what is being discussed the last two meetings and tonight, is specific to the speed humps as a part of the condition. Mr. Dumas wanted to confirm before a decision is made and ground broke on this road, we would talk about it, with Council Member Jones responding yes, exactly.

Council Member Gossage clarified on this issue, the speed humps, asked if they could get input from staff and maybe from Chief Lewis on the points that Mr. Clem had made, because it sounded….. with Mayor Weatherly interjecting he was going to ask, since they had empowered the Town Manager to make the decision and recommendation to move ahead, was going to ask him to frame the issue as far as what his recommendation was and the factors he had in it, asking if there was anyone else he needed to call on from staff, asking he proceed.

Manager Radford had framed his language around the speed, volume study, and number of vehicles and speeds of the vehicles that traveled the area. He stated Council had asked him to settle the issue and he asked at that time was his decision on this issue binding with Council responding yes. His belief in doing this was that he could not air by following the town's established policy regarding the installation of speed calming devices anywhere in town. He recalled at the last meeting there is connectivity through Becketts Crossing from Olive Chapel Road over to Beaver Creek Phases I and II and eventually to III and IV. He compared it to existing conditions in Cameron Park where there are less speed humps and no four way stop signs and no three way stop signs and Beckett's Crossing already had more existing speed calming devices than any other neighborhood in town and requesting more. The reason for the Policy decision is solely that so they could compare this case to all other coming future cases.

Mayor Weatherly stated the fact after this was initially done, they realized there was a policy in place having to do with the installation of speed humps that they had side-stepped for expediency on the other issue involved. Council Member Gossage added that was good and glad the policy was in place, but did think Clem had made a couple of valid points that need to be addressed; he would tend to agree with him the red speed limit sign would have the affect of slowing someone down. Council Member Schulze asked if this is truly the way people are clocked. Manager Radford stated when they do a speed volume study they do use the sign. Council Member Gossage asked if they have a way to do that without the sign. Manager Radford responded absolutely; they could park in someone's driveway in an unmarked vehicle and do that from time to time and count cars and physically tract cars; they are not able to stay there constantly over a four day period as they would be using the sign. Council Member Gossage asked if they were able to place the sign where a vehicle might naturally slow down a bit due to a curve or turn. Manager Radford responded he thinks there's a possibility of that, absolutely.

Council Member Sutton asked they go back to the original plan they did approve – four speed humps paid for by DDR and the community requests the fifth be added at their own expense; they did get misled, not intentionally, and misunderstood by the group that came in and gave them diagrams saying those speed humps were in the wrong places – we were told; he recalled the Mayor saying "no good deed goes unpunished", so they said they were trying to help them with the four speed humps and had them all approved then they said, "that's not where we want them"; they asked staff to figure out the placement.

Action: Council Member Sutton made the motion to go back to the four speed humps they had approved and the locations and then allow the community to put the fifth where they want to put it at their expense. Mayor Weatherly stated the motion on the floor would reinstate the condition, asking the Town Attorney if this would modify the condition in any way. Attorney Fordham as he understood it would be a motion to deny the rezone amendment; the status quo would be the requirement is in place as a condition. Mayor Weatherly stated the motion as stated is consistent with the condition that was in place in the previous rezoning. Attorney Fordham asked the motion be restated as to deny the amendment, if that's what Council wants to do because it's not to go back to a previous condition, and keep separate the issue of the fifth speed hump and have a separate motion to that because it's not directly related to the rezoning proposal.

Council Member Sutton didn't mind the motion to deny this, but wanted to be clear that the four speed humps be paid for by DDR and let them proceed, and then he didn't see anything wrong with them paying for the fifth – the homeowners association paying for the fifth.

Mayor Weatherly asked if this should be a separate motion. He asked Council Member Sutton to restate the motion. Council Member Sutton said to deny this. Mayor Weatherly said lets do this and then the floor will be open for an additional motion to clarify. Mayor Weatherly asked if there were a second to Council Member Sutton's motion, with a second to the restated motion by Council Member Jensen. Mayor Weatherly opened the floor for debate.

Council Member Gossage clarified this put the four speed humps where they were originally designed to be, with Council Member Sutton stating it does. Council Member Schulze stated he would vote for this because they agreed to this originally and thinks they should honor the agreement but reluctant to if he did it over again, he doesn't think he would do this because it goes against their own policy and a bad precedent to set. On the fifth hump he will get to that; this one he will go for.

Council Member Jones feels much the same way, that a deal is a deal and they had one; they got confused by the comments made; our policy does require and been in place for a while, 1) there be a need that has been determined by observation and 2) majority of the residents want it and what they saw at the last meeting was confusion in that regard and sounds like that has been clarified so, a deal is a deal and should go back to it.

Council Member Jensen stated our ordinance requires the town to pay a part of the speed humps, noting this was a private deal with a subdivision and all they have to do basically is agree to it because it is a town street. Council Member Schulze stated he had an issue with that and would bring that up. Council Member Jensen stated the second one is they did do a study and evaluated today's traffic and possibly made an arrow where they set the device; he stated that's like checking out a country road to see what the speed situation is and the number of people going down there before you put in the big development next door; what we are trying to do is resolve a problem that they feel is coming in the future but trying to base it on a traffic study of today; you can't do that. Council Member Gossage added that's his next question: some of this development isn't up yet and maybe traffic patterns will establish themselves and then folks will say they had rather have the speed humps in different places, asking is there any desire to wait to see – he noted no folks interested in waiting to see.

Mayor Weatherly called for a vote on the motion not to agree to the rezoning that would remove the conditions. Vote on the motion was unanimous. Mayor Weatherly noted the amendments to the rezoning was not agreed too, and opened the floor for the next motion.

Action: Motion by Council Member Sutton and second by Council Member Gossage that the four speed humps at the location previously agreed too and paid for by DDR be put in and the homeowner's association be allowed to put in the fifth one at their own location. Manager Radford didn't understand "their own location" with Council Member Sutton responding that he didn't know where it is, he presumed it's in the subdivision. Manager Radford added he felt they should get some buy in from staff.

Council Member Schulze clarified as it stands now, the fifth speed hump is not warranted, with Manager Radford responding nor were the first four at this point. Council Member Schulze responded he thought they had agreed to that; the real issue he has with the fifth speed hump is that what they are doing is delegating their responsibility to the speed humps because somebody else was willing to pay for it doesn't mean neighborhoods can start putting speed humps up wherever they want. He thinks the whole planning is interconnectivity and if they start putting speed humps up, it hinders that interconnectivity and they are fighting their own cause; he doesn't think they should relinquish that responsibility to the homeowners; he thinks they have a policy and should follow that policy. He's opposed to the fifth speed hump.

Council Member Jones stated he was not opposed to the fifth speed hump, he's concerned about where it goes and thinks they need to be very clear about it and as mentioned staff needs to be involved in that location. He recalled when they had the presentation at the last meeting, there was specific location noted, but not sure they are clear enough on where it is and there was discussion about it being in a curve and whether or not it would cause any issues because of that. He wanted clarification on that before he votes yes or no on the fifth speed calming device.

Council Member Jensen asked if they could make it subject to staff agreement as to where it goes. He thinks at first there was feeling by staff that it was a bad spot but then they reevaluated a slop and curve and said in a certain area the speed hump could go in and would meet our criteria. Council Member Gossage added it was pretty much on the other side of the curve where one had already been approved. Council Member Jensen stated they were out of the curve on the far side. Manager Radford stated they would find a place that's acceptable in the neighborhood. Council Member Jones responded if that's the case then he agrees with what Council Member Jensen and others have said; we are trying to prevent something here rather than cure it and maybe establish some traffic patters rather than deal with them later. He added if he were comfortable could come up with a location.

Mayor Weatherly called for a vote on the motion to allow for a fifth speed hump to be financed by the homeowner's association, but the location be negotiated between staff and president of the homeowners association. Vote on the motion was 4 to 1 with Council Member Schulze voting no. The motion passed.

End of Public Hearing # 01

Presenter: June Cowles, Planner

Public Hearing # 02 – Rezoning Case # 06CU08

(Planning Board unanimously recommended denial having reviewed this item at their May 8, 2006 meeting).

Public hearing and possible motion regarding rezoning amendment, Case #06CU08, Peachtree TND, Cornerstone Homes LLC., petitioner, seeking to rezone from Traditional Neighborhood District Conditional Use to Traditional Neighborhood District Conditional Use District, 41.7 acres located south of US64 and north of Haddon Hall Subdivision.

June Cowles, Planner, stated the applicant for the Peachtree rezone amendment requests this item be continued to the June 20, 2006 Council meeting. Applicant asked to address the Council. Manager Radford stated we are not having the public hearing, it's been withdrawn.

Curtis Coleman works for Cornerstone Homes, the developer of a piece of the Peachtree Landing, asked continuance to June 20, 2006 based on two issues to have more discussion with staff to form a compromise dealing with public vs. private roads and vs. a stub and not having a stub. He wanted to bring to Council that within the existing UDO there is no real classification for active adult classification of homes; within in the packet it's listed as apartments and condos and they want to figure out what type use they can fit "active adult"; a type community they plan to build.

Mayor Weatherly called for a motion to continue the hearing to June 20, 2006.
Action: Motion by Council member Gossage and second by Council Member Schulze to continue the hearing to June 20, 2006. Motion carried unanimously.

End of Public Hearing # 02

Presenter: David Rowland, Director of Planning

Public Hearing # 03 – Special Use Permit #06SUP02

(Planning Board unanimously voted to deny the special use permit having reviewed this item at their May 8, 2006 meeting).

Public hearing and possible motion regarding Special Use Permit #06SUP02, Bruce Radford, Town Manager, applicant, proposing beach bingo be permitted at the 53 Hunter Street location, (Town of Apex Community Center).

The Town Clerk administered oaths to those speaking during this hearing.
David Rowland, Director of Planning, stated the Planning Board did not recommend approval of the special use permit for the reasons listed on the cover sheet which is attached and incorporated as a part of the minutes. Staff recommends approval with the conditions that 1) the hours of operation are the first and third Wednesdays of each month from 1:30 p.m. to 3:00 p.m. and 2) no prizes are to exceed $10.00 or have a redeemable value of more than $10.00 and no more than 50 participants.

Mayor Weatherly opened the public hearing asking those in favor of the special use permit to come forward.

Ann Mullin had Rowland restate the conditions; she supports this issue, noting good programs for seniors will all not being able to participate; they don't have the physical strength or dexterity. She stated seniors pay for Yoga and Tychy and other programs, others are willing to pay to participate in bingo and find it to be a mentally challenging activity that enriches their social lives and thinks just as seniors contribute to the quality of life in Apex, and the Town can contribute to the quality of the senior's lives. She stated they were all entitled to their own opinion, but not to their own set of facts. She stated the Town Attorney had advised beach bingo is not gambling and asked Council approve this special use permit so the seniors can participate in this activity.

A man from the audience thanked the council for those that have a vote of confidence in the seniors and noted this more a social activity then gambling. He thanked them for voting their conscious and keeping politics out of the equation whenever possible. He respects all religious beliefs and knows some people feel by their religious upbringing that this is demeaning or demoralizing or gambling, etc., he can respect that but that many people in this town also believe this is a wholesome activity and is not damaging to the Town. He finds it humorous they have in previous meetings brought up comments about Al Capone coming to town, and at Peak Week he didn't see anyone coming and honestly doesn't see where that would be a detriment to the Town. The question tonight is, does this do any harm to the Town and he asked they ask themselves when they decide to vote on the issue and from all seniors that will participate, they don't know how big this will be or how small, but may relieve all the fears in their minds may be totally irrelevant and doesn't see a negative affect in Cary, Holly Springs or other neighboring towns. He thanked them and urged them to vote on behalf of the seniors.

Helen Roberts thanked Council and hopes they will approve it and make a few seniors happy.

Council Member Schulze asked questions regarding the time restrictions, asking if it were better to remove it and make it flexible so if staff needed to change the time would have this flexibility with different schedules, thinking it might be too restrictive. Rowland responded this was suggested by the Parks and Recreation folks. Council Member Jones stated the special use permit criteria requires specific time, with Rowland adding and conditions, etc. Council Member Jones stated at the Parks and Recreation Advisory Commission meeting, this was discussed and was to coordinate with other activities in the community center and other senior activities that this time fits the schedule; with a special use permit have to have time. Council Member Jensen agreed with Council Member Schulze that moving it around… one and one-half hours would be a specific amount time and what they are concerned about he thinks more than exactly when the time takes place. Maybe, John Brown, Director of Planning could weigh in on this.

The Town Clerk administered an oath to Brown. He explained the reason for the specified timing was, 1) it would not interfere with other activities at the community center for seniors so they could do things in the morning and stay there, the ones that wanted to and go into the next activity, so they didn't have to go home and come back, and 2) it's being offered in other communities around Town and they tried to pick a time and days that wouldn't conflict with Cary and Holly Springs so if people wanted to go to the others could do both. The hour and one half time limit was mainly because that is how some places have it set up for that amount of time and they tried to pattern after others are doing and what has been successful.

Council Member Schulze wasn't questioning the time itself, but the wisdom of having a time. He asked what if it were changed to anywhere between 8:00 a.m. and 5:00 p.m. and if he said this is the schedule 1:30 to 3:00 was fine with him, but he's trying to offer maximum flexibility so in the future if they want to change to another time, they don't have to come back and change the conditions. Brown responded it was up to them, this was the plan presented to the Parks and Recreation Advisory Commission when they talked about the number of people, time, way it would be structured similar to other places and time based on other things he mentioned, this is the specific time planned to offer, based on other things they have planned and on the other reasons explained; if they wanted to take this off, it is still going to be at that time and the plan for right now. Council Member Schulze asked the attorney if the applicant can change the condition, since they are the applicant. Attorney Fordham stated it would be better for the applicant to agree to the condition change and could then vote… with Council Member Schulze interjecting Bruce was the applicant, but he gets the authority through them. Attorney Fordham stated that's right, but they had already delegated that authority to him. Council Member Jensen suggested they go ahead and put this through and if there's a problem, come back and change it, it's been hashed over quite a bit and he agrees about the change, but lets get it done.

Mayor Weatherly closed the hearing at 8:10 p.m. and called for a motion.

Action: Motion by Council Member Schulze to approve the special use permit as submitted, with a second by Council Member Sutton.

Council Member Gossage wanted to thank the Planning Board for their hard work and thinks they six points laid out were in unanimous agreement and thinks they did an outstanding job. He doesn't think this should be characterized as it was tonight, necessarily as a matter of should the activity occur; for him, it's should it occur on public property; should the government building be used for the activity and should our government itself support the activity and run the activity. It's not a matter of should the activity occur, it's where – the location and wanted this to be understood.

Council Member Jones added as liaison to the Parks and Recreation and Cultural Resources Advisory Commission, he reported they had reviewed this and all the criteria of how it's going to be done and have approved the procedure concerned obviously about how it impacts other activities in the community center, but have approved the specifics that were brought forward. Speaking for himself, personally, he echo's Council Member Gossage said, he's not opposed to beach bingo being played in appropriately zoned locations, he is opposed as he said at the last meeting, to the Town actually sponsoring and running the activity and hope they would given an opportunity for others to step forward who might do that within the zoning – that may or may not be in our community center – may be in some other location within the zoning that allows it; he would hope that they would have given that opportunity before coming forward with our own application.

Mayor Weatherly joined in on that sentiment as well, he remarked about the unanimous recommendation of the Planning Board and he couldn't remember the last time there was a unanimous recommendation from the Planning Board on anything that was remotely controversial. He noted the consistency in their recommendation needs to be emphasized as well; he noted nothing inherently evil with the playing of bingo, it's played at children's birthday parties but the Town participation in offering prizes of value for the participation is the issue and whether it's appropriate activity for the town to be engaged in, he thinks not, and wanted to state this for the record.

Council member Schulze stated beach bingo is legal like any other activity that goes on in the community center and he understands people have different views, as the gentleman had mentioned religious views and he respects other peoples values, and differences in moral or whatever you want to call it, but he thinks it's a totally legal activity and as such should be offered as a service to seniors in Apex like any other social activity. He would say that if a private enterprise comes to town and wants to start a beach bingo, in downtown Apex, he would be more than willing to pull this program back and allow the private enterprise to do it like any other private enterprise; he doesn't think the town should be competing with private enterprise for the same thing. He thinks seniors will benefit from this and will be a good thing.

Vote on the motion was 3 in favor and 2 opposed with Council Member Jones and Council Member Gossage voting no. Motion passed.

End of public hearings

OLD BUSINESS

Presenter: ClearScapes, Steve Schuster
Old Business Item # 1 – Appearance Commission
Steve Schuster, ClearScapes, Raleigh, presented for discussion the Appearance Commission's request for funds for a bus shelter project, identifying needs, appearance opportunities and having surveyed the market, with the design drawn from Apex's agrarian tradition, as well as its railroad history and legacy. The character, charm and simplicity of rail and farm structures inspire the shelter's appearance. Each location is individualized with image and color; together they create a unique bus stop shelter, with recommended locations: Town Hall/Hunter Street, NC55/Galaxy Foods, and Shepherd's Vineyard. Units could be reassembled, with permanent bench setting, easy replaceable components, and film clean resistance coating. Sere Lewis, from the Appearance Commission gave the Commission's support to the concepts created by Clearscapes and believes the shelters will help send a positive message to citizens about using transit in Apex, with the Clearscapes design preserving small town character. Illustrations of the design prototype and alternative plus cost estimates were discussed; several design options were presented.

The Appearance Commission asked the Council to allocate funds for the bus shelter project. Cost estimate for the Prototype shelter was $29,820, with a site-specific variation of $5,000. Selected Prefabricated shelter cost estimate is $21,355.00, with site-specific variation of $5,000. Manager Radford presented from Columbia Equipment plan and elevation views of a prefabricated shelter with estimated cost lower costs of under $18,000, with installment and site-specific variation as well.

Mayor Weatherly questioned the urgency to spend the money and asked the Manager to explain the process of how budgeted funds are allocated, with Manager Radford explaining the funds are available to be expensed at any given time, with the funds being re-appropriated at the end of the fiscal year if not spent.

While discussing the costs involved with the shelter project, Council Member Schulze expressed concern with the costs, feeling a prefab structure could be customized and be unique to the Town at a lower cost and also looking at portability. Council Member Gossage agreed this could maybe be done at 50% of the costs, and while customizing the shelters, he would support the idea and maybe should direct the commission to go back and review this further; it would be nice to have shelters. Lewis noted the costs were mid-range and costs at $60,000 and using outside contractors. Council Member Sutton concurs with the recommendation of the Commission, noting the shelters would last a long time and to erect anything permanently should do it right, noting objective was not to lower the standards. Council Member Jones agreed, however, had a problem with the costs for the concrete pad, 3 sides, and glass not more than 300 square feet, and no landscape. An example of the Triangle Transit shelter was given that is located on Beaver Creek Commons Drive at a cost of over $10,000.

Mayor Weatherly expressed he was hearing three reservations on price, however supporting the idea, asking if the Council would like to consider working with a maximum amount not to exceed $50,000. Schuster noted the cost estimate was based on one shelter, with three would be less costly.

Action: Motion was made by Council Member Schulze and second by Council Member Jensen to approve the concept at a not to exceed amount of $50,000 with the Appearance Commission coming back to Council with a proposal for approval. Vote on the motion was 4 to 1 with Council Member Sutton voting no. Motion carried.

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.

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

Herman Jaffee advised a public meeting of the US Regulatory Commission would be held on Tuesday, May 23, 7:00 p.m. in the New Horizons building regarding the Harris Plants intent to add nuclear reactors. He noted risks should this action be taken.

End of Public Forum

NEW BUSINESS

Presenter: Sere Lewis
New Business Item - # 1 – Appearance Commission
Sere Lewis stated the Appearance Commission requests Council vote to approve an allocation rental of $2,500 of Appearance Commission money to go towards a piece of public art. A local artist, Daniel Mathewson, designed a rustic train, with the commission having chosen the art to start conversation and engage community interest. The artwork was placed on display in the town hall parking lot. Council Member Schulze did not see the artwork attractive, and didn't think it was a good expense of tax payer's money. Council Member Jensen saw the artwork as creative however, hesitated to charge ahead for public opinion, but felt children would be fascinated by it. Council Member Sutton thought kids would love it. Council Member Jones shared concerns with liability, where kids may fall, with Attorney Fordham advising from a risk standpoint, it should not be touched. Mayor Weatherly stated he had trouble with this, and discussion followed on how they would engage public interest.

Manager Radford commented on the campus activity and the young folks that visit the campus and the number of kids he sees daily and the abuse of the landscape and rocks being thrown, with no discouragement from the parents, and fearful about the safety of the kids, with this being placed on campus, even if barricaded would be an attractive nuisance, and he has concern with people that are not already careful.

Action: Motion by Council Member Schulze and second by Council Member Gossage to deny the request of the Appearance Commission based on the fact that he didn't like the artwork, and didn't want to spend the taxpayer's money on it. Council Member Jensen thinks it's a curious item, however understands the injury aspect, but would like public input. Council Member Sutton agrees. Vote on the motion was 3 to deny and 2 to approve with Council Member Sutton and Council Member Jensen voting to approve the request. The motion passed to deny the request of the Appearance Commission.

End of New Business # 1

Presenter: Town Manager Bruce Radford

New Business Item - # 2 – Disposal/Sale of Real Property

Manager Radford asked consideration of disposal/sale of Real property in connection with Old Mill Village Subdivision, and beginning the upset bid process. Mayor Weatherly recalled a former offer that was discussed, and seeing no reason to keep the property, discussed further amount of usable property once buffered and the property value. Appraiser Karen Yates was in agreement with Mr. Mike Howington, the property value is less as residential vs. commercial and currently zoned commercial. Allan Manase, Agent, noted less than one acre of usable area, with intent to develop it residential, noting access issue, and if turned down would be left as a commercial piece.

Council Member Gossage asked the Manager if there were a pressing need to sell the property, with the Manager responding there was not. Council Member Jensen regrets the sale of the Lake Pine property, and the upset bid process, where he felt eventually, the right buyer would come along, and didn't think you get the best price through this process and would say no. Manager Radford responded the US64 property was not a closed deal and had contingencies regarding access, zone and site plan. Attorney Fordham advised he wasn't sure it was proper to negotiate for potential purpose of the property, but to make points on the property.

Action: Motion by Council Member Jensen and second by Council Member Gossage to deny the request for disposal/sale of the property. Motion carried unanimously to deny.

End of New Business Item # 2

Presenter: Town Manager Bruce Radford/John Brown, PR&CR Director

New Business Item - # 3– Exchange of Real Property

Manager Radford asked Council to consider adopting a Resolution authorizing the exchange of real property between the Town of Apex and JVI Construction. JVI desires to swap land at the WHOPS Park along the Bullock tract. Manager Radford added the green space is adjacent to the Seagroves Farm and this exchange would maximize the property encompassing land for a larger park. Piece of the property contains a pump station that would be used until abandoned by Joe Iannone when he owns the property. Manager Radford asked Council to move forward with the proposal and further authorize the Town Attorney to close. John Brown Director of Parks and Recreation noted the WHOPS Park was hardly ever used, and this was a good opportunity to add on for a better park; the existing park shelter would be demolished.

Council Member Gossage asked clarity regarding the contract language about leaving the property in its natural state. Tim Donnelly Director of Public Works noted parts of the pump station could be removed, however leaving the concrete pad, with the Town Attorney advising the pump station site would be returned to a natural state. Engineer Shan Dolle was present to answer questions and commented on the abandonment of the pump station and the extension of the sewer line and tying into the Seagroves line, however not knowing what phase, but within three years. Council Member Jones commented on the cost to remove the concrete and steal from the pump station site to place things back to the natural state. Dolle stated removal of any materials once abandoned was not a deal breaker for them.

Council Member Jensen shared concern there was no appraisal of the property thinking the WHOPS Park property would be more valuable than the Bullock property, seeing equal value for equal value, but not square foot for square foot. Manager Radford believes he has an appraisal of the Bullock property - $60,000 an acre, however reminded him, the park was underutilized and often vandalized, and this would make for a better park. Council Member Gossage could see value to both noting one couldn't pin a dollar amount on the property, asking the current owner of the Bullock property, with Dolle responding JVI currently has it under contract, and believes has closed on the property, and owning all but two existing tracts. Council Member Jones noted an appraisal may be difficult since both were residential properties and taking into consideration the current state. Brown noted the tax values were with Wake County, with the WHOPS Park and pump station being exempt in tax value. He added the other Bullock tract tax value was $17,000 an acre.

Mayor Weatherly commented the market value was different regarding properties not exempt. He was not seeing the comfort level where it needed to be, not saying this wasn't good for them, but felt they would be more comfortable with comparable values. Council Member Jensen saw the trade being more valuable. Council Member Jones thinks this is something we want, and didn't see the necessity of the expense and time in acquiring an appraisal.

Action: Motion by Council Member Gossage and second by Council Member Sutton to adopt the Resolution and authorize the exchange in property, and noting clarification in the contract language regarding the natural state of the site. Vote on the motion was 3 to 2 with Council Member Schulze and Council Member Jensen voting no. Motion carried.

End of New Business Item # 3

New Business Item - #4 – Parks & Recreation Advisory Commission Appointment

Mayor Weatherly request Council's consideration of the appointment of Mr. Scott Lassiter to the Parks & Recreation Advisory Commission, noting perspective of a young person on the commission, and based on acceptance at NC State. Council Member Jones concurred with the Mayor's recommendation, noting it not unprecedented to have a young person on the commission.

Action: Motion by Council Member Jones and second by Council Member Schulze to approve the appointment of Mr. Lassiter for a three year term that will expire May 2009. Motion carried unanimously.

(Consent Agenda Items 7 and 8 are being considered under new business).

11. **2006-07 / 2007-08 Non-Parks Grounds Maintenance Contract Jones Landscaping and Maintenance.**
12. **2006-07 / 2007-08 Parks and Recreational Facilities Grounds Maintenance Contract Jones Landscaping and Maintenance.**

Council Member Schulze asked the total of both contracts which was $340,000 with both bids being recommended for award to Jones Landscaping and Maintenance; concerned that they owe it to the taxpayers to bid out the contracts. John Brown, Director of Parks, Recreation and Cultural Resources advised it was not necessary to bid out these contracts; Jones has been under contract for the past 2 years and offers another 2 years at the same price; Jones has done an exceptional job on the parks side, and has an outstanding record and recommends award of bid to Jones Landscaping and Maintenance and as well on the non-parks side. Council Member Schulze confirmed with the Town's Attorney that Brown was correct. Town Attorney Fordham advised service contracts do not have to be bid. Jones was available for questions, and confirmed in conversation regarding pesticides, that he doesn't use round-up near streams, and open bodies of water.

Action: Motion by Council Member Schulze and second by Council Member Sutton to approve the award of contracts for both parks and non-parks to Jones Landscaping and Maintenance. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

Work Session item: Review of proposed Annual Budget for FY 2006-07.

Manager Bruce Radford presented the proposed FY2006-07 annual budget message. The ad valorem tax rate is recommended to remain at $0.40 per $100 valuation. Estimated total tax base is $2,711,461.568. 11 positions are recommended for staffing. A 3% cost of living adjustment is proposed for eligible employees. The proposed budget is available in the Town Clerk's Office with the Public Hearing set for June 6, 2006. There was a brief conversation regarding the tax evaluation.

CLOSED SESSION

Possible motion to move into closed session to discuss possible litigation and to receive legal advice from the Town Attorney. **Action:** Motion by Council Member Gossage and second by Council Member Jones to move into closed session. Motion carried. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Gossage and second by Council Member Schulze to move back into regular session at 11:02 p.m. Motion carried.

ADJOURNMENT

Action: Motion by Council Member Schulze and second by Council Member Sutton to adjourn at 11:03 p.m. Motion carried.

The above minutes were approved on the 6th day of June, 2006.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of the Tuesday, June 6, 2006 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with Council Members Jensen, Gossage, Jones, Schulze and Sutton present. Mayor Weatherly gave the invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

Mayor Weatherly presented a Resolution of Appreciation recognizing James F. "Jimmy" Perry for his contributions to the Apex Community and presentation of a plaque by Council Member Jones recognizing his 12 years of service as a member of the Parks, Recreation, and Cultural Resources Advisory Commission 1994 – 2006.

Mayor Weatherly presented a Proclamation Honoring the Service of Dr. Tom Dixon Upon his Retirement from Apex High School. Dr. Dixon served 14 years and was the longest serving Principal in the history of Apex High School.

End of Presentations

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was set prior to taking action on the following items. ***Action:*** Motion by Council Member Schulze and second by Council Member Jensen to approve the consent agenda. Motion carried unanimously.

1. Minutes of May 16, 2006 Council Meeting.
2. Minutes of May 16, 2006 Closed Session of the Council (separate cover).
3. Budget Ordinance Amendment and Capital Project Ordinance Amendment (Williams Creek sewer improvements).
4. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU05, Home Places, Toad Hollow Trail at Kelly Road (R-40W Wake County Zone to Medium Density Residential Conditional Use District)
5. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU06 DDR/1st. Carolina Apex, PH III, south sides of US64 at Beaver Creek Commons Drive and Green Level Church Road (PUD-CU to PUD-CU).
6. Findings of Fact & Conclusions of Law regarding Special Use Permit #06SUP01, Hope Chapel, 6175 Old Jenks Road (Hope Montessori School).
7. Findings of Fact & Conclusions of Law regarding Special Use Permit #06SUP02, Town of Apex, 53 Hunter Street (allow beach bingo in Community Center).
8. Placement of Parade of Homes directional signs in accordance with and allowed by UDO Section 8.7.1.A(22) (Parade of Homes signage event dates: 09/30/06 – 10/1/05; 10/06/06 – 10/08/06; 10/13/06 – 10/15/06).
9. Resolution regarding a N.C. Highway Safety Program, Grant Form GHSP-06-A Highway Safety Equipment Project Contract in the amount of $7,900 with no cost to the Town.
10. Resolution accepting and endorsing the Solid Waste Management Plan Update of 2006 for Wake County (State requires update every 3 years; town is not required to add additional intended actions; document located in the Public Works Department Environmental Programs Manager's Office).

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: Bruce Radford, Town Manager

Public Hearing # 01 – FY 2006-2007 Annual Budget

Public Hearing regarding the proposed FY2006-2007 Annual Budget was opened at 7:12 p.m. with two requests being made for sidewalks: Susie Friddle, 309 S. Hughes Street and Christine Clark, 102 New Timber Path. Manager Radford reported money was in the budget package for sidewalks, with additional $200,000 for sidewalks along S. Hughes, E. Moore, Samara Court, Rainesview, Kelly Road, and Olive Chapel Road. The hearing closed at 7:20 p.m. The budget ordinance will be presented at the June 20, 2006 meeting for adoption along with the schedule of fees.

End of public hearing

OLD BUSINESS

Presenter: Brent Kirchhoff, Branch Manager Waste Industries

Old Business # 01 – Solid Waste Services

Brent Kirchhoff, Branch Manager Waste Industries asked Council to continue the fuel adjustment charge for solid waste services as presented in January. Council approved 7 cents for recycling and 10 cents for residential garbage and $1.28 for commercial dumpsters of all sizes. The approval by Council in January included a six month sunset. After a review of the status of fuel prices and its continuing impact on operations, Council Member Schulze didn't approve of an amendment to contracts once accepted. Council Member Jensen was in favor of continuing the fuel adjustment since prices were raised on power due to the fuel costs felt working with the contractor in turn would result in him working with the Town. Mayor Weatherly expressed that fuel costs were unanticipated.

Action: Motion by Council Member Jones and second by Council Member Gossage to continue the fuel adjustment charge at the same rates for the next six months. Vote on the motion was four in favor and one opposed. Council Member Schulze was opposed. Motion carried.

End of Old Business # 1

Presenter: John Brown, Director of Parks, Recreation and Cultural Resources

Old Business # 02 –Performing and Cultural Arts Center

John Brown, Director of Parks and Recreation and Cultural Resources introduced Steve Schuster of Clearscapes to give an update regarding the plans for the planned Performing and Cultural Arts Center. Rick Halton of Clearscapes showed slides of the Salem Street Town Hall building, with plans to restore the historic building to its original character and further with a new addition to the side and back of the building. Slides included a sketch of the ground floor and second floor with auditorium and raised ceiling.

There were concerns expressed regarding the modern design for the additions, showing a glass staircase to the side of the historic building and a modern boxy design for the back addition that had no windows. Council Member Schulze did not recall seeing the design drawings. Schuster responded the drawings had been shown to this group as well as Parks and Recreation Commission and further it is common practice when restoring a historic building to its original character traditional for additions to be a newer design, quiet and contemporary, and also was consistent with historic guidelines. The Wake County Historic Preservation Commission had given approval of the design, along with state/federal government approving the concept. Council Member Gossage agreed and the back addition lacked windows and he preferred windows for consistency and design. Schuster explained the back addition would house mechanical equipment, bathrooms with the upstairs housing a dressing area and back stage and didn't need windows for privacy reasons, again being consistent with historic guidelines. Council Member Jensen expressed concern not so much with the addition to the back of the building but with the modern window stair at the front compared to the rest of the town building fronts, preferring a blend and a tone-down from the modern look.

Schuster expressed the grand stair would be constructed with a clear transparent glass and chandelier, with the design not having changed from the feasibility study. He stated bid documents are ready and he had thought they had agreed with the design and now council members are saying they have not seen the drawings. Council Member Sutton asked if the color had been chosen for the building, with Schuster responding it would be a neutral color scheme and with respect for the historic buildings. Council Member Jones stated the intent was to preserve the historic structure but with the addition to be functional and not take away from the historic structure, and even if they tried, could not replicate the 1912 architecture; he did have a bit of heartburn on the stair glass from what one would see from Center Street, and as far as the side elevations, he sees no need for windows. Schuster responded the stair view would be important and reason for the rear high window was for the privacy in the dressing area and to allow light. Council Member Jensen felt it a stark contrast and maybe if there could be an arc would blend it a bit. Council Member Gossage stated the side view sticks out as a big wall and more of a modern architecture.

Manager Radford asked the time delay if Schuster were to begin a redesign. Schuster responded 60 to 90 days, with the challenge being to satisfy the state preservation office, and had been consistent with what they said had to be done, and further stated the funds may be in jeopardy; this would also involve not only design work but the construction drawings. Council Member Schulze expressed he still wanted to see more traditional design and not so modern of a design because of such a stark contrast. Schuster expressed with horizontal windows to the service addition, having any windows would be in the way, with that traditional windows would not be appropriate, lots of things that don't lend to windows, with the box addition for service pieces. He had attempted a three dimensional view for the back addition due to the traffic and public parking, with the grand stair at the street allowing folks to see the movement of the people and not competing with the historic building.

Mayor Weatherly asked if there were options, noting the glass at height being dramatic, however design maintains the historic building with the newness being a rebirth of the building. Schuster responded he could provide options with sketches, with several options being previously shown in the workshops, however, felt this design sketch had the greatest community support.

David Rowland, Director of Planning, expressed Schuster had done a wonderful job, and felt strongly design should not replicate the historic section, however, the design addition should be secondary and modern 21st century building, not wanting everything to look as it did in the past. He felt the design was functional and on target.

Council Member Jones asked if Schuster could offer photos of other historic buildings with additions in the final results, with Schuster responding he could, however, again expressed the additions should be secondary and a more quiet approach and felt once built would be embraced by the community. He continued that he obviously, by their comments, he had not communicated well with them. Mayor Weatherly responded it wasn't an issue of trusting his instincts, he had come highly recommended and he trusts his judgment. Council Member Jones expressed to be fair, they should give him an idea of what they had in mind, and further asked if the Historic Preservation Group could be here to address this as well, perhaps at the next meeting. Council Member Sutton preferred this addition not stand alone, but ties into other buildings. Council Member Jensen felt this stair design jumps out at you, and wanted a better blend as well and also wanted to see sketches. Council Member Schulze suggested an arc with brick and also wanted to see the rendering of the interior stair and lighting.

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.

Dave Gorley addressed the Merion Subdivision, Wake County, and the ETJ of the area, questioning need of review of the Apex Transportation Plan to move the collector street, referencing Colby Chase, and asking if Town had intent to annex the Merion Subdivision. Mayor Weatherly's response was Apex does not force annexation, and as the philosophy of the council changes, so could this. Manager Radford's response was the transportation map had not been amended. Gorley asked what he should do to initiate action to change the plan. Mayor Weatherly's response was to put the request in writing and to why it's in the compelling public interest to do so, and would give it consideration, however, made no promises but would look at it.

End of Public Forum

NEW BUSINESS

Presenter: Bruce Radford, Town Manager

New Business Item - # 1 – Western Wake Regional Wastewater Management Facility

Possible motion to approve Amendment No. 1 to the "Agreement for Design, Construction, Ownership, Management and Operation of Western Wake Regional Wastewater Management Facility."

Manager Radford reported the Western Wake Partnership had obtained $5 million loan from NCDENR; prepared within this document is condition with how this money may be spent, with one condition being the loan money be spent prior to January 1, 2007, and evident the money cannot all be spent on just facility and preliminary work prior to the cut off date. It is recommended the scope of the loan be extended to relate to all work such as EIS and NPEDES permitting, Beaver Creek Pumps Station and Force Main, Effluent Pump Station and Force Main, and Reedy Branch Gravity Sewer with all partners participating in the costs of the related items. The loan rate is available at 2.205% and all partners would benefit from the low interest rate as each pays their share when payments are due; with debt being tremendous at a higher rate. Western Wake Partners Advisory Committee unanimously recommends approval; staff recommends approval of Amendment No. 1 to this document.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve Amendment No. 1 to the Agreement for Design, Construction, Ownership, Management and Operation of Western Wake Regional Wastewater Management Facility." Motion carried unanimously.

End of New Business # 1

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into closed session to discuss: 1) possible litigation, 2) receive legal advice regarding a planning matter, and 3) to receive an update regarding the Regional Wastewater Facility.

Action: Motion by Council Member Schulze and second by Council Member Jones to move into Closed Session at 8:25 p.m. for discussion of the items as stated. Motion carried. Closed Session minutes are recorded separately.

Action: Motion by Council Member Jones and second by Council Member Gossage to move back into Regular Session. Motion carried.

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

Action: Motion by Council Member Schulze and second by Council Member Jones to adopt a Resolution by the Town Council of the Town of Apex Requesting Extension of the Town's Extraterritorial Jurisdiction. Motion carried.

Action: Motion by Council Member Jensen and second by Council Member Schulze to finalize the settlement of the Franchise Fees with Time Warner Cable accepting the check in the amount of $60,000. Motion carried.

End of Regular Session

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Jones to adjourn at 9:25 p.m. Motion carried unanimously.

The above minutes were approved on the 20th day of June 2006.

Georgia A. Evangelist, MMC
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, June 20, 2006
Meeting was held at 7:00 p.m. in the Council Chambers on the
2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting, with all Council Members present.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

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

PRESENTATION

Randy Clayton, Chairman of the Board of Directors, Apex Chamber of Commerce presented the Apex Chamber of Commerce Economic Development Report (attached).

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was set prior to taking action on the following items.
Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda. Motion carried.

1. Minutes of June 6, 2006 Council Meeting.
2. Minutes of June 6, 2006 Closed Session of the Council (separate cover).
3. Budget Ordinance Amendments and Capital Project Ordinance Amendments.
4. Resolution authorizing Wake County Revenue Director to collect taxes on behalf of the Town of Apex.
5. Award construction contract for the Seaboard Street Water and Sewer Improvements to lowest bidder, Canco Construction NC., Inc. for a total bid of $179,676.83.
6. Wake County Tax Report.
7. Cancellation of the July 4, 2006 Council Meeting ***(4th. of July Holiday).***
8. Minor site plan for Panda Express, Panda Express Group Restaurant, Inc. for an out parcel Beaver Creek Commons Drive & NC55, Beaver Creek Commons ***(Recommended by Planning Board June 12, 2006).***
9. Town renewable energy initiatives (Interconnection Regulations and Solar Policy).

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items as amended: 1) Appointments to the Parks, Recreation and Cultural Resources Advisory Commission and 2) Closed Session for purchase of real property.
Action: Motion by Council Member Jensen and second by Council Member Jones to set the agenda as amended. Motion carried.

PUBLIC HEARINGS

Presenter: June Cowles, Planner
Public Hearing # 01 – Rezoning Case # 06CU07
Planning Board unanimously recommended approval at their June 12, 2006 meeting for the land use amendment from Medium Density to High Density, rezone from Residential Agricultural and Conservation Buffer to Planned Unit Development Conditional Use District, and the subdivision and site plan with an additional condition that lot 31 recreational amenities be provided in Phase I.
Public Hearing and possible motion regarding land use amendment, rezoning, subdivision and site plan for 12.14 acres from Medium Density Land Use to High Density Land Use, and Residential Agricultural and Conservation Buffer to Planned Unit Development Conditional Use - Case #06CU07, located north of Center Street and south of Surrey Meadows Subdivision.

Town Clerk administered an oath to those speaking during this hearing, thus giving sworn testimony.

June Cowles, Planner, presented the staff report for Groves II Land Use Amendment, Planned Unit Development Rezone, Subdivision and Site Plan for Case # 06CU07; attached and incorporated into the minutes for the official record of this public hearing. Site is similar to The Groves and includes WHOPS Park, single family homes, and undeveloped land. An intermittent stream is located at the center of the site and includes a 50 foot buffer. Project includes townhomes, single family lots and private recreation site, RCA, and development standards and complies with UDO standards. Applicant requests change from medium density land use to high density land use with the condition: no more than 7 units per acre. Most of existing Forest Grove Drive will be removed; a new road will be located in center of site, with portion of Forest Grove Drive remaining to serve 1308 and 1316 Forest Grove Drive residents. Applicant request reduction in RCA from 20% to 18.3% and allowed under the UDO thus reducing by no more than 2%. Applicant request reduction in Center Street buffer from 30' to 15'; single family homes Lots 32-43 will front on Center Street, with rear access to lots through a public alley 20' wide and enough to accommodate public parking in alley. Townhomes will back to Center Street; landscape plan includes type E buffer on these lots which is the thoroughfare buffer and Townhomes adjacent to Center will have rear elevations – landscape plan is to screen rear of townhome units with evergreen shrubs and trees (semi-opaque B type buffer). Setbacks and architectural standards are noted in the report. Existing park acreage will be transferred to the public park on the Seagroves site with pedestrian access from street A and the public alley; applicant proposes to pay a fee in lieu based on actual density; sidewalks will be placed on both sides of street and around and into the park. Traffic report was not required. There will be additional Center Street widening, with three access locations off Center Street. Applicant requests an extension of the cul-de-sac on street B, 850' from 500'. Surry Meadows and the Seagroves Farm Public Park surrounds the development and does not provide a connection to this proposed subdivision; with the physical constraints on the property and lack of interconnection with the adjoining subdivision; the extension is justified. Parking is consistent with UDO. Groves II complies with UDO standards, and the requested variances from the UDO requirements have been noted in the staff report and PUD Plan. Planning Board unanimously recommended approval at their June 12, 2006 meeting for the Land Use Amendment from Medium Density to High Density, the rezone from Residential Agricultural and Conservation Buffer to Planned Unit Development Conditional Use District, and the subdivision and site plan, with an additional condition, that Lot 31 provide private recreational amenities and it be provided in Phase 1. Local resident has asked to add additional shrubs where trash bin enclosure is located, and similar to existing Groves development, and with trash picked up two times a week, instead of a dumpster.

John Brown Director of Parks, Recreation and Cultural Resources was administered an oath by the Clerk. He reported Parks, Recreation and Cultural Resources Advisory Commission recommends acceptance of fee-in-lieu moneys (approximately $50,000) for The Groves II project, based on actual density; and being there is no money to develop Seagroves Farm Park, which was not a part of the bond referendum. Applicant proposed a public park land swap to develop Seagroves Farm Park (10 acres) approved by Council; existing WHOPS park is 1.33 acres, and would be relocated to enlarge Seagroves Public Park site. There are no greenways or municipal park areas on the park and recreation master plan; money will start construction the Seagroves park tract. Council Member Jensen had a problem with giving up the 2 acres of land and felt town could always find money, and the land across the street would probably also pay a fee in lieu, and town could possibly have expanded the park there for something bigger, giving up the 2 acres of land was a big mistake.

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

Sean Dolle, Jones, Cnossen, and Dolle Engineering, 106 W. Chatham Street, Apex, represented the owner, and added to the staff report given:

1) Process to this date has been about one year, having met with staff and made revisions addressing concerns by TRC, and added two additional drives to the east and west recommended by engineering staff and agreed; met with NCDOT and agreed with the drive and access points to Center Street and that all three drives will be accepted; it was mentioned the drive further to the west closest to Surry Meadows entrance will probably be limited access right-in and right-out.
2) UDO under PUD guidelines allows Town Council to reduce RCA by no more than 2% if in return additional measures are provided on site (applicant requests the reduction of RCA to 18.3% (2.13 acres) of the site. Required RCA is 20% of the site (2.4 acres)/ Additional measures on site provides: sidewalks on both sides of Street A and around the bulb, additional landscape, a public alley way (staff felt it would be more favorable to Council vs. a private alley), giving up 15 feet of land to have a 40' public right of way, Center Street will be widened, and the land swap given as a part of the project for a public park. Council Member Jensen stated the park was beneficial to the developer as well as the town.

Council Member Schulze addressed parking: parking for townhomes will be similar to The Groves townhome project with perpendicular parking spaces off the public road and with 2.5 per units and no on street parking.

Council Member Gossage address single family residents, yards and speed limits: single family residents front and face on Center Street with a 10' buffer and a minimum 10 foot setback (small front yard) and at the rear; the topographics allow for a basement level garage in the rear and the height of the house beyond that; the rear may have some yard; lots are shallow.

Council Member Gossage felt there should be a reduction in speed limit from 45 mph speed limit to 35 mph. Dolle responded it changes along this area to 35 mph. and was discussed when The Groves across the street was developed, and to do this would require a petition submitted to NCDOT for approval of the reduction in speed. Mayor Weatherly stated there should be a recommendation from the Police Department before moving forward with this. Dolle will be glad to assist in this matter.

Council Member Jensen addressed buffer: Applicant requested reduction in Center Street buffer to be consistent with The Groves, across the street that has a 15' buffer; physical limitations of the property includes a narrow end on the west and natural Neuse River buffer towards the west not allowing much room to develop; reduction would assist them to develop the property.

Council Member Jones verified the0 reduction of land for the public alley: public alley is 15' wider than a private alley; there was a 25 foot private easement, and staff wanted a minimum of 40'.

Council Member Jensen questioned the E type buffer and the number of trees per lot: buffer is above the requirement for each lot for the single family and town homes, with additional landscape which is more than an E type buffer; single family homes lots are 45/50 feet; an E type buffer is shown on the plans (one large tree per 1000 square feet or 2 small trees per 1000 square feet); portion of buffer along the single family homes would require six larger trees with eleven smaller trees, however staff requested because the house fronts face on Center Street, they do additional landscape because of the 30' to 15' reduction, not completely screening the fronts.

Council Member Schulze asked to see the rear elevation of the townhomes: drawing A-3; will be seen from Center Street and similar to The Groves across the street, and by the same developer. Single family home elevations have not been yet determined; listed in the PD plan allows for additional architectural standards and higher quality materials with single family homes either having crawl space or minimum of two steps up so they are not at grade homes, and thinks single family homes will have a front porch.

Council Member Gossage asked his thoughts on the Planning Board's condition: Dolle stated they were in agreement to it and were fine with the condition (additional condition that lot 31 recreational amenities will be provided in Phase I.)

Council Member Jensen asked the amount of fee in lieu for the two acres: average was $25,000 per acre or approximately $50,000 and figured on density. Council Member Jones advised the fee schedule does not allow them to collect more than market value. Mayor Weatherly added this was state law and will not let them. Council Member Jensen understood, however, they have the option to say yes or no and he didn't like this. Dolle stated the project as a whole will benefit the town and the area and will be well developed and a pleasing project that all will be happy with it. Council Member Jensen agreed, but thought it better if they didn't take the fee in lieu. Mayor Weatherly stated the disagreement is with the Advisory Commission that made the recommendation to take the fee in lieu. Brown stated with the land swap they felt comfortable to make this recommendation. Mayor Weatherly added, and not on any kind of insistence on the part of the developer.

Sandy Nance represented her mother Peg Mishew, 1106 Rainesview Lane in Surry Meadows: trash location impacts her lot, and does not want dumpsters – dumpsters brings noise and abused by others putting stuff in them. She asked it remain as shown on the site plan. She advised, JVI had addressed additional buffering on the two lots that back to this one, and has agreed to evergreen plantings along the 10' buffer between those two properties to take in the entire area of the two property lines as evergreens provide year round growth and additional screening in this area. She appreciates JVI working with them to get the additional buffering and would like it to be a part of the minutes that this be a condition of the approval and that this arrangement be acknowledged and be a part of the approval.

No one else spoke in favor or in opposition. Mayor Weatherly closed the public hearing and called for a motion.

Council Member Gossage appreciated comments regarding the fee in lieu and felt $25,000 an acre for parkland was a good point, but noted this will be within walking distance of a thirteen acre park and is satisfactory to him.

Action: Motion by Council Member Gossage and second by Council Member Jones to approve the proposal with the condition stipulated by the Planning Board (Lot 31 recreational amenities be provided in Phase I) and the condition for trash cans and not a dumpster and for the evergreen buffering around the area as stated.

Council Member Jones added Parks, Recreation and Advisory Commission gave this due consideration and with the thirteen acre park adjacent to almost this property, felt fee in lieu was the appropriate option to take, and was difficult to budget funds to develop park land, not that there is a big inventory of undeveloped park land, but are going to focus on buying property where its needed, but didn't feel this is the appropriate place to do this. Council Member Jones added and with the other conditions, thinks even though they are giving up 15' of public alley - getting 15' of widened street and giving up the right of way or the set back along Center Street is probably going to be a bit disjointed initially before the whole area develops and while the traffic is what it is on Center Street, but as the area becomes more urban, it will not be a problem and he doesn't have an issue with that.

Council Member Jensen thinks it's a huge mistake by the Advisory Committee in this area to accept $50,000 for two acres of land that could have been additional park land for a trivial park there. He thinks the developer has done a very good job on the plan, and has no problems with it, but will vote against it because of the two acres, not voting against the developer, but voting against the advisory commission and what has come down through staff; he disagrees with it and thinks it's wrong. He feels they have talked about this enough times that in a situation like this where its hard red, says its time to stop and collect acreage and not fees; $50,000 of fees when the town budget is $50 million doesn't make sense when land is disappearing here faster than anything else; he thinks it's a mistake.

Mayor Weatherly called for a vote on the motion to approve with the conditions as so stated; motion carried 4 to 1 with Council Member Jensen voting no. Motion carried to approve.

End of Public Hearing # 1

Presenter: June Cowles, Planner

Public Hearing # 02 – Rezoning Case # 06CU08

Continued from May 16, 2006 Council meeting; Planning Board at their May 8, 2006 meeting recommended unanimously to deny the rezone based on lack of interconnectivity, inconsistent with UDO, Apex Transportation Plan, & Traditional Neighborhood Standards; Plan has been revised as recommended by staff.

Public Hearing and possible motion regarding Rezoning Case #06CU08 Peachtree TND, Cornerstone Homes LLC, petitioner, seeking to rezone from Traditional Neighborhood District Conditional Use to Traditional Neighborhood District Conditional Use, 41.7 acres located south of US Hwy 64 and north of Haddon Hall Subdivision.

Town Clerk administered an oath to those speaking during this hearing.
June Cowles, Planner, presented the staff report for Rezoning Case #06CU08, Peachtree TND; attached and incorporated into the minutes for the official record of this public hearing. Request is to amend the TND zone; item was continued from May 16, 2006 Council meeting at the request of applicant to revise proposed plan. June 21, 2005 Town Council approved Peachtree TND. Plan is noted on Attachment 2. Amendments specific to eastern portion of plan are listed (Page 3), and reviewed by Cowles, and includes all uses mixed with residential, office, and retail except for condos permitted on Parcel D. Applicant agreed at Planning Board meeting to remove apartments from Parcel D. RCA is 27.3 % of site; all buffers are the same as on the approved plan. Architecture and design will be brick, stone, wood, or hardi-plank siding.

Access and Circulation: Blackburn Road extension will provide right in/right out and left over access to the development off Hwy. 64. Plan does not include one of the roundabouts from the approved plan; applicant plans to build one story condo's marketed towards senior citizens with traffic calming devices and due to safety concerns. 2005 Traffic Impact Report was conducted by Kimley Horne to analyze proposed extension of Blackburn Road to US64 through Peachtree property. Ramey Kemp & Associates conducted a trip generation analysis for the proposed 96 units compared to the approved 86 units; based on trip generation it is not expected to impact the existing roadway infrastructure beyond that determined under the existing zoning condition; no additional traffic analysis or mitigation was required. Blackburn Road extension will provide a right in/right out and left over access to the development off of Hwy 64. Amendment includes all transportation requirements approved in the Peachtree Plan. Plan is consistent with the UDO, however the UDO states in return for greater flexibility in site design requirements plan developments are expected to deliver exceptional quality community designs that preserved critical environmental resources and provide high quality community amenities, great creative design of layout of buildings, RCA and circulation, ensure compatibility with surrounding land uses and neighborhood character and provide greater efficiency in the layout, provision of roads, utilities, and other infrastructure.

Staff recommends sidewalks be included on both sides of the streets in parcel D and the garage roof pitch be consistent with the proposed and existing residential units. Applicant proposes an active adult community, and sidewalks on both sides of the street will provide additional pedestrian safety. Plan was reviewed at the May 8, 2006 Planning Board meeting and staff report includes what the applicant revised at that meeting.

Planning Board recommended denial of the Peachtree rezone amendment based on the inconsistency of the UDO regarding interconnectivity, the Apex Transportation Plan objective and the traditional neighborhood standards that included the phase plan. Since that meeting, the applicant has provided dates for the phase plan and has provided a public street connection to the eastern portion of this site. Cowles stated denial by the Planning Board was based on lack of interconnectivity and other than the sidewalk situation this does satisfy interconnectivity.

Mayor Weatherly opened the public hearing asking those in favor to come forward.

Clyde Holt, Attorney, Smith, Moore Law Firm, BB&T Building Fayetteville Street Mall, Raleigh appeared on behalf of applicant Cornerstone Homes and stated the following: Property was rezoned one year ago; request to allow construction of an adult condominium community that was not contemplated at the time of the original zoning. Presentations on behalf of Cornerstone will be given by: Dough Tice, Principal of the Organization, and Custus Coleman, Site Acquisition Manager, and Engineer Harry Mitchell, Bass, Nixon and Kennedy. Changes that occurred since the Planning Board meeting: Two issues Planning Board did not find acceptable: interconnectivity – original submittal of the plan was Parcel D which is where the loop street is on the eastern portion of the map and where the adult community will exist – they had hoped it would be acceptable if there was no connection to the adjacent undeveloped property; traffic studies indicate from this development there will not be a significant amount of new trips generated and hope to maintain a feeling of privacy and security within the adult community; they also requested private streets and neither was found acceptable by the Planning Board. They have worked with staff and have resubmitted the proposal satisfying interconnectivity and public streets instead of private streets.

One issue still remains: sidewalks on both sides of the street; proposed sidewalk connection is made to the east with sidewalks on both sides of the street and a sidewalk around the outer loop of the perimeter of the loop street, and then when they join again on the western portion of the property there would once again be sidewalks on both sides of the street from that point forward. They feel on the interior portion of the property, it's more important to preserve vegetation and more important with the driveway entrances, to not have the additional pavement necessary for the sidewalk on the interior portion. With traffic calming devices anticipated, they feel quite comfortable that having sidewalks on the exterior portion of the loop along with the two entrances will be significant and sufficient.

Questions concerning design of condominium homes: have submitted a supplemental amendment today for review and described as one-story residential style homes; wanted to submit elevations to give an idea of the type adult community proposed, and get into questions concerning roof pitch and other issues, although a condominium community, they are planning individual four unit buildings – to someone driving through the public streets, it will look like individual home sites rather than a condominium project. He will address other issues as they arise, and turned to Doug Tice, Cornerstone, to address how they develop these communities and how they are developed and marketed that they are bringing to Apex.

Doug Tice, Principal, Cornerstone Homes, described in more detail the community proposed, building ranch style homes geared to active adults; homes are similar and their design has held up well over the years; Cornerstone builds ranch style condominiums with a community building in Wake Forest, this will be the same floor plan and concept. Buyers are mostly active adults typically living within a three mile radius of the development and need to get down to one floor, and the group they typically see wanting to stay in the same community and this provides this. Amenities include clubhouse, fitness center, and heated pool; like the security, and with maintenance provided. Fact is there are lower traffic counts and fewer school age children in their communities allowing long years in this type community; demographics will help satisfy the needs for this age group in Apex.

Custus Coleman, Site Acquisition Manager Cornerstone Homes, wanted Council to understand the design with private roads and circular path, and trying something new here and wanted to be successful, and working with staff to meet their goals. Details: last year concerns from Haddon Hall were addressed; have met with their President who endorses this project and will be good neighbors. Parcel D data: they are looking at a reduction in residents on site; typical traffic trip counts for 85 units are almost 900 and they are close to 525 trips. With Wake County Bond referendum of $1.2 billion, they see they are not a cost to infrastructure, but are positive impact to tax revenue dollars minus cost for schools. Peachtree Landing Villas are handicapped adaptable and have made changes per staff's direction to build their vision. He looked at square foot prices received and compared to other neighborhoods, they are helping housing prices in the area. This will be a positive impact for the community seniors and the town.

Attorney Holt pointed out Engineer Harry Mitchell was present, however, he was familiar with code requirements and he is satisfied the rezoning satisfies all requirements of the ordinance to be approved; they are in accord with staff recommendation and if sent back to the Planning Board with the public streets and interconnectivity would have their support as well.

Three issues submitted they would like Council support on refer to:

1) roof pitch: they are satisfied the examples of the structures being built are of residential character and do generally meet spirit and intent of the regulations; will satisfy staff recommendation and ask flexibility on the attached garages for these units to have a somewhat less pitch on garages allowed under the code and a slight change from zoning of one year ago.
2) Sidewalks: they don't feel it's necessary or appropriate to have sidewalks on the inner portion of the loop; code requires sidewalks on one side and they meet this requirement; with traffic calming devices proposed as a part of the site plan and with sidewalks on the outer loop, is sufficient to meet traffic safety and code requirements.
3) Engineer Harry Mitchell had talked with the town engineer and not sure this is appropriate for the zoning discussion, and may need to address this at site plan approval: This is a condominium community with all common bills, water/sewer, and landscape paid by the homeowners association and they would like to put a single water meter for each of the building (each building has four homes) rather than a separate meter for each one of the units in the building; this is easier for them to administer, as they pay the bills and do the landscape, irrigation, etc. – this is an issue that has come up that they would like some relief now or at the appropriate time.

Council Member Jensen addressed the parks, noting the one on the southwest corner near the round-a-bout, thinking this was available to the general public. He noted sometime ago Haddon Hall folks were concerned with kids and traffic flow and he felt if there were a park they could go to like this one would be a trade off. Attorney Holt noted it a recreational area, and thinks it's for use for the condominium owners. Coleman noted there are two pieces of PUD Parcel H set aside for .75 acres for the community. He pointed to it on the map and he and Council Member Jensen were in agreement.

Council Member Sutton asked if consideration had been given to the noise buffering on US64. Coleman responded vegetation on US64 to the north is being explored and would look at tree vegetation and landscape as well and would continue to explore it, and knew residents would like a quiet spot and an issue that would have an effect on their marketing and would like to get it right. Attorney Holt stated this would be looked at with site plan. Council Member Jensen prefers planting southern magnolias as a possibility, with Attorney Holt responding, alright and making sure this was in the minutes.

Mayor Weatherly asked for those opposed to the rezone to come forward. With no opposition, he called on Council for other questions and comments.

Council Member Schulze addressed the roof pitch and the UDO requirement and asked if it were hard-fast, with Rowland responding no, they wanted units to be consistent with garages in Haddon Hall with a similar pitch and not a flattened pitch. Council Member Jensen asked since this was separate from Haddon Hall, why place this requirement, with Rowland stating you would want to consider prices when looking at comparables in the area and were trying to keep it as an updated looking community, not wanting or saying flatter pitch is a 60's style look, wanted more an upright or contemporary pitch of today. Council Member Jensen felt this was the garage and asking if he were acceptable to this situation, with Rowland responding, their recommendation is they be consistent and be the same pitch.

Council Member Sutton asked if they were sticking with inner sidewalks, with Rowland responding he needed to correct one thing said by Attorney Holt, that the zoning ordinance says under Traditional Neighborhood Development, that it does require sidewalks on both sides of the street and thinks if Council approves this, it would be inconsistent with the UDO.

Council Member Schulze asked if the normal course of events would be to go before the Board of Adjustment to get a variance. Rowland thinks this is a zoning matter now and doesn't see it as a hardship or appropriate for the BOA and where the decision would be made on sidewalks and meeting the UDO.

Council Member Jensen looked at the sidewalks on the outer loop and that someone walking from the east, and at the one side of the eastern most stub would go south or north, so there is continuation sidewalks the way its being proposed through that loop; the only people being effected to have sidewalks on one side is the people living there, with Rowland not agreeing, but the UDO does specifically call for sidewalks on both sides of the streets in TND. He also thought it safer for the residents to have sidewalks in front of their homes.

Attorney Holt stated that he stood corrected concerning this particular zone district, and that he also should have pointed out that Council does have the authority to approve a variance or an exception from the normal if they find this particular proposal due to its orientation for adult living; therefore, will be less people with fewer young people in this community and is a down zoning with the transportation study, the original one and the supplemental study talking about how there are fewer people per building and less traffic per building, with less congestion in general; thinks there is sufficient justification for this particular community and the way it's designed with the loop system street, that there not be a duplication of sidewalks and they have the ability to allow it to be constructed as proposed if they are comfortable with this.

Mayor Weatherly asked from his experience with adult neighborhoods, there are less strollers and pedestrians than in other neighborhoods. Coleman stated walking is the most popular past times for active adults, and they find walking takes place in the roads and no traffic typically in their roads; traffic is not heavy enough where you have crowds of people walking in one single sidewalk or two sidewalks are necessary; one has proven ample in their developments constructed and are trying to stick to the mold. Mayor Weatherly assumed this could be a marketability issue too if the people they are trying to attract, where their homeowners see this as a negative of not having sidewalks on both sides, and obviously would have a different opinion. Coleman responded it's never been an issue and are conscious about surveys and studies as to what their homeowners want and never an issue with mobility within these neighborhoods or the lack there of.

Council Member Gossage asked if he heard walking takes place in the road, with Coleman responding residents walk on the loop road, they walk on sidewalks; there is no traffic. Council Member Gossage noted most of his experience was with private streets, with Coleman responding they have public roads in Johnson City, Tennessee with 112 condominium units and with a stub road connected to an adjacent subdivision, with very little through traffic and the traffic that does come through is at normal speed and with traffic calming devices, and with folks riding bikes around the loop road. Council Member Gossage asked if traffic calming devices were being proposed, with Coleman responding yes, two traffic calming devices. Tice responded they have talked with staff with two devices being proposed; there are no strollers with few children, with Mayor Weatherly saying he was referring to strolling or leisurely walking not strollers for children.

Council Member Schulze asked how the communities are restricted to age and what's to stop younger folks from moving there. Coleman stated they typically have a few younger residents due to rules and regulations with all land outside the individual condominiums being common and there are no provisions or allowances for soccer nets or any type play ground equipment; the pool is not usable by anyone under 18 and by design have found with these in place in the association, results in a community that attracts adults. Skate boards are not allowed and the entire design caters to adults; they do typically see 80% of residents considered 55 and older and also have those single under this threshold – young professionals that do not want maintenance and work all the time or had rather play golf, and have found a mix or blend of ages keeps a more well rounded community and a healthy community.

Council Member Schulze asked, being a retirement community is not a condition of the rezone, with Coleman responding it's not, with Council Member Schulze stating theoretically it could evolve into something else, with Coleman responding this has not happened in the twenty years experience with the Epcon Community franchise network but certainly is possible.

Coleman addressed the roof pitch: Comments on trusses and roof pitch and photos are in the packet and they feel their design is as modern for this type with them being built in roof areas around the country and successful; garage roof pitch is 4/12 and 4.75/12 on one of the other buildings; all other roof pitches far exceed 5/12 minimum and go up to 8/12 and in looking at truss plans would see this; to revise this for a higher steeper pitch would be redesign of the building and would like to avoid if they could. They believe and hope Council would agree and see this as an acceptable and attractive design in the existing state of 4/12 garage pitch.

Council Member Jones asked if the garage is in the center of the four unit buildings, with Coleman responding yes, and in most cases are not in view from the street, they are positioned so not to be visible from the street and their goal and design. For the majority of cases, they try hide them the best they can, not that you can't see them at all.

Council Member Jensen asked if they expect the pond shown to look like the one on the plan with Coleman responding they will do their best. Tice stated they would like to have the pond look this way, and could only remove certain nuisance vegetation, but limited, but if they would give him ability to do this, they would like to make it a more park like setting, with this making sense to Council Member Jensen, but noting it still functions as a retention pond, with Coleman responding yes.

Cowles stated there was one item with the letter passed out; applicant wants to propose language refinement to add sentence at the end of the first paragraph under residential. Staff is fine wants to assure variety of architectural styles and construction materials throughout the neighborhood – Parcel D at least two different home designs will offer varied floor plans. Staff didn't want to include these elevations as a condition with the PUD plan because it's a site plan issue as far as elevations. Including these elevations as an example is fine with staff, and with Attorney Holt agreeing.

Council Member Jensen clarified staff's only concern was with the sidewalks at this point, with Rowland responding yes, they will live with the garages.

Mayor Weatherly closed the hearing.

Attorney Fordham asked for a brief closed session to give legal advice to Council before making a decision on this request. **Action:** Motion by Council Member Schulze and second by Council Member Jones to move into closed session. Motion carried. Minutes of Closed Session are recorded separately. Motion by Council Member Jensen and second by Council Member Schulze to move out of Closed Session and back into open session. Motion carried.

Mayor Weatherly called on Attorney Fordham to give his legal opinion as the UDO speaks to the ability for Town Council to grant an exception to the sidewalk issue. Attorney Fordham stated in this particular circumstance related to sidewalks in the TND, this particular requirement is from a part of the Code that is not subject to the variance provision within the TND. Council does not have authority to grant a variance. Mayor Weatherly stated the proper forum for request of a variance would be to the Board of Adjustment, which is still open to the petitioner for that purpose, with Attorney Fordham adding Board of Adjustment based on this criteria.

Mayor Weatherly then called for a motion. There was no motion made, with Council Member Jensen asking, if there was opportunity for the petitioner to agree to the sidewalks or not, before a motion was made; if not, they would have to send this back. Council Member Schulze asked if the appropriate action was to deny this. Council Member Jensen stated appropriate action was to deny this, according to the UDO, with Council Member Schulze asking, what does this allow for the applicant or should they withdraw.

Mayor Weatherly responded, they could approve this with double sidewalks and would be consistent with the UDO, asking Attorney Fordham for his legal advice on this, or unless the petitioner wanted to clarify the issue, asking if he agrees, but asking basically did they waive their right to go to the Board of Adjustment later.

Attorney Fordham responded they could continue final determination to see whether or not the Board of Adjustment would grant a variance; they could approve it subject to a variance being granted, and if a variance is not granted – he would want to give it some thought, but this could be possible to consider; the other would be to inquire of the applicant whether they want to conform to that requirement, although they don't have too. Mayor Weatherly asked if they could give it conditional approval tonight, but certainly maintain their right to go to the Board of Adjustment and let them resolve this – we approve it with two sidewalks but then the Board of Adjustment; it preserves the petitioner's right. Attorney Fordham advised he didn't think it could be approved with two sidewalks unless the applicant consents to that. Mayor Weatherly was saying, that if they put it in language to modify their condition for two sidewalks subject to review by the Board of Adjustment and so therefore, it's still approved, whichever, if they turn it down or if they approve it, asking if this was permissible. Attorney Fordham stated it depended on if the applicant would agree to it; maybe they should let the applicant speak at this point.

Attorney Holt stated they would like to preserve their right to petition the Board of Adjustment but will, if the ruling is there will be sidewalks on both sides, by all means will construct sidewalks on both sides. If it is appropriate according to the Town Attorney, they would like it to be approved with sidewalks on both sides, with the understanding they would like to reserve their right to appeal to the Board of Adjustment and if they decline their appeal, there will be sidewalks on both sides.

Mayor Weatherly stated basically, he was withdrawing the condition that the request to put one side of sidewalk, its status quo anti basically without the condition and therefore can go forward. Attorney Fordham stated the simpler way to do this is have him go to Board of Adjustment first and then come back to the Council if he has a variance. Council Member Jensen asked if they could continue this to allow him opportunity to go to the Board of Adjustment with Attorney Fordham advising yes.

Attorney Holt responded he would like to go ahead and proceed with the sidewalks on both sides and if it's a stumbling block to go to the Board of Adjustment, then they will put sidewalks on both sides and adjust their program accordingly. Council Member Jensen said they could continue this until he had this opportunity. Attorney Holt responded yes, but once again, they have been working with staff and are ready to proceed and file the site plan and ready to proceed with the development and would prefer Council give them insight as to whether this is an appropriate development, one way or another tonight.

Mayor Weatherly opened the floor for a motion.

Action: Motion by Council Member Jensen to approve subject to the sidewalks being on both sides of Parcel D, with Council Member Gossage seconding the motion. Council Member Jones added, and including the amendments that has been made since the Planning Board meeting, with Council Member Jensen agreeing, and with Council Member Jones continuing to include the issue as they are requesting relative to the roof pitch of the garages, with Council Member Jensen adding yes, subject to all of those, with Council Member Gossage agreeing having made the second. Motion carried unanimously.

End of Public Hearing # 2

Presenter: June Cowles, Planner

Public Hearing # 03 – Rezoning Case # 06CU11

Applicant requests removal of rezone amendment to Old Mill Village from the Town Council agenda; hearing will be re-advertised. Planning Board met June 12, 2006 and unanimously recommended removal of the rezone request from the agenda.

Public Hearing and possible motion regarding Rezoning Case #06CU11 Apex First Development, LLC, petitioners, seeking to rezone from Planned Unit Development Conditional Use to Planned Unit Development Conditional Use amendment, property located on Old Raleigh Road and Apex Peakway containing 32.08 acres. (Cowles advised as stated; no action was taken).

Presenter: Dianne Khin, Assistant Director of Planning

Public Hearing # 04 – Rezoning Case # 06CU12

Planning Board met June 12, 2006 and unanimously recommended denial based on inconsistency with certain PUD standards.

Public Hearing and possible motion regarding Rezoning Case #06CU12 DDR/1 st. Carolina Apex PH. III, LLC, petitioner, seeking to rezone from Planned Unit Development-Conditional Use to Planned Unit Development-Conditional use (to change conditions) located on the north and south sides of US64 at Beaver Creek Commons Drive and Green Level Church Road containing 130.943 acres.

All those speaking during this hearing were administered an oath by the Town Clerk.

Khin began with review of the staff report incorporated as a part of the minutes for the official record of this public hearing. In order to change conditions of a conditional use permit, the same process as the initial rezoning must be followed, which includes public notification, a public hearing at the Planning Board, and a public hearing at the Town Council. This rezoning request does not propose to change the zoning map designation PUD-CU, but does propose to change the conditions from Conditional Use Permit #06CU06.

On April 4, 2006, the Apex Town Council approved the request to eliminate striping at Vision Drive and to allow the opening of the theater and an additional 100,000 square feet of retail shops in Phase 3 without the connection of Beaver Creek Commons Drive to Kelly Road, with two conditions regarding road improvements on the north side of US 64 and speed humps in Beckett Crossing and Carriage Downs.

Since that time, the developer has determined their tenants require that an additional 80,000 square feet of retail space be allowed to get their COs prior to the completion of Beaver Creek Commons Drive to Kelly Road (see letter from DDR attached). In order for this to be acceptable traffic-wise, temporary adjustments to Creekside Landing Drive are required, which the developer agrees to make. In addition, the developer would like to add several conditions to this rezoning to address noise and screening issues around the pump station in the western portion of Phase III of the shopping center.

Rezoning Case #06CU11 continued

The conditions are listed as follows with staff recommending approval of the rezoning.

1. Delay installation of the proposed concrete island on Creekside Landing Drive to provide additional stacking space prior to development of adjacent parcels.
2. Plant evergreen vines on the pump station fence every 6' to help screen the pump station area.
3. Relocate screening plants planned for the base of the retaining wall to other locations where the screening would be more functional.
4. Field locate the deciduous trees originally planned to be planted around the retention pond to the area at the base of the retaining wall to extend the existing hardwood buffer.
5. To the extent there is adequate area, plant 25 Loblolly Pines that are at least 8' tall to areas above the retaining wall and retention pond to further screen this area.
5. Restrict daily delivery truck and trash pick up for the shopping center to after 7 am and before 11 pm.
7. Designate a dumpster with approved type of enclosure outside of the rear areas adjacent to residential properties to be used for the site's street sweeper.

Planning Board considered this conditional use rezoning at their June 12, 2006 meeting and unanimously recommended denial based on inconsistency with PUD standards found in Sections 2.3.4(F)(1)(a)(v) regarding land use patterns that promote and expand opportunities for: Walkability, connectivity, public transportation, and an efficient compact network of streets; 2.3.4(F)(1)(a)(vi) regarding compatibility with the character of surrounding land uses and maintaining/enhancing the value of surrounding properties; and 2.3.4(F)(1)(f)(i) regarding a safe and adequate on-site transportation circulation system that is integrated with the off-site transportation circulation system of the Town.

Council Member Jensen addressed relocating field screening plants and field locating deciduous trees, suggesting rather than relocating plants, there should be additional plants; he had visited the property and thinks the ones below the wall should be left where they are and add others elsewhere. Khin responded, they are proposing to add 25 lob lolly pines at least 8 feet tall to the top of the retaining wall and the retention pond area. These conditions were crafted with Steve Yates, Senior Zoning Code Enforcement Officer's assistance, who had visited the site with Council Member Jensen, and felt leaving the hardwoods at the top of the bank would not provide sufficient planting space to plant the evergreens which would provide better screening, so he suggested they move the hardwoods down to the base rather than keep them at the top where you can see the pump station and backs of the stores.

Council Member Jensen read the third condition: to relocate screening plants planned for the base of the retaining wall - with the wall jumping out if the screening plants are not there. Khin understood the deciduous trees would be moved to the base of the retaining wall and screening plants would be moved up hill. Deciduous trees would break up the wall and not necessarily screen it at the base, but the screening plants could be put up towards the top so to screen the backs of those buildings; now the screening plants are all you see. It basically moves hardwoods from the top, evergreens from the bottom and swaps those out and then add additional evergreens at the top. Council Member Jensen felt this would be alright; he thinks deciduous trees are screening trees only three or four months out of the year and the problem he has with them, they drop their leaves; it doesn't make sense – he would say evergreens everywhere for screening.

Mayor Weatherly opened the public hearing asking those in favor to come forward:

Attorney Gray Styers, 1117 Hillsborough Street, Raleigh, serves as zoning counsel for DDR/1st Carolinas Phase III. All documents he refers too were presented to Council and attached. A letter summarizes the reasons for need of change in condition in regards to the timing of construction of Beaver Creek Commons Drive, Tab 2 is their application for the request to change conditions, Tab 3 is the traffic report done early March as it pertained to the movie theater and the first 100,000 sq. ft. phase to move forward. Tab 4 is the revision of the analysis that looks at the possibility of putting a traffic light at the intersection of Green Level Church Road and Creekside Landing Drive. This was not before the Planning Board, based upon the comments of the Planning Board and was some concern expressed by another party at the Planning Board – they went back and asked what happens to traffic if a stop light is located at the corner of Green Level Church Road and Beaver Creek Road – this was referred by Ronald Stephenson at Ramey, Kemp and Associates and reviewed by Russ Dalton, Town Transportation Engineer; his review is behind Tab 5; he asked to submit this as evidence in support of the application.

Chris Erb, DDR/1st Carolinas Phase III, and Ronald Stephenson of Ramey, Kemp and Associates, and Connell Radcliff were present.

Chris Erb, expressed appreciation to all for helping get the theater open with a strong opening, while continuing to be impressed by local patronage and support received from the Town. DDR/1st Carolinas continues to have problems with NCDOT; a new traffic study is a result of not only the Planning Board concerns but also NCDOT concerns. NCDOT has changed rules again, saying they have no option in how they build the extension of Beaver Creek Commons Drive over to Kelly Road – they have to build it at the final vertical elevation, which means they have to redo their plans and their permitting through environmental agencies that were completed. Based on Planning Board concerns and concerns of interested parties, they have gone back and looked at placing a traffic signal at Green Level Church Road and Creekside Landing Drive. Former study shows this particular intersection operating at a Level Service F which was adequate and worked, however didn't work very well. A traffic signal there would solve concerns of the interested party – DDR/1st Carolina in terms of can we get the entire south phase open if they did this and does it take into account Carolinian Towns – site plan is coming. Results of the study basically tells them Kohls can open, the south phase of the shopping center can also open in its entirety and Carolinian Towns can also be fully built out and that particular intersection which seems to be the cause of concern can operate at a Level Service B which is great in terms of traffic. He emphasized they were not trying to get out of their responsibility for building Beaver Creek Commons Drive and will still need to build that in order to open the north phase which they are actively constructing now. This will allow them to open up tenants for the south phase and get the nucleus of this portion of the shopping center going off in the right foot. He asked Council's consideration of this.

Ronald Stephensen, Traffic Engineer with Ramey, Kemp Associates, Raleigh, stated they had performed the two traffic studies found in the packet and as mentioned, the second study deals with traffic at Green Level Church Road and Creekside Landing Drive, and what would happen with installation of a traffic signal. In addition to this, the second study considers the build out of the Carolinian Towns, 46 townhomes as well as an additional 100,000 sq. ft. of retail – they assume it would be Kohls. They look at the traffic in addition to over 300,000 sq. ft. of retail, plus the cinemas on the south side of US64; they found with a signal at this intersection, overall Level Service is B, which is good, and exceeding the typical which would be Level Service D; each of the legs of the intersection would operate at Level Service A or B during the heaviest time or afternoon peak hours for the retail center. They also for a conservative estimate looked at the peak time of the movie theater which is generally later than peak hour; everything operates fine.

Council Member Sutton wanted to address Beaver Creek Commons Drive asking to see the connection of Beaver Creek Commons Drive over to Kelly Road. Manager Radford noted the diagram shows existing conditions with the bottom half showing proposed conditions, with Beaver Creek Commons Drive coming in from the right at the bottom. He continued they call this a "pork-chop island" and would disable traffic from being able to go straight allowing traffic to only go left and right – north and south on Kelly Road in order to help alleviate if not completely eliminate through traffic through Abbington.

Council Member Jones added while he likes that, it's not really an issue in front of them tonight, but would come later. Council Member Sutton wondered if the developer were willing to put that in that way, and would be part of the plans for Beaver Creek Commons. Response was yes from the applicant, with Russ Dalton, Town Transportation Engineer Dalton stating it would be fine with him.

Attorney Styers stated this does not determine whether Beaver Creek Commons Drive will be constructed, but simply when, in terms of the sequence of the construction, and as they well knew and heard any delays that have occurred have not been the result of anything they have done, just to contrary; DDR has retained other attorneys in the law firm to try to facilitate and expedite the process as fast as possible, so they don't want to have had this delay or be here but are here and have some great tenants – Borders Books, TJ Maxx, and whether there will be efficient traffic circulation once those stores are open. Erb indicated originally if they could just open another 80,000 sq. ft. then that would allow those tenants to be able to move in by this coming Christmas shopping season; they realized in doing this study and what Stephenson had talked about – Tab 4 third page of the study – if they get the stop light there and in his conclusions and recommendations on page 3, the intersection of Green Level Church Road and Creekside Landing Drive will also operate at a Level Service B during the p.m. peak hour and the signalized intersection under the combined 2008 conditions of full build out of the movie theater not 180 but 300,000 sq. ft. of retail center in the south part of Beaver Creek Crossings.

Not just the additional 80,000, but with this proposal everything open on the south side. The Carolinians Towns development as well as a Kohls; roadway configuration existing are planned for construction will accommodate the expected cues. Table 1 shows with the light and without Beaver Creek Commons Drive being built out, you have Level Service A and B and from traffic studies over the years; he knows this is acceptable for the amount of retail they are placing at this location. With the proposed signalization they know of no opposition at this point; concerns expressed at the Planning Board are no longer present based on the conversations they have had with the folks that came to Planning Board as well. They feel with this additional condition, it may be appropriate for Council to state .... they are going to build it before the north phase on US64, at this intersection, they could go ahead, and they believe it appropriate for a motion to be made by Council that they could open the entire south phase because they know from the studies, it is much better than what they anticipated without the signalization. The reason they proposed just the 80,000 was based upon conversation with staff who said with no other signalization, the 80,000 they felt comfortable with and in their conversation with Dalton. Staff report summarizes their compliance with all other ordinance provisions and they know of no opposition. All evidence before Council is in support of this particular amendment to conditions. Benefits to Boarders and TJ Maxx are a practical matter and will not be realized without the amendment and will be beneficial to the entire community with the amendment change. With circulation improved with the signalization and with additional buffering proposed around the pump station, they feel this is a good win-win for the community to be able to move forward with the proposal as presented. They feel they have demonstrated the evidence and could actually open up all 300,000 sq. ft. of this space, but the condition would be different than condition one as proposed – condition one would be with signalization at the intersection of Green Level Church Road and Creekside Landing Drive and with this condition they feel they can open the entire 300,000 sq. ft. of space.

Questions from Council:

Council Member Jones, asked if NCDOT had agreed to this signal. Erb responded, part of this would be to get NCDOT to agree to the signal, although in a meeting they had Monday before last, when they basically told them they wouldn't let them build the road at grade, indicated yes, a signal at this location would work and they would approve it and typically would probably only take 30 days. Council Member Jones asked if this would be permanent or temporary. Erb responded the conversation would be approved as a temporary signal and they could discuss a permanent signal here with them. Attorney Styers added at this point, if this were approved with that condition, the risk would be on them, but feels sufficient and confident they will be able to get approval.

Mayor Weatherly asked what staff thinks about this proposal. Dalton asked if he was referring to permanent signal or temporary, or whether it comes at all. Mayor Weatherly responded, advisability of the whole request if the signal was approved allowing opening the whole project on the south side. Dalton responded this is correct, they had looked at the analysis; his original concern with the 100,000 sq. ft. was based on a concrete island located there; the level of service was ok, with the problem being vehicle stacking. Removing the condition for the additional 80,000 sq. ft. would have opened that up and would have been a marginal level of service and would have allowed enough vehicle stacking. Now they are proposing a signal, they have done a full analysis and included a full build out and they have shown the signal to operate appropriately. He's hoping NCDOT can move forward with approval of this signal based on the latest concerns. He would actually prefer this signal not be given a removal date; they could call it temporary or permanent or whatever up front, but he would hope the decision would be up to the town as to when or if this signal ever gets removed, because it may be a good permanent location for a signal.

Mayor Weatherly asked as far as a recommendation for them, how Council would approach this as far as approving what is being requested of them with the uncertainty of the signal. Dalton responded the additional 80,000 sq. ft. would operate adequate prior to the installation of the signal, but going beyond that would require the signal. Mayor Weatherly understood the 80,000 sq. ft. could be approved without the signal, but then conditional upon approval of the signal they could approve the whole south side of the project as they have seen without any additions. Attorney Fordham asked whether and what the public notice referred to; he thinks they may be limited to what the public notice said, with Manager Radford stating 80,000 sq. ft. Mayor Weatherly clarified the public notice for tonight's meeting would restrict them to the confines of what was advertised, asking if that's so. Manager Radford responded yes.

Council Member Jensen asked Dalton, with the additional 80,000 sq. ft. without the signal, what the level of service would be of that intersection. Dalton responded the overall level of service is better than Level Service D at the stopped control intersection. Stop control intersections typically work during peak hours with level service F on the side streets, but the way conditions are written and analyzed with overall level of service would operate adequately. His main concern was vehicle storage and not what he would call extreme delays on the side street and was able to operate adequately with that additional square footage.

Council Member Schulze asked the best guess of when Beaver Creek Commons Drive would be completed. Dalton referred to the applicant. Erb responded they need to go back to DWQ and the Army Corp to get their sign off on larger areas of impacted wetlands in order to do this; they also need to redo their engineering plans which they have already started. This whole process could take six more months and could take longer depending on how successful they are in getting through the environmental issues they need to get through, and that Manager Radford had indicated staff are willing to help anyway they can and NCDOT has also indicated they are willing to help anyway they can. They hope it will be shorter sooner rather than later, but at this point.... with Council Member Schulze interjecting a few months off anyway.

Council Member Jensen recalled Erb had said NCDOT required had told them they required this just recently. Erb stated the decision was two Mondays ago. Council Member Jensen added three or four months ago they had at least requested, or six months ago, requested this road be put in at split elevation, asking why didn't they parallel paths or something to be prepared for both. Erb responded you can't do parallel paths – the history of the situation is that back in October, they met and the town, along with DDR/1st Carolinas with NCDOT and they gave them two options: you can build the road at grade today, coming back in the future to build the road at its final vertical elevation... with Council Member Jensen interjecting so they originally gave you options, with Erb responding they originally gave them options, or and if you choose that option, there are a bunch of conditions they had to meet or build it at it's final elevation today. Erb continued looking down the road and knowing they had issues with getting tenants open, said build at grade today was a quicker option for them, and so they chose that option and started moving forward with this; there were emails back and forth between them and from the meeting two weeks ago where they started flip-flopping on their decision to allow two different options to choose; they finally met two Mondays ago to discuss the issue and at that meeting were told infinitively your options are really one – you can only build this at its final vertical elevation.

Council Member Jensen said it seemed to him that if they had bonded to build it or come back and pay for the raising of it, they should be able to do it. Erb stated that was the condition, they would have to bond the future work and would have to come back and build that work before they advertise for the I-540 so it wouldn't mess up their construction schedule. They were willing to commit to that, and still are, but it's no longer an option. Manager Radford stated the reason for this was with the joint reconstruction of Beaver Creek Commons Drive and the new construction of the I-540, it would have to be closed again and they said it would be over a year long delay that it would be closed and felt we were better off to have it open from the beginning at the grade at which it should be done and not closed only to be able to reconstruct it at a later date and be closed at a time when people have gotten use to a travel pattern. Council Member Jensen clarified it was an advantage to us and he agrees.

Attorney Styers, stated that given Attorney Fordham's opinion which he understands about public notice, he thinks it probably makes sense to go, even though he would like to not have to come back here, with the signalization to open any additional and again his crystal ball clairvoyance isn't that good, and thinks it makes the most sense at this point to ... his hope would be that they would approve the request as recommended by staff. Erb stated they will need to be back and hopes Council will look favorably upon them for doing this and they are trying to minimize the number of times they are having to talk to them; they do not want to waste their time.

Council Member Gossage wanted to address Connell Radcliff asking if he were sworn; Town Clerk administered an oath to him. Council Member Gossage said it sounds like the light would be a positive thing and that he was most familiar with the neighborhood of Walden Creek, and asked if anyone would say there's a big red light in my window. Radcliff responded, they had not heard anything from those neighbors since they had gotten into this process and there is really no one still there that they had talked with before, with the exception of Ms. Ward; she's the only one left and he would be glad to explore that and would certainly meet with any of them if that's the case. He stated there is one property that is buffered with Lelands that is pretty high and the light would face in the opposite direction. He doesn't think so, but can't speak for them; the buffering issue the first time was addressed and since then the Lelands are pretty high and you can't see through them; they have grown quickly over the five years.

With no one speaking in opposition, Mayor Weatherly closed the public hearing and then opened the floor for a motion.

Attorney Fordham stated there had been a lot of discussion on a couple of things, and he wanted the proposal to be clear and if the signal is being put in and the 80,000 sq. ft. is what he understands it to be. Council Member Jones added clear conditions proposed by the applicant. Attorney Styers responded, "The staff recommendation".

Action: Motion by Council Member Sutton to approve the additional 80,000 sq. ft. of retail space to be allowed to be opened without the Beaver Creek Commons Drive connection to Kelly Road, and to add the seven conditions listed and recommended by staff, and also Russ Daltons depiction of the lane splitter at Kelly Road and Beaver Creek Commons Drive. Second by Council Member Jensen.

Mayor Weatherly asked if there were discussion on the motion.

Council Member Jones wanted to make it clear, that he would vote for it, but it's not in order to allow the 80,000 sq. ft. at the expense of getting Beaver Creek Commons done, it's to get it done before – it's timing.

Council Member Jensen stated, he made the second to the motion, and would vote for it, but wanted to point out one thing – the 80,000 sq. ft. doesn't bother him, but thinks they should assess how this affects Beckett's Crossing; Art Clem who's a spokesman for Beckett's Crossing was in favor of this; he continued he would have hesitated to go the full route because even though they are talking about a signal, that is north of US64 and that's just one point – the other point is what happens to Beckett's Crossing; it's really important to get Beaver Creek Commons through, because he will certainly get heartburn being concerned people will find the other route because Beaver Creek Commons going through is to really protect Beckett's Crossing and those people; he's glad they are only doing the 80,000 sq. ft. and need to look at this from a different perspective next time.

Motion carried unanimously.

End of Public Hearing # 4

Presenter: Angela Reincke, Senior Planner

Public Hearing # 05 – UDO Amendments

Planning Board met June 12, 2006 and recommended approval of the amendments with minor changes; Staff recommends approval of the amendments with the minor changes; changes are incorporated.

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

Angela Reincke, Senior Planner presented proposed amendments to 38 items in certain sections of the UDO as follows: Sec. 2.2.7(C} through (E), Sec. 2.2.13, Sec. 2.2.15, Sec. 2.2.18(B}(6}(b}, Table 2.3.1, Sec. 2.3.3, Sec. 2.3.4, Sec. 2.3.6, Sec. 2.3.7, Sec. 2.3.14(E}(4}, Art. 3, Sec. 3.2.5, Sec. 3.2.6, Sec. 3.2.7, Sec. 3.2.8, Sec. 3.4, Table 4.2.2, Sec. 4.3.3(C}, Sec. 4.4.3(B}, Sec. 4.5.5(F}. Sec. 4.6.1 (C}(6), Table 6.1.11 (F}(1), Sec. 7.2.1(H}(2}, Sec. 7.2.1(L}. Sec. 7.5.4(C}, Sec. 7.5.4(D}. Sec. 7.5.6, Sec. 7.5.9(C}, 8.1.5(D}(4}, Sec. 8.1.6, Sec. 8.2.6(B}(3} Table 1, Sec. 8.3.2 Table 8.3-1, Sec. 8.3.4(C}, Sec. 8.6.4, Sec. 8.6.4(M}, Sec. 8.7.1(A}(21}, Sec. 8.7.1 (A}(27}(b), Sec. 13.19.

Reincke asked Russ Dalton, Transportation Engineer to explain item # 24 regarding the traffic calming policy, and warranted calming devices in neighborhoods. He stated conditions could not be placed on developers/development (for instance Beaver Creek) to put calming devices in neighborhoods; a study of traffic in neighborhood would have to be done to determine if calming devices are warranted; that could be done before development – if already warranted by a study in that development prior to the other development coming in, then the condition could be tied to them, but if not warranted before, condition could not be applied.

Council Member Jensen stated the calming devices in Beckett Crossing were to deter traffic to go in a different direction; he noted criteria related to speed and not molding attitudes as to how they are going to go. Dalton responded the Town's Traffic calming policy is based on national standards and staff would prefer they stick to policy; it's based on conditions, both speed and volume and number of trips. Council Member Jones felt number of trips is an indicator of whether they need to discourage people and to go another way. Dalton reminded Council that policy requires a petition and staff had concerns that when development is coming in and residents approach Council and pressure them into requiring traffic calming devices, they may or may not speak for the entire neighborhood, but if they stay with policy, they insure the neighborhood is on board, and they don't have a backlash from neighbors that may not have been represented in what was happening.

Khin pointed out the impetus for this particular section of the UDO came from Planning Board member that did not feel it was appropriate to require zoning conditions that were inconsistent with any policy the Town already had in place. Dalton stated staff stands behind the policy where neighborhoods warrant calming devices, either before or after new development; they do not want them put in where they are not warranted.

Reincke continued with the proposed amendments beginning with item # 25 and ending with item # 38. Council Member Schulze clarified item # 36 would allow local churches or non-profit like "Kiwanis" to now advertise, with a maximum of 30 signs per event, with Reincke responding this was correct.

Staff recommends approval of the amendments and requests any motion made include the noted changes identified in sections #6 and #8.

Council Member Gossage asking the current standard or was there one referencing page 33 – section 30 E – Retaining Structures. Reincke responded there is no current standard; this came from Jeph Allen Town's Inspections/Building Department – part concern whether it was pedestrian sensitive like Beaver Creek Commons where you have retaining wall, and with a fence being put up as part of the buffer for the residence with a fence being 30 inches from the wall, so kids can't get back there and climb and run; this impacts anybody putting in a wall that exceeds the height requirement, even a homeowner, any wall higher than 30"; this is a building related item.

Council Member Jensen addressed shielding of lights, and makes sense but instead of allowing 30 foot high lights, where the light is high and the house is here, they be limited to 15 feet in parking lots adjacent to subdivisions or houses and he's not seeing that. Khin stated this would be brought back to them and a different issue.

The Planning Board considered these amendments at their June 12, 2006 meeting and recommended approval with several minor changes, which staff supports, with a 5 to 1 vote. Changes requested by Planning Board have been incorporated into the staff report; Ordinance with amendments is attached. Council Member Sutton asked as a practical matter couldn't the UDO amendments be presented more often fewer at a time, 38 items to him was a lot to consider in one meeting. Khin reported several more amendments were coming over the next two months.

Attorney Fordham had made changes to the amendments and passed them to the council to refer to so the motion would incorporate all the changes (Exhibit A).

Mayor Weatherly opened the public hearing with no one addressing the amendments. There were no other questions to staff. Rowland stated in regards to civic clubs being able to put up signs – they can advertise and put signs up now, this amendment increases the number of signs they can put up; signs can be left up for the duration of the event or 30 days total.

Attorney Fordham asked on page 17 referring to the consent agenda stated there was still a requirement for a public hearing on a major site plan, and they might need to adapt the language where it doesn't go under consent agenda. Khin responded this was incorrect and shouldn't be on consent agenda. Attorney Fordham continued the first sentence of d(i) should be deleted, with Khin agreeing and would correct the Ordinance. Khin referred to a second sentence that mentions consent agenda and should be removed also; the motion should reflect the striking of (i) and the first sentence of (ii) as well. Khin read the ordinance as it should read ... the Town Council shall consider the applications, staff report and all other relevant matters and approve of the conditions or disapprove the application, with Town Attorney Fordham agreeing. Town Attorney Fordham advised when a motion is made, it should be ..... the motion, the proposal as in the agenda as modified as stated by Khin and also as modified by the handout from the him.

Council Member Gossage asked to either pull or clarify 30 E. Mayor Weatherly responded the motion may need to reflect the striking of whatever he had a problem with.

Action: Motion by Council Member Gossage to approve the amendments with the changes as indicated by Khin and including Exhibit A from the Town Attorney, and also striking 30 E, (with Attorney Fordham adding and including the two references pages 15 and 16 2.3.5.e should be 2.3.6.e) with Council Member Gossage adding and the corrections noted by Reincke. Second to the motion by Council Member Jones. He expressed concern relative to retaining structures and the 30 inch height and putting a 42 inch guard rail on top them. Khin stated this came from building inspections and they may have them come and talk to Council about this, if they feel strongly about it. Council Member Jones understood need to do it, and lots of applications, 30 inches and especially in a residential situation seems a little onerous; his kids instead of 30 inches would jump off something even 72 inches high. Council Members Gossage added the residential application is where he's concerned. Council Member Jensen agreed with this as well. Attorney Fordham advised he was clear on the motion. With no further discussion the motion carried unanimously.

End of Public Hearing # 5

Presenter: David Rowland, Director of Planning

Public Hearing # 06 – Annexation Petition # 391

(A sixty (60) day time period was required before adopting the ordinance to extend the corporate limits of the Town in relation to the Utility Service and Annexation Agreement mutually adopted by both the Town of Cary and the Town of Apex. The public hearing was scheduled at least 60 days from beginning the annexation process on April 4, 2006 and setting the hearing June 20, 2006).

Public Hearing and possible motion regarding Annexation Petition # 391, Westfield Homes of the Carolinas, LLC, and Steven M. Kubera, owners/petitioners, petitioning to annex 6.302 acres including public right of way into the Town's corporate limits; the property is two tracts of land located at 1619 Salem Church Road (Kubera Tract) and 1621 Salem Church Road (Westfield Homes tract) and known as the proposed Trace Subdivision.

David Rowland, Director of Planning presented Annexation Petition # 391 orienting to the location of the property and the need of water and sewer to develop it. Mayor Weatherly opened the public hearing and with no one addressing this annexation, closed the public hearing and called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Jensen to adopt an ordinance to extend the corporate limits approving annexation petition # 391. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Presenter: John Brown, Director of Parks, Recreation and Cultural Resources

Old Business # 01 –Performing and Cultural Arts Center

On June 6, 2006 Council meeting, Clearscapes was asked for design alternatives/options for front and side additions.

Presentation by Clearscapes Inc. regarding plans for the Performing and Cultural Arts Center.

Mayor Weatherly stated with the last visit of the Performing and Cultural Arts Center, Council asked Clearscapes representative to come back and revisit the architectural design, alternatives, and options for the front and side additions. John Brown, Director of Parks, Recreation and Cultural Resources introduced Steve Schuster. Schuster, stated questions raised were how they were handling additions to the building. One thing discussed was the fact that part of the funding being provided by the Federal Government and some county moneys are tied to following the Secretary of the Interior Standards for Rehabilitation of Historic Structures. The drawings presented to Council showed the area toned walls as the existing building with addition to this drawing at the lower end which is the side and to the left end which is to the rear on both levels; showing a back of the house addition which houses restrooms and mechanical spaces and support areas for the theater, and a side addition which becomes the vertical circulation to the building. He wanted to show some of the approaches taken on historical buildings and what the Secretary Standards call for, asking additions to historic buildings be of their time and that they defer to the importance of the historic building, so on the front the sliver of space that houses the stairs – they tried to take it as a quiet glass structure to compliment and not compete with the main building – the rear basically is back of the house addition which is added onto the side. Last rendering showed that view.

Some other precedence were: Memorial Auditorium, Raleigh, similar and much larger project, historic building in center with wings on each side that are done in a similar manner – simple glass structures that compliment and not compete with the main building and because it's a theater as well – the back of the house addition are generally large boxes which is what houses those. They have done theaters, showing one in Burlington, and in this case town bought the historic building next door and the addition was into a historic building as shown – on the rear again a small service building to the rear. Memorial Hall, Chapel Hill, major auditorium was added onto and shows historic building on the right and their back of the house addition treated much as support structures tend to be. It's an attitude as how historic buildings are often added onto. A project in Salisbury, shows the historic warehouse building in the center and addition to the front which became the front door, once again tries to be a building of it's time and quiet to defer to the historic structure. Clayton, two historic schools – one on each side and the addition in the center – contemporary building of its time trying to be quiet to let the historic buildings be more important. Train Station, Raleigh, addition on the back, simple glass structure complementing the historic structure. He invited Paul Formburg, State Historic Preservation Office Staff member who has been reviewing this item, but could not attend, however, his comments were passed onto the Manager.

He asked Myrick Coward to join him, President of Preservation, North Carolina, since 1978 and teaches at the University of NC Chapel Hill, a Planning Preservation Class; sits on the National Board of Directors for the National Trust for Historic Preservation and has lectured in 40 states and three foreign countries. He asked him to talk about his experience of how historic buildings are added onto. Coward stated among preservationist in the field, they have a bias toward differentiating additions from the old building, so you can tell the difference in the old and new building, and goes back to the Secretary of Interior Standards which were adopted in 1978 which calls for differentiated additions – not wanting the old building and the new building to look alike. Part of this is it enriches the building to look at it and see the differences. Preservation of NC Covenants are very specific about saying they do not discourage contemporary design for new additions and in their covenants since 1978; they have never had debate about it from then on – it's the way they do their business. They feel this kind of differentiation is the honest way of approaching construction and gives a real idea of what they are looking at and not trying to figure out what it is. He teaches a class in Chapel Hill on Preservation and is a subject you go through slides, thinking, talking and discussion where students get it, where some think it's the other way around in terms of their expectations.

Council Member Schulze stated at the last meeting, he thought some of his comments were misunderstood and his intent is not to hold up this project; he likes the project and wants to keep it moving; he's trying to tweak the plans a bit to what he thought in his opinion, to tone down the starkness of the glass pane. He thinks everyone on the Council agrees that they want to make the addition look different from the original and that was fine, but what he's hearing and he feels like there is a wall there; he want's the addition to look different from the original but also look a little less stark, and all he's hearing is you have to have a glass pane. He asked why they can't do something, maybe he could add suggestions, he doesn't know if he knows the background from the last meeting, but his issue was the glass pane was so big, it looks to stark and out of place for downtown environment.

He was suggesting maybe a small arch on top to tone it down and arches aren't just for historic buildings, plenty current day buildings have arches, and he doesn't think anybody would confuse that addition with the original structure, so all he was trying to say is, tone it down without having to go back to the drawing board, asking if there was a way they could etch the glass, do something else – he's not the expert here, but looking for suggestions to tone it down, but at the same time keep the project moving forward and on schedule. Again, this was just his opinion and if other people on the board say its fine the way it is, then he can live with that, but he's offering his suggestion and last time he seemed to get some agreement with his suggestion.

Schuster responded their job was to hear his concerns and address them; he wanted to make sure he was hearing him say the addition on the front is a little too harsh in his view point, and he respects that; he'd love to hear other views so if they do make a modification, they have some confidence they are hearing everyone's view and not trying to pick out different ones because their goal is to find a consensus that works for the town and for all the elected officials.

Council Member Sutton asked if the glass was clear or tented. Schuster responded their intent was to be clear so that at night it became the grand stair and transparency of people moving up and down throughout the building, as compared to shading it and loosing that view into the building.

Council Member Jones added in his opinion, transparent piece of glass depending on the angle of the sun and other stuff, and the type of glass used can be less stark and thinks that what you see in the rendering; when he looks at the rectangular shape in the alley way, between the Town Hall and Rodney's signs, and sees the right angle at the top, he's seeing the same angles in the building next door in the façade of Rodney's. Schuster went back to the front elevation and stated clearly the building has horizontal lines at the parapets at the cooping lines and therefore keeping the front horizontal was their intent to not compete with the front; clearly, curves and arches are often used, but part of what they helped do in the downtown architectural guidelines, was to talk about how to be consistent in the downtown and right now have a very horizontal building top downtown and was his intent. Looking at the type of glass can be done and very appropriate to think about.

Mayor Weatherly took poled Council to see before talking about what changes, if there was a consensus that they after having percolated over this for two weeks, and seen other examples in the neighborhood, had gotten more comfortable with the original design. He didn't know how to assess that, but asked.... maybe start with a motion to approve the original design if that's what he was hearing him say and then see if they get three votes from that. Council Member Sutton was ok with this and made the motion.

Action: Motion by Council Member Sutton to approve the original design as presented, with Council Member Jones making the second to the motion.

Mayor Weatherly asked for discussion. Council Member Schulze was not going to vote no for it, he likes the project. Council Member Jones suggests Schuster look at moving forward with the building but come back to them with what kind of glass; is it complete top to bottom, how do you treat that glass, without changing the architectural design where they had to go back to construction documents; maybe a shop drawing issue rather than construction document. Schuster would be happy to show them the actual materials, which would be very useful.

Council Member Jensen stated the last time he thought when he was here, he would come with minor modifications suggested by Council Member Schulze, a slight arch or a square top with a slight arch in the glass underneath or something; maybe they need to look at this as a whole street to see how it blends in; we are looking at one building and don't see Rodney's Signs next door to get a better feel; he has the same exact feeling as Council Member Schulze – the boxiness to him is stark, and maybe what he wants, but at the same time detracts rather than flows; you want it different in minds eye which is an artist, but have it flow a little.

Performing and Cultural Arts Center continued

Council Member Gossage felt the struggle here was between wanting to preserve and amplify the historic nature of this building, but not wanting to detract from the historic nature of the entire downtown and there's a concern that is what this will do. The other perspective he has is as they talked about two weeks ago, was from the side and that there's going to be this big box sticking out on the back and that will detract and he thinks in his mind is what he's seeing is not just limited to this building, you are looking at it from the perspective of this building, where they are sitting here knowing downtown and walking there every weekend and getting ice cream and looking at, … how is this going to fit in with walking up and down the street, this section in the front and the section in the back, we certainly don't want to do anything that detracts or doesn't amplify this building but also don't want … he didn't want something that he was going to walk down and go… gosh that looks funny, it doesn't look…. with Schuster interjecting nor do we, he can assure him. Council Member Gossage felt they were walking on a fine line. Schuster suggested they come back with an elevation of the entire block showing this building in context of everything else on the street so you are not looking at it in isolation and he's hearing that is an issue, look at it in the total context of the block and also bring back the materials to really see what they look like in reality in order to see if in fact it has the starkness that the drawing implies, in reality or not, that would be an easy step to take to give more information to make this decision.

Mayor Weatherly asked if this would be inconsistent with the motion that's on the floor; what he's proposing is a potential radical rewrite. Mayor Weatherly stated the motion on the floor would basically approve what has been presented with and then come back with materials and other refinements maybe, enhancements that could be made, modifications without architectural and design changes, with Council Member Jones adding, and to allow the process to continue, and by the time they award bids, they are all in the same boat here.

Council Member Schulze thought they had made it clear last time they would see options tonight and he's not seeing any. Schuster stated they did not bring options, but showed what standards required and choices and how other buildings have done the same thing. Council Member Schulze responded he knew what standards required and he agrees with those standards and his intentions, he wanted to see options that would accomplish the same goals, and he supposed he didn't have a rendering of the stair case either. Schuster responded no he didn't.

Council Member Gossage read the minutes from the last meeting, his response had been that he would be able to provide options with sketches with several options being previously shown in the workshops. Schuster responded that he understood. Mayor Weatherly added they are in debate on the motion on the floor, and should confine it to that. With no further discussion, Council Member Jensen asked if this could be deferred to the next meeting to see. Mayor Weatherly responded they could offer an amendment of substitute motion. Manager Radford noted the Council next meets July 18, 2006.

Council Member Jones asked the schedule, with Schuster responding they are ready to go to bid as soon as Council gave them authorization. Council Member Jones asked how long the bid process was. Schuster responded typically four weeks. Council Member Jones added you open bids and review them with Schuster continuing they come back to Council with recommendation for award, with Council Member Jones continuing recommendation of a contractor based on the construction documents based on what you see; there's opportunities to make slight modifications, with Schuster interjecting throughout the construction, and with Council Member Jones continuing until we get a CO, with Schuster responding yes sir.

Council Member Jensen asked how we do the construction when we don't have the money yet, asking didn't they have the cart ahead of the horse at this point? Are they going to get a loan? Council Member Jones was assuming that when this comes to Council for award, they will have those options in front of them to look at; that's his hope.

Manager Radford told them he's not associated with the fund raiser committee; he had sent them an email that talked about where the fund raiser was at this date, and he would tell them, they are planning on restarting the fund raiser campaign in September. Council Member Jones spoke to the fund raiser campaign in that there are several options to pay for it. Manager Radford continued if they want to make a contribution toward it to bridge whatever necessary from the financial perspective, they have the financial ability to do that; they had known all along they were going to make a significant contribution to this project in order to be able to see it to fruition. Donna Buckless asked to address Council regarding this matter however, with the motion on the floor, Mayor Weatherly advised he would recognize her at a later time. Mayor Weatherly called for the question. Vote on the motion was unanimous to proceed with the basic architectural design, with Schuster coming back with… Council Member Jones adding, with materials, options, and backup for those materials if they don't like them.

Performing and Cultural Arts Center continued

Council Member Jensen wanted to know if they would see the arch or any kind of slight change. Council Member Jones asked if they would show some change to the top .... with Council Member Jensen continuing probably not, because they had been railroaded through this process.

Mayor Weatherly added they didn't want to do anything inconsistent with what the experts advice was that would mess up federal standards; they didn't want to see anything that would jeopardize federal guidelines, being consistent with them. Mayor Weatherly asked if everyone was listening, arches and all basically accept what he's saying about federal guidelines and things. Council Member Schulze was not hearing one thing or the other and was his problem; he was frustrated about that and had not heard federal guidelines say "no" to arches. Mayor Weatherly was saying if they are. Council Member Schulze said he could live with that, but he's not hearing that. Mayor Weatherly stated his email indicated some change... with Council Member Schulze interjecting he didn't want to mimic the original building, with Mayor Weatherly responding that's right with Council Member Schulze agreeing with that, but wants it to be clear and he's not hearing options. Mayor Weatherly asked if Schuster was clear on this, with Schuster responding, he was clear and next step is to proceed with bidding the project and at the next meeting come back, with contacts, options, and materials. Council Member Jones added and to bring them something in options to the addition to the left.

Council Member Sutton confirmed Schuster was going to proceed with bidding the project, and come back... with Schuster interjecting, so they could select the contractor and understand what the costs are in the market place – they have given a good estimate, but the market place ultimately will tell them the costs are and will come back to the next meeting with the building, context, materials and looking at the harshness of the addition he has heard to see what they may do to address this issue, with Mayor Weatherly agreeing. Council Member Sutton felt it was in the spirit anyway and not the letter.

Donna Buckless is involved with proposing this project to the public in relation to the private fund raiser campaign. She had thought they would hear her comments prior to having made discussion on architectural design for renovation of the old town hall. She was made aware by newspaper and committee Council had concerns on the exterior design, and a fund raising board member of the cultural arts center and a citizen of town, voiced her concerns of their discussion tonight. Drawings by Clearscapes has vision of tying downtown and small towns with charm and appeal, vision and modernization, and thought Council would have wanted; Town employed them to do such a job. Drawings shown two weeks ago were not new to Council and had seen them on many occasions and had multiple opportunities for input prior to two weeks ago. Same drawings the fund raising committee has displayed to thousands on Peak Day, young, old indifferent, varying age groups. Same drawings shown at fund raising galleries with money pledged based on those drawings. All voiced concerns about a matter of taste and added personal taste; personal opinions should not enter into this project so late in the process. She realized seeing many drawings are concerned about what would fit the downtown area; you hired a fully qualified company and have a professional staff at their disposal to give professional advice; from a design standpoint to blend the old with the new. That's why they spent a good chunk of change and proposing to spend another to have changes made, and concerns her. She recognizes this is their right as council, there could be some significant financial implications incurred for any significant changes made. Fact that you are having him go back will cost tax payers money; he will not do designs and changes and showing streetscapes for free and will take hours and costs, costs that should have occurred prior to tonight. Whether it be a dollar or ten thousand dollars, the citizens of Apex have to pick up the tab. Standing among hundreds of people on Peak Day, she did not hear one single word of concern from a senior, middle age, teens, 20 year olds, not one in that path voiced concern. All she heard was oohs and ahs... She never heard the glass is stark or its too dramatic a change for downtown Apex – the basic question asked where will it be .... next to Rodney's Sign shops – drawings were up the entire day. In closing, she stated as a citizen she appreciated their hard work time and attention to detail, but requests the project go as is. committee has not heard one word of criticism from anyone except from the Board; any changes incurred will be costly to the citizens of Apex. She has a son that graduated from High School and the future of Apex and no offense to council, but not you... it will be the children that grow up ... we need structure downtown that is modern that mixes old with new so they can continue to attract younger thinking people of America into our town. By asking professionals to go back and revamp what they have done because of their own personal tastes is wrong, they are asking citizens of the town to incur expense they shouldn't this late in the day be incurring. She asked them to rethink their going back and doing any additional drawings; everything she has heard them say is all based on strictly personal taste; dramatic, stark, it's modern and a great transition; if you ask her she would be applauding and fighting them. It's only a matter of opinion, and as a fund raiser board had only heard from several hundred talking with 1500 or 2000 people at this point and not one has voiced concern. She feels like they answer to the people of Apex especially if they ask them to pick up the penny when the penny has already been paid.

Performing and Cultural Arts Center continued

Mayor Weatherly's response to her was they have voted to proceed with these designs and the only thing he will come back with will be minor modifications and will not require drawing changes. They will go to bid with these plans here. Buckless stated there was still not consensus and concerned her and was a matter of personal taste as opposed to what is right; there are people at their disposal that are paid professionals and yet are asking glass removed and glass tinted.

Council Member Schulze told her he didn't know what the options are and are trying to get it and frustrates him. He's not asking to go back to the drawing board. He's not heard one option and asked how does he know. Buckless asked him, where were those options six months ago when he saw the drawings. He responded he had not seen this one drawing, and said it last meeting. In looking at this you can't tell how stark it is.

Mayor Weatherly continued they were beyond radical redrawing now; vote of the board is to proceed and with glass potential options and other minor adjustments that will not require any architectural drawing changes. Buckless asked so, then, the glass will stay. Mayor Weatherly responded, whether tinted or whether clear, or whether may there some minor things that can be done, that will be considered a minor modification. Council Member Gossage stated he had used the word significant in there and that's not going to happen. Mayor Weatherly responded they had just voted that they would not do a significant rewrite; because they are going to let the bids out and can't anticipate major changes if we let bid out. In fact, Council Member Jones clarification was he will come back with things that will not require major changes. Council Member Schulze wanted to be clear about that, very clear. Mayor Weatherly added, not to go away thinking they are doing anything inconsistent and why when he felt like they were going in this direction, then her comments, would have satisfied her entirely and surprised she seemed .... with Buckless interjecting, it seems they will be stalled and still concern on the table, with Mayor Weatherly responding, no... and why we are going ahead with the bids; the fastest we could possibly be moving with this plan. Buckless added her concern was not speed, her concern was that they all have such strong opinions and she hasn't heard one outside the three of the Council and not heard one single person that they presented this to and was presented to varying age groups and citizens and the one you are doing this for. Mayor Weatherly finalized that they are moving ahead with these plans, but have reserved the right for minor changes such as the ones he just said with consultation with the experts. He asked her to come back at the next meeting; you heard the motion and are proceeding.

Council Member Jensen clarified on the motion that Clearscapes said they would come back with a rendition of the whole street and he doesn't think it's personally necessary as long as they see the first couple two or three buildings or something like that and they were not looking at great modifications, just squaring off or rounding off the top basically all he was concerned about and nothing else, because it looked stark to him. Buckless asked, if he were an architect, no offense, that's where her concern is, not that he doesn't have a matter of opinion. Council Member Jensen architecture has changed day to day, month to month and year to year and it's an opinion of the time. Buckless disagreed. Mayor Weatherly thought everyone was on the same waive link here.

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 comment.

NEW BUSINESS

Presenter: Bruce Radford, Town Manager

New Business # 01 – FY 2006-2007 Annual Budget Ordinance

Possible motion to approve the FY2006-2007 Annual Budget Ordinance.

Bruce Radford, Town Manager presented the 2006-2007 Annual Budget Ordinance for adoption. Public hearing was held prior to the finalized budget; workshop was held with Council and highlighted the budget message. Final Public hearing was held with two comments specific to concerns with sidewalks and thinks those issues have been addressed and told them the plans for the sidewalks. This budget does not increase the ad valorem tax and would remain at $0.40, with the greatest majority of municipalities in the County having dramatic tax increases. This budget calls for increase in water and sewer rates to develop capital to make contributions towards the regional waste water treatment facility. The budget is well formulated and adequately addresses the needs and concerns of the community and would like to ask adoption of it as presented.

Mayor Weatherly was pleased with the budget and thinks he has followed philosophical direction of this board to make priority to keep the taxes as low as possible in relation to providing services. he knows departments may have been upset their projects were not able to be funded in this budget and appreciates their patience, but with adoption of the budget and conclusion of the budget year, Apex will be the lowest tax rate town in Wake County which means we are very conscious of raising more revenue than needed to fulfill our commitment to provide services and believes this budget does that. Mayor Weatherly stated maybe next year for those projects not funded; they don't think they are not important, but do need to lock the household budget and live within your means and thinks they have established that $ 0.40 is our means and next year hopefully revenue will increase while maintaining the same tax rate. He was thankful for the budget and it was consistent with what the board would have wanted him to do. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Schulze to adopt the FY 2006-07 Budget Ordinance. Motion carried unanimously.

End of New Business # 01

New Business # 02 – Parks Recreation & Cultural Resources Advisory Commission

Mayor Weatherly will request Council's consideration of the reappointment of the Chair and Vice Chair of the Parks, Recreation and Cultural Resources Advisory Commission and recommended by the liaison to the Parks, Recreation Advisory Commission:

Reappointment of the Chair and Vice Chair

Chair – Angela Reincke one year term expiring May 31, 2007
Vice Chair – Greg Coley, Vice Chair - one year term expiring May 31, 2007

New Business # 03 – Parks Recreation & Cultural Resources Advisory Commission

Add – on: Reappointments:

Julia Epplin for a three year term expiring May 31, 2009
Don Koch for a three year term expiring May 31, 2009.

Action: Motion by Council Member Jones for (both New Business Items # 02 and # 03) approval as recommended. Second by Council Member Gossage. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Motion by Council Member Jones and second by Council Member Gossage to move into closed session to discuss: Acquisition of right of way and easements associated with the Apex Peakway Project (Hillcrest Drive to North Salem Street) and to establish negotiating positions, regarding acquisition of real property. Motion carried. Minutes of closed session are recorded separately. Motion by Council Member Gossage and second by Council Member Jensen to move back into regular session. Motion carried.

ADJOURNMENT

With no further business to come before the Town Council, a motion was made by Council Member Schulze and second by Council Member Sutton to adjourn at 10:58 p.m. Motion carried.

The above minutes were approved on the 18th day of July 2006.

Georgia A. Crumpler
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes for Tuesday, July 18, 2006 Town Council Meeting
held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly call the meeting to order with all Council Members present.
Mayor Weatherly rendered the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATION

Mayor Weatherly presented a Proclamation for "Zoning Officials Week" July 30, 2006 – August 5, 2006.

Mayor Weatherly introduced David Joyner, Executive Director of the N.C. Turnpike Authority for a briefing regarding the I-540 as a Toll Road proposal; debate and discussion of the potential tolling of the outer loop would impact western and southern wake counties. CAMPO will review the proposals at their August 16, 2006 meeting. After the review of the executive summary, public comment was received and discussion heard. Public notice was duly given. A Preliminary Financial Feasibility Report for the Triangle Parkway and Western Wake Parkway is attached. The study consisted of two components: 1) A level 2 Traffic and Revenue Study conducted by Wilbur Smith Associates, and 2) a financial analysis of data by Public Financial Management to determine the financial feasibility for building the project as a toll facility. Grady Rankin, CFO of the NC Turnpike Authority, was present to explain the financing options for the project that would extend from NC55 near Research Triangle Park to NC55 near Holly Springs (12 miles) with the southern portion of the project to open at a later point (16 miles). Request for the study came from five mayors of Wake County towns and due to the rapid growth of the greater Triangle area, particularly western Wake County and the estimated traffic forecasts being extremely high and based on 4.5% over the next 20 years. Environmental work for the project has been complete. Without I-540 as a toll project, and should the Western Wake Parkway project be a free road project to be constructed by NCDOT, the earliest date of completion with traditional funds would be 2017 or 2025 with the Southern Wake section being 2025-2035. Study found considerable demand for the proposed Western Wake Parkway and ultimately for the full Western Wake Parkway and Southern Wake Parkway projects. To build a toll road includes maintenance cost of approximately $40 million a year, and relives NCDOT from the maintenance and allows money to be spent in other places. The NC Turnpike Authority adopted a policy that says they will not move forward without CAMPO approval and should the project not go forward, NCTA has an agreement with NCDOT to take over the project. It was noted Federal funding shifts and with $660 million budgeted for TIP new construction statewide. Project is 75% bondable based on the preliminary study with 25% of the cost unknown; he knows nothing that would turn to the locals to fill the gap, however may look to the General Assembly for source of revenue to fill the gaps; operation as a toll would have debt pay off with 35 year bonds and once toll is removed, the state would pick up the maintenance. If the toll project is successful, build out date is 2007 – 2008 and opening to traffic 2011. Total project cost including the Triangle Parkway to here is $800 million with an estimated construction cost per mile of $16 million.

I-540 presentation continued

Bonds being considered are standard 35 year debt financing. Mayor Weatherly expressed concern with the financial assets that could be sold, the state, asking questions regarding the states ability to sell the project; we doubly pay for our roads through gas tax and then through tolling, and then when the bonds are sold to a private company who would then realize a profit from their investment, not only the payment of the investment, so the tolls would go up and would never see an end to this. Joyner was not implying this only stated this has been done; he noted it controversial however, will set limits on caps for toll increases to pay and upgrade projects and went into a dedicated fund for transportation; he had no idea if this would ever be considered in North Carolina, a conservative state and slow to change, and hasn't heard any conversation about this in North Carolina, as it is not addressed in current law.

Mayor Weatherly's concern was also with the issue of being burdened with perpetual maintenance of the loop, and then the project would never come out of the toll. Joyner reminded him the law says when the bonds are paid, the toll comes off and the agreement is the maintenance goes to NCDOT, they only get the maintenance over the period of the bonds, with the toll covering bond payments and current maintenance, and debt reserve; no projects have gone into fault. Mayor Weatherly commented that 35 years is a long term, and say forever and longer term than he had initially understood, and if it's the only way for financing those bonds.

In response to Council Member Gossage question regarding payback of 35 years vs. 20 years, Grady Rankin explained unique features of the toll road is that revenue starts slow and increases significantly, with layers of financing build as revenue allow, noting the types of financing and federal bonds. 35 year bond indebtedness vs. 20 year debt payback keeps the tolls down over a longer term with lower payments. He felt estimates and projects for the Western Wake section were conservative and not any excess cash flow on the project, not already spoken for and a possibility that revenues will exceed projections. Council Member Gossage asked if this were built as a free road, this would be done by NCDOT eventually, with Joyner responding TIP funding is reviewed every two years for the seven year TIP and moves subject to political debate; this loop project is one of ten competing for funding; without a toll project he does not see the project being built in this lifetime or our children's lifetime as federal government funds would be broke and only money would be available for maintenance; no one knows where the money would come from; there's no will to increase gas tax, and other sources of revenue; every state faces the same delimea, and serious problem; funds are drying up faster than can recoup losses; to say the funds would be there to build this project as a traditional funded state/federal project, he personally doesn't think the funds will be there; things could change and something could happen. Mayor Weatherly stated he couldn't see into the future, but is obviously in the political environment, you reach critical mass and pressure builds and do things that wasn't anticipated even a few years ago, and could be the case with this road, with the growth anticipated, demands of people coming along the beltway and can't continue on, and administration changes, there's not way to look into the future... with Joyner adding inflation of construction costs is up over 50%. Mayor Weatherly is torn with this toll road proposal and wants NC55 back to the locals and see reductions of traffic on NC55 and will never get it back until the I-540 loop is completed, and who's to know.

Council Member Jensen asked questions regarding federal bonds or Tiffia Loan and noting them not guaranteed, only issued, and asked if the state were to guarantee the bonds, could there be lower interest rates and if doable. Joyner didn't think the state would want to do this, however thinks the state will have to help fill the gap; he's talked to the House and Senate Transportation Committee, and realizes they have created an unfunded mandate; and there's no money to fill the gap and doesn't think they fully understood this when they created the Authority.

Mayor Weatherly opened the floor for public comment: Richard Nowak came forward and shared concerns: the 35 year term, potential cost increase on tolls, taxpayers funding the cost of western Wake County with NCDOT having funded the northern part and bypass across the state, state law "tolls will come down once debts are paid", however, laws change and the tolls could remain, and final the tolls free up dollars and allows NCDOT to spend that money for other projects, while taxpayers are paying here. No one came forward to address the I-540 toll project, and Mayor Weatherly closed the hearing.

Council Member Jensen would like to see toll booths along the entire loop, with Mayor Weatherly responding this is contrary to current federal law that prohibits booths on roads already constructed. Joe Malozo of the Transportation Alliance explained current legislation passed with two amendments and explained 1) would have to approve any conversion of an existing free road to a toll road 2) if an existing road were converted to tolling; resources could only be used for that toll. Mayor Weatherly confirmed they were talking the section of I-540 from I-40 to NC55 and will open next year and funds would be used then; asking if legislation gives authority or makes it happen. Malozo noted it gives authority and the value of adding this would bring in $125 million in resources they would not have to bond. Joyner advised they were looking at electronic tolling throughout, not toll, however there will probably be cash lanes with an analysis being conducted to determine optimum toll levels and looking at technology Mayor Weatherly expressed he would like Council to give him their input on the proposal of I-540 as a toll project, prior to his meeting with CAMPO in August.

End of Presentation

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion and with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was set prior to taking action on the following items.
Action: Motion by Council Member Gossage and second by Council Member Jones to approve the consent agenda. Motion carried unanimously.

1. Minutes of June 20, 2006 Council Meeting.
2. Minutes of June 20, 2006 Closed Session of the Council (separate cover).
3. Minutes of June 20, 2006 Closed Session of the Council (separate cover).
4. Annexation Petition # 393, Henderson E. Hinton, property owner/petitioner, petitioning to annex 6.885 acres including right of way into Town's corporate limits: property is located on the south side of Lufkin Road; and extending north to US1; 1) Resolution directing Clerk to Investigate Petition 2) Certificate of Sufficiency by Clerk, 3) Resolution setting public hearing for August 15, 2006.
5. Budget Ordinance Amendment and Capital Projects Ordinance Amendment.
6. Designation of Mayor to declare a disaster adding the sample Declaration of Disaster as part of NIMS compliant Emergency Operations Plan and acceptance of new NIMS Emergency Operations Plan.
7. Resolution: NC Highway Safety Program Grant form GHSP-02A Highway Safety Project Contract.
8. Resolution to change name of portions of NC Highway 55 and Technology Drive to East Williams Street and a portion of East Williams Street to Bobbitt Road.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items with an amendment to include a closed session: potential purchase of real property. **Action:** Motion by Council Member Jones and second by Council Member Gossage to approve the regular meeting agenda as amended. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director
Public Hearing # 01 – UDO Amendments
Planning Board met July 10, and unanimously recommends approval of all amendments with condition to Sec. 8.2.6.; staff concurs with the condition, and recommends approval of the amendments.

Public hearing and possible motion regarding amendments to certain sections of the Unified Development Ordinance.

Khin presented amendments to the UDO. Most noted amendments were in Section 2 of the UDO: conditional use rezone procedures and Appearance Commission membership and Section 8 relating to buffers. Other amendments were noted and outlined in the staff report which is attached and incorporated as a part of the official minutes. Staff recommends approval of the UDO amendments. Planning Board considered the amendments at their July 10, 2006 meeting and unanimously recommended approval with the condition that in Section 8.2.6, no buffer be required along the use "Railroad tracks" within any of the districts through out town; market will decide how close and to what extent any buffer would be needed along the tracks and pointed out in downtown there are residential properties that have railroad tracks in their back yard in the historic district. Staff concurs with their recommendation and has made the changes to the staff report and ordinance accordingly. Buffers are required when new development proposals come forward and there are various buffers depending on type of use; Asphalt Plant is type 6 use and would not have a buffer next to the railroad tracks. Staff proposes to go from some buffers along multi-and single-family residential to no required buffers – it doesn't mean the applicant and developer would not provide some sort of buffering; Trackside development would have a parking lot between the tracts and the buildings but not technically a buffer because it is paved. Council Member Jensen felt this was a mistake as buffers provide some noise protection, and felt this is a step back in quality and needing some type buffer – as a town need quality.

Public Hearing # 1 continued

Mayor Weatherly opened the hearing at 7:45 p.m., and with no one addressing this item, closed the hearing.
Council Member Jones felt this should depend on use and in some cases did not make sense, in talking about commercial and institutional and a buffer between that and the railroad tracks did not make sense to buffer that use from the tracks; if there's a residential area, he thinks for their own marketing reasons would want buffers; if commercial the same thing; in Trackside case, the parking lot is adjacent to the tracks and is there for a reason, and wouldn't want to buffer it; he understood need for some flexibility and had always it seemed been able to do this, whether required in the UDO or not if it was the right thing to do. Mayor Weatherly felt market would dictate this and would not build something they couldn't sell because it has a railroad track beside it.

Council Member Gossage felt if something was developed and didn't have to buffer it, but for liability sake, wanted to put up a fence there could put a chain link fence, or another type fence. Khin responded chain link fence was not allowed, and could be a possibility, however staff was looking at the future of transit service with the purpose of being next to railroads; residents who choose to live in this type development understands the train is there and their choice to live there. Council Member Gossage asked would we want to buffer the fence, and there be no requirement to buffer it. David Rowland Director of Planning responded this could be reviewed when projects come to site plan. Council Member Jones thought the question was whether you buffer the use from the railroad track or the railroad track from the use. Council Member Gossage could see where you wouldn't want a buffer.

Council Member Sutton clarified at site plan if they felt it were needed, Council could request the developer to put it in. Rowland responded they could put conditions on the site plan. Khin reminded Council there are building set backs and could not build closer to railroad right of way line than what the set backs require and varies in each district; there would not be a building on the line; it would not be allowed; she thinks the request is a difference between setbacks and what could be between the railroad tracks and a particular housing such as townhomes, single family, condominiums – actually having to do a specific buffer, and a specific width. Council Member Sutton expressed that one would hope the market would drive this, but in case it doesn't, then if you don't have the requirement he doesn't think you could force a developer to do it; if it's not in the UDO he doesn't think they could be made to do it. Rowland added they have done a lot of things to suggest to the developer and most of the time they agree. Council Member Sutton asked if they had a developer not take their suggestions, with Khin responding sure, and Rowland adding it's rare, but has occurred, but thinks its site specific. Khin responded the original language was in the Peakway recognizing the more urban nature of the area, and Planning Board didn't see any reason to exclude it anywhere along the rail line.

Council Member Jensen could see that would be market driven to put buffers in; part of what he would like to see done is for quality development, because tax revenues are better from high quality development rather than low quality; he noted a cut off amount that applied. Khin responded transit oriented developments have high costs for the homes of the people who build there and doesn't think that would be an issue with Trackside development. Council Member Jones reminded there would be landscape requirements for whatever uses, with Khin noting the Parking lot had to have at least the requirements for vehicular use plantings; she believes they plan a buffer but not the required buffer width, believing it to be 30 feet and felt they didn't' have this to give and wanted to plant a thicker buffer in a smaller width. Council Member Jensen had mixed emotions about this, and market driven at that point.

With no further discussion, Mayor Weatherly called for a motion.
Action: Motion by Council Member Schulze and second by Council Member Jones to approve the amendments as recommended by Planning Board with the condition as stated. Vote on the motion was 4 in favor and 1 opposed, with Council Member Jensen casting the no vote. Motion carried to adopt the amendments to the UDO.

End of Public hearing # 1

Presenter: David Rowland, Director of Planning

Public Hearing # 02 – Annexation Petition # 392

Annexation of the .509 acres must be considered prior to the Rezoning Case # 06CU16.

Public Hearing and possible motion regarding Annexation Petition # 392, Thomas E. Seymour and Sidney W. Seymour, Jr., owners/petitioners, petitioning to annex .509 acres into the Town's corporate limits; the property is located on the south side of Beaver Creek Commons Drive and a section needed for the Kohls site plan and in Wake County and must be annexed to bring it in for site plan; this is a voluntary annexation. Mayor Weatherly opened the public hearing at 7:52 p.m. Alan Maness agent for Thomas Seymour supports the annexation. Mayor Weatherly closed the public hearing and called for a motion.
Action: Motion by Council Member Gossage and second by Council Member Jensen to adopt an ordinance to extend the corporate limits by the acreage stated above. Motion carried unanimously.
End of Public hearing # 2

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 03 – Rezoning Case # 06CU16 and Major Site Plan

Planning Board met July 10, and unanimously recommends approval with conditions; staff concurs with the conditions and recommends additional language to condition #3, and recommends approval with regards to the site plan.

Public Hearing and possible motion regarding Rezoning Case #06CU16 and Major Site Plan for Kohl's, Barrister Capital Management Corporation, petitioner, seeking to rezone from Wake County Designation to Planned Commercial District classification property located on Beaver Creek Commons Drive at US Hwy 64 containing .509 acres. Kohl's major site plan contains a total of 9.74 acres and 101,630 square feet of retail space.

All persons speaking during this hearing were administered an oath by the Town Clerk. Minutes of this hearing are almost verbatim as this is a quasi-judicial hearing.

Khin oriented Council regarding rezone per the staff report attached and incorporated as a part of the official minutes. The rezone is .509 acres requesting Planned Commercial to match the remainder of the tract; current 2025 LUP designation is retail. Planning Board recommended approval of the rezone, and staff recommends approval of the rezone. Planning Board voted separately for the rezone and later for the site plan.

Site plan: overall site is 9.74 acres; surrounding land uses include the Beaver Creek Commons Shopping Center, Beaver Creek Crossings Shopping Center, US64 and Beaver Creek Commons Drive, the thoroughfare for the proposed Kohl's. Building Design: 101,630 square foot building, two stories with four shades of brown and tan masonry block. Have worked with architect on exterior of building; have an outstanding issue in that staff would like to see additional windows on the building. Landscape/Buffer: appears to meet UDO requirements and have requested an arborist report to determine existing buffers and RCA meets UDO standards – if not additional plantings will be required. RCA plus buffers is 21.8% of the site with a requirement of 20% total. Project proposes 407 parking spaces located to the side and rear of the building; main entrance to building is to the east and secondary entrance to the south. Street access: proposed project does generate more than 1000 trips a day – TIA was submitted and reviewed and have recommendations. 2025 LUP site is classed as retail.

Recommendations for consistency with the UDO and the Apex Thoroughfare Plan:

1. Provision of additional windows or alternatives to additional windows, such as trellises, if found to be acceptable to staff. Architect proposed to add trellises on both the east and south main entrances; also along the south entrance visible on Beaver Creek Commons Drive. Staff felt trellises are most appropriate where you could walk underneath them, adding pedestrian amenities but still would like to see additional windows particularly on the entrances – and seen along Beaver Creek Commons Drive and the two pedestrian entrances. Trellises meet ADA compliance; architect will work with staff on plantings that could grow up the trellises for additional greenery at the entrances.

2. Staff would like a more detailed Arborist report submitted prior to construction plan approval. If the report shows that existing vegetation is not sufficient to meet buffer and RCA standards, then additional plantings will be required. (The applicant has verbally agreed to this condition).

3. The certificate of occupancy for this site shall not be issued until either Beaver Creek Commons Drive is completed to Kelly Road or a traffic signal is installed at the intersection of Green Level Church Road and Creekside Landing Drive, whichever comes first with one exception as noted: Petitioner shall participate in the funding of the signal design, materials, and signal installation through private arrangement; that participation shall equal 25% of the cumulative costs of the items mentioned; if a traffic signal is not installed by the time the petitioner seeks certificate of occupancy, a certificate of occupancy may still be issued provided the petitioner pays a fee in lieu in the amount of $35,000 unless any amount shown to have been previously expended toward the funding of the signal to the Town of Apex. The fee in lieu shall be used in its entirety towards the cost of the traffic signal for up to one year after collection. IF a traffic signal is not installed after one year, the Town may use the fee-in-lieu toward other transportation related improvements within and adjacent to the Beaver Creek shopping center site.

4. This is in connection with the completing of the light plan; Planning Board discussed having this plan done with a mix of 400 and 250 watts prior to construction plan approval. The plan has been provided, and staff believes the plan should have only 250 watts or less; there is a provision in the UDO that the Planning Director can approve up to 400 watts, but have had only one instance where this was approved "Haddon Hall Commons Harris Teeter", and have spent almost one year trying to fix this. Staff recommends no more than 250 watts for the lighting and would be consistent with both Beaver Creek Commons and Beaver Creek Crossings which uses 250 watts maximum.

5. One additional condition was not included in the agenda item and is in regard to the Apex Transportation Plan requirements: Beaver Creek Commons Drive will have a 70' right of way; developer of Kohls would have to dedicate an additional 5 feet of right of way along Beaver Creek Commons Drive which is one-half of the 10 foot dedication to make the existing 60 foot the 70 foot; there's five feet on each side and can't get 5 feet on the north side because of US64 but could get it on the south side. Total 60 foot right of way would be consistent with the dedication provided by the developer of the adjacent shopping center and is necessary to accommodate a five foot utility strip and the ten foot multi-use path that is specified in the Transportation Plan.

Planning Board considered the major site plan on July 10, 2006 and unanimously recommended approval with four conditions.

1. Provision of additional windows or alternatives to additional windows, such as trellises, if found to be acceptable to staff.
2. Arborist report submitted prior to construction plan approval. If the report shows that existing vegetation is not sufficient to meet buffer and RCA standards, then additional plantings will be required.
3. Certificate of Occupancy – Planning Board wanted it to say The certificate of occupancy for this site shall not be issued until either Beaver Creek Commons Drive is completed to Kelly Road or a traffic signal is installed at the intersection of Green Level Church Road and Creekside Landing Drive, whichever comes first with one
4. Redo the lighting plan to the satisfaction of the Planning Director with a mix of 400 and 250 watts prior to construction plan approval.

Council Member Jensen asked if staff recommends 250 watts, with Khin responding yes; it has been changed. He asked if developer has agreed to this. Khin responded this is a major site plan so she's not sure they have to agree but has not yet heard.

Council Member Sutton clarified the right of way for 70' total. Khin responded the Transportation Plan calls for 70' total, and because this is adjacent to the US64 right of way, they could not get 5' on the north side, but would like to get the 5' on the south side, which would be a typical dedication for a 60' right of way going to a 70' right of way. With the 5' on the south side, it would be a total of 65' for the whole right of way. The 65' right of way is what's been dedicated for Beaver Creek Crossings.

Council Member Jones asked when this additional condition was added; Khin responded today. Council Member Jensen asked why increase the right of way. Khin responded they had asked for the additional 5' at the beginning of the TRC review process, and they were assured all the improvements could fit within 60' and was determined, although at a late date, they need the additional 5' so utilities can be put within there; the multi-use path is 10' wide and in the Transportation Plan and not a sidewalk; typical utility strip is 5 to 6 l/2 feet and need for the Acorn lights that are currently down Beaver Creek Commons Drive, but have not yet been continued across this property. Any additional utilities that may want to locate there, phone, etc.

Council Member Jones asked to see the north elevation. Khin added staff has asked for additional landscape along this elevation and have agreed to work with them on adding some different layers, some under trees and shrubs rather than just the large hardwoods that are proposed.

Council Member Gossage referred to the early Kohls project several months ago, where staff worked with Kohls on the look of the building and Council to a certain extent, asking how this design compared to the earlier design. Khin responded the earlier design comments were to get it to be consistent with the Beaver Creek Crossings Phase 4 design, because it was a part of that shopping center. This is a stand alone site and Beaver Creek Crossings Phase 4 Kohls was a one story building and this is a two story building. The early building had two entrances on one façade; this one has an entrance on two different facades. Some elements are similar; their signature entrance with posts and white block; they did bring out various materials and colors of similar pattern that was at the Kohls when it was part of Beaver Creek Crossings. The parapet has been raised at the entrances as requested. It's a very different building because it's not a part of a long shopping center, but a stand alone two story building. There are elements that are the same however a lot of it is different. Actual materials and colors have been selected, but not the same and not required to be consistent with Beaver Creek Commons or Beaver Creek Crossings because they are a stand alone site.

Council Member Jensen asked about the bridge on Beaver Creek Commons Drive and where there was discussion for the multi-use path to go through. Khin responded there is a culvert showing it on the map designation of the bridge – there is currently not a multi-use path in this location, it is off the Kohls site. At the time, Beaver Creek Commons was developed, there was not a multi-use path requirement, and actually did a 5' sidewalk – example in front of Target. There was an update to the Transportation Plan after that project was approved and decided that with the greenway connection which is a little bit off this page that comes up through the open space for Beaver Creek Commons and will eventually connect with Beckett Crossing greenway, that they would like to see a multi-use path connect, cross the bridge over US64 and to connect up to the property next to Walden Creek where they targeted for future park – there is some open space there.

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

Alan Manase, BBM Associates represented the applicant Barrister Capital Management Co. for the site plan. They have worked for two and one-half months with staff on this site plan, and have gone from eight pages of comments to four pages they thought until 5 o'clock today, a fifth one was added. He addressed each of them.

Condition # 2: Arborist report – they will comply and satisfy staff on this item.

Condition # 4: Lighting plan – they did try to mix 400 and 250 watt fixtures; from their standpoint felt it was better design, with staff disagreeing - they will comply with 250 watt requirement.

Condition # 1: Windows on the building – they did since Planning Board submitted a new elevation to staff to incorporate trellises similar to the entrance of town hall to appease the requirement. Staff did like them, but still wants windows. This is a completely different building, a new prototype that has not been built anywhere else in the country; it's the first, a two story building where the earlier building was one story. Request for windows intent is to bring out the pedestrian character of the development; architects have gone great links to incorporate more glass than in the previous submittal and may be unclear in looking at the elevations just how much glass there is. The signature entrance projects from the building, and behind this, the glass goes up higher than it does in front up to 18 to 20 feet behind this façade; as you come in there is the stance of glass going higher. Also, on the corners you can see on the elevations, there are display windows at the corner – this being the east elevation so from a pedestrian sense, if you were walking in from Beaver Creek Commons Drive, you would come by this window then to a large display window and thinks maybe the scale of it is being lost a bit as this is a fairly tall building being two story and can see people out front and scale of the glass projects fairly high and even higher behind the projection at the entrance. At the other entrance, there is the same display windows, either side and once again on the corner, the same display window. He thinks the architects have heard the concerns from the previous submittal and tried to incorporate more glass; from an operational standpoint to punch more glass into this building is simply not going to work for this type facility; this is more like a department store you would see in a mall; everything is oriented toward the inside with merchandise on the outside walls, so those windows would severely limit the amount of merchandise that can be placed in the store, so he thinks they have done all they can do to try to concede what the planning department is looking for but to simply punch more windows into this space is not going to work operationally for Kohls.

Christen Braun from Kohls has been in on the design of this new prototype and was present to answer questions. Council Member Jones asked if the windows he's talking about were about 15'. – reply was 13'. Braun continued the design concept was to concentrate their energy and glazing at the entrances where people would be walking to, and from a merchandise standpoint wall space is important for Kohls because that's their bread and butter; interior methodology is laid out as such a way they try to maximize purchase displays, fixtures. The old elevation was submitted and showing more glass on the newer building.

Council Member Schulze wanted to suggest instead of a window have a showcase that would still be closed off on the inside and still use the wall for merchandise and have a door that would open up for access and display merchandise in the show case to the outside. Kohls representative responded that is pretty much what they have as far as flanking both entrances, showing the display windows that display merchandise as customers come into the stores. They are working with staff, having added trellises onto the front elevations, east and south to bring more pedestrian scale into the building and think it's a valid point and will try to work with this issue.

Council Member Jones asked what the building materials were. Kohls representative stated tilt-up concrete panels, split-face block, around the gateways are imported tile, and teraneil product which simulates stone.

Condition # 5 - Additional 5' of right of way - Alan Mannes addressed that in the initial submittal they did receive a comment from Russ Dalton regarding this, and believes Khin did as well for the additional 5' of right of way. The way the comment was written said either provide additional 5' or prove to us that you don't need too; he believed that was Russ's language more than Khin's language. They feel they have done this in the re-submittal and in fact the comment went away; they had shown they provided what they were looking for along the right of way for the multi-use path given also there is going to be a public town utility easement for a new power line – the power poles will sit on the right of way and then a 15' easement into their site; they were a little surprised to hear this comment come up at 5:00 today and haven't had a lot of time to deal with this. A few things he would point out is the Acorn style fixtures that are in Beaver Creek Commons – they don't have a problem with them, but do have a bit of an issue trying to at this late date, give an additional 5' for them.

They are more under the same condition as Beaver Creek Crossings which has this same power line with the metal poles and their light fixtures hung off those same poles. In their meetings with Town's public works folks about this utility easement and the poles coming through there – it was assumed those same type lights would be installed here, in fact, public works told them they would prefer to have those and there had been no mention of the Acorn style fixtures until today. They would like to work with staff to figure out a way they can accommodate those Acorn style fixtures without given up the additional 5' of right of way. He knows 5' sounds like a little bit but on this site is a lot and a late date to try to re-engineer the entire site which they would be starting a lot of it over from scratch. They have a lot of buffering on the site they are required to give – riparian buffer, RCA, and thoroughfare buffers and the 5' could hurt them in a lot of aspects. They would like the chance to work with staff to find a way to accommodate those type fixtures, but they are closer to Beaver Creek Crossings if you look at the map, they are adjacent to the theater more so, than Target, and they felt they would be consistent with them by having street lights hung on the same poles the power lines are.

With the comment on Condition # 3 - Manase stated at Planning Board, they were ok with the wording of the condition as presented to the Planning Board which would have required for a CO either Beaver Creek Commons Drive go over to Kelly Road or hang the signal at Creekside Landing Drive and knew that was a condition of their CO and were ok with this. The developer raised the issue that they should have to contribute to that signal and have spent a lot of the last week trying to work out how this should be done and what is equitable. The number thrown out a Planning Board was 25% and was not sure where this came from initially, he thinks staff said maybe they were 25% of the traffic and analyzing this week, they are far less than that. They would like the chance to present some of those numbers, and thinks they are closer to 6% of the traffic if you look at the conditions as they were suppose to be presented at the Planning Board. He introduced Christa Green with Wilbur Smith Associates.

Green had prepared the traffic impact study and there were no problems with that, a relatively easy site, and the Green Level Church Road Creekside Landing Drive came up later as a condition when Dalton had sent back his comments in the traffic study. After the last meeting when the 25% of the cost of the signal came up, she had spoken with Dalton and it was because the number came from where Ramey Kemp had prepared a technical memorandum looking at if they construct additional phases, noting this gets confusing because it talks about Beaver Creeks expansion with them as a small piece of that. They had trip generations – when you do a site, you take your building and there's a book and you look at the land use and based on studies across the United States, how many trips is this going to generate. There was nothing in the book that is like Kohls, the closest thing in the trip generation manual is their shopping center which is basically looking at a whole strip of shopping center and assuming there is different land uses and some internally captured trips between the uses. This was not the right use, so Dalton and she had come up with the closest or a free standing discount store, which is like a Wal-Mart without a grocery store, which doesn't know that they do Wal-Mart's without grocery stores anymore, because they talk about them having adjacent nurseries, or gas stations and not like Kohls either, but was the best thing at the time they had; that's what they used in the traffic study which he prefers to be on the conservative side when doing these. Afterwards when this number came up, she found out that Kohls having ran into this same problem in other times has actually performed their study and in accordance with ITE guidelines, so if you have a different kind of land use, you can go out and get an appropriate number of sites, count it and look at it and say, what is this really like – so, they have one done in conformance with ITE guidelines and it came out that the actual number of trips that Kohls would generate is about half as much as what was in the traffic study; if you think of a free standing Wal-Mart, free standing Kohls, that seems logical to her and she has looked through the study and seems it was well prepared and has provided it to Dalton last week, and he has looked at it too. When you take the new trip generation and apply it to the numbers used in the other traffic study for the interim phase, you are just under 7% of all the traffic at that intersection for the Kohls and then if you step back and look at it in the big picture, if Beaver Creek is built out, the Kohls will be maybe 4% at most of the total traffic; they feel 25% is really high because you are looking more at 7% interim and if you step back and look at the whole big picture, the Kohls is only going to be 4% too. That's why they are asking for the reduction.

Council Member Jensen guessed Kohls is only requiring 4% of the traffic, or utilizing that much, then maybe it would be more equitable that Kohls paid for 4% of all the support road within Beaver Creek Commons. Green responded the only improvement in question here is the signal, everything is in. Council Member Jensen understood, but they wanted to be equitable in this, with Green adding for this additional improvement. If there were no Kohls – you see this all the time, if there is a development and a parcel held out, that they don't in turn come back and have to say just because they agreed to build all this that you pay. Council Member Jensen responded he understood that, but she had started out they just wanted to be equitable. Green replied that's where the original number came from; in her traffic study, it's what would Kohls need to offset their site traffic – they need the turn lanes into their site and what they have agreed to build – their lane length exceeded the minimum. Council Member Jensen stated equitable means something like 4% for all the roads, but are not going to do that, but he's arguing that.

Council Member Sutton asked if any Kohls traffic will use the bridge over US64. Green responded that's where they came up with the number. Council Member Sutton asked if they were going to pay for a certain percentage of that bridge. Green responded no, with Council Member Sutton adding he didn't think so.

Manase added the developer and engineers are available for any further questions on the comments or anything else that comes up.

Council Member Jensen questioned storm water management, noting underground storage, asking what size storm with Manase responding for the two and ten year storms as the town's ordinance requires. Council Member Jensen noted in most retention ponds, the typical standard retention pond, you are required to save the first one inch flush, asking how they did this. Manase responded the one inch flush really has more to do with water quality and the total suspended solids and they will be using hydrant dynamic separators prior to the water entering the detention basin to settle those settlements. Council Member Jensen asked in terms of phosphates and nitrate, how does this manage that. Manase responded literature says there is some reduction in that through these by settling those solids but they are not required by the Town in terms of nitrogen reduction.

Clyde Holt, Attorney, Smith Moore Law Firm, Raleigh, represented the applicant, expressing appreciation staff's support throughout this, and the courtesy they have shown. They appreciate the support in the endorsement of this project by the Planning Board. They looked into several of these issues all of them in great detail except the one presented at 5:00 p.m. this afternoon. They recommended approval in accordance with conditions they have listed and they would ask the Council endorse the Planning Board's recommendation with those conditions and with the wording that the Planning Board found appropriate. As far as the window idea, he doesn't know that there is anything in the code that requires a specific number of windows, either per building or on a particular side of the building, and appears to be a subjective design feature and he thinks Kohls has bent over backwards to try to address staff's concerns and comments and will continue to work with them, but would respectfully ask that they not be … or that merely subjected condition be imposed upon them and it's hard to tell how much glass is going to be enough, or how many trellis is going to be enough and thinks that they have made a good faith attempt to come up with something that the Town can be proud of and that staff has had some good positive input in, but they would ask Council agree with that. Further questions, he would be glad to answer, and a pleasure to be in Apex and look forward to building this project.

Mayor Weatherly asked for those who wish to speak in opposition to come forward.

Andy Penry, Taylor Penry Law Firm, Raleigh, representing Developers Diversified Realty, which is the developer of Beaver Creek project. He stated his client has appreciated opportunity to work here with Council and others and looks forward to continuing to do that. They were at the Planning Board meeting and one of the issues as raised by Council Member Jensen, the issue of fairness and equity in sharing in the cost of the infrastructure for the developer that will take benefit from it – who is going to frankly get a free ride from it. They certainly agree with the staff's recommendation on the 25% assessment on the traffic signal and thinks their studies demonstrate at least that impact and thinks Kohls study shows Council Member Sutton 50% of their traffic will use the bridge in question. They have tried to have a dialogue with the developer over the past week or so since the issue was raised by him at the Planning Board about what is fair and equitable sharing in the cost of this infrastructure and were continuing in that dialogue and think they would like to continue in that dialogue – it's frankly a private matter that is better dealt with among them, so they would propose to table this issue while this conversation continues, but if they don't want to do this, thinks they can and should consider the impact that someone is free riding on this work and aught to fairly and equitably be required to contribute their fair share which is at least 25% candidly and certainly more and is certainly more than the traffic signal and something that benefits us all and this developer aught to be required to pay its fair share. He turned to Mr. Herman from Developers.

Herman stated Developers Diversified Realty does not object in principal with the proposed development, but does take issue with making sure any developer whether them or any other developer coming to town, is treated fairly and equitably and that all developers step to the plate as DDR has done on both the original development of Beaver Creek Commons as well as Beaver Creek Crossing and take upon itself the responsibilities to do the right thing for the town which is developing and contributing appropriately through doing the improvements themselves or contributing to a fund that offsets those costs that other developers may have already expended prior to them arriving on the scene. That being said, they have reached out to the developer in an attempt in trying to discuss this prior to this evening's meeting, not to take up Council's time, and discuss an issue that is really more of a private matter, in hopes they can reach an agreement that would be equitable and fair for both developers and would seek that as Town Council's suggestion back the developers if that issue be placed back in private hands to deal with it.

Herman pointed out that their traffic study conflicts back and forth with how they arrived at 25% and doesn't want to get into too many details other than the fact that their traffic study acknowledges 50% of their traffic whether it's 4% of the total or 25% of the total, but 50% of the traffic they will generate out of this proposed building will go across the bridge they just completed across Hwy 64 which further enhances the traffic circulation of the area as well as the thoroughfare plan for the entire Town of Apex. They are pleased to be able to do that and thinks it will help everybody long term and appreciate considering their agenda item later that would then provide a temporary solution while they work through the NCDOT issues that changed upon them in the middle of the game to produce the extension of Kelly Road, with they fully intend to complete and follow through with. They are not here seeking to not do anything they have already committed to do, they are here to appeal to the board and this body to treat everybody fairly and equitably and have everybody doing what they should be doing.

No one else spoke in opposition.

Manase in response to these comments addressed the transportation improvements, paying their fees as any other developer, widening their portion of Beaver Creek Commons Drive, providing turn lanes. He's not sure, but not aware of any precedent for an agreement like this at the end of the process. He knows there are provisions within the ordinance and policy to allow if a developer extends sewer lines that those sewer acreage fees can then be contributed back to him; those agreements are put in place up front and he's not aware of that being done on transportation impact fees; if the Town would like to donate the transportation impact fees to the neighbor, that's between the Town and them.

In this instance the deal was struck between the developer and the Town; the developer needed those roads and was willing to build them; to come in at site plan approval and require them he thinks goes against Town's policy and may be setting precedent for the future as generally those agreements are put up front and made known, so the rules are known to all. He wanted to point out, they have precedent on sewer for that, and may be for transportation.

Council Member Sutton directed to Manase that if he didn't dedicate this additional 5' and the Town wants to put in those lights, he asked, would the Town have to buy the right of way from them. Manase responded the issue of the 5' was not with who owned it, and they didn't care who owned it, it was pushing the whole site 5' south and was the problem and what they were looking at. They are given that urban edge and are up on the street with the building, and if they give 5' they have to push the whole site 5' south and causes a lot of problems; its not an ownership issue, and if they could somehow reduce the easement, or somehow combine those lights into that easement, they don't have an issue with putting Acorn lights out there; it's more a building setback issue and thoroughfare buffer issue that pushes the whole site south.

Council Member Jones directed to Manase that he had mentioned earlier that they could accommodate everything that needed to be there without the additional 5' with Manse responding yes, that was their understanding until this was brought up today. Council Member Jones continued the utilities, the cross section of the street issues, with Manase continuing yes, because the Town in the end of this whole process, the Town will have a 15' public utility easement that is adjacent to that right of way. Manager Radford commented it will be taken up with the pedestrian walkway, with Manase adding only on one end and then it comes in and gets back to the curve, with Council Member Jones calling it the multi-use path. Council Member Jensen asked if we ever put our utilities underneath multi-use paths or is there a draw back to that. Manager Radford responded there are draw backs to that; obviously you have an asphalt surface. Manase stated this is asphalt rather than concrete, which is a little easier to patch, but it's not ideal for that. Council Member Jones asked where in this 15' easement are the overhead power lines or are they in that same easement. Manager Radford responded they are not in that same easement; he didn't want to talk about this while in public hearing and will he would address them afterwards. Manase answered the questions, that the poles would be on the right of way line and then there would be a 15' easement outside of the right of way.

Council Member Jones asked what the estimated cost of the traffic signal was. Green responded that Dalton had indicated the signal with metal poles would be approximately $70,000 to $90,000, and she had checked with their senior traffic engineer and he had said that was a good estimate. Kent Jackson added the one on the Peakway at SR1010 was about $82,000. Mayor Weatherly said if it were $82,000 they were talking 25% of that.

Council Member Jensen saying specifically on the traffic requirements, what are they arguing against, were they arguing against putting this off, so they can have their private conversations, or are they arguing specifically against the traffic light, or they arguing against the suggestion of 4% for all the roads specifically. Manase responded they would argue against the 4% for all the roads definitely, they do concur they can contribute toward the traffic signal; that amount seems to be open for debate as well, but they don't argue that a contribution toward the traffic signal at Creekside and Green Level Church, with Council Member Jensen saying the contribution being 25% or $35,000. Manase responded they felt 25% is high based on the numbers, with Council Member Jensen saying, but you are not going to argue against that. Manase turned this over to his client Frank Csapo to discuss this.

Csapo stated as they know when they do a project like this, you are always projecting costs and analyzing costs very early on in the project, and doing certain cost proforma and make certain deals based on those proforma as the deal moves forward; certainly they are at a very late juncture in this whole deal and a little difficult at this point in time to be sprung with the concept of 4% of all of the improvements for the area, which was obviously never factored into the proforma and never considered in this point in time, it's quiet frankly impossible for them to carry those kinds of burdens on this particular deal at this late juncture in the game; financially cost prohibited for them.

Their neighbors when doing their development, stated a letter from Mr. Connell Radcliff in May 2004, when undertaking this whole project, a detailed long lengthy letter, in which he set out all of the terms and conditions by which they agreed to move forward on their particular development, which is ball park 1.5 billion square feet of space, restaurants, movie theaters, all those things. At that point in time, they had the ability to factor in all those improvements they were undertaking into their proforma and into their development plan, and to move forward with knowledge and understanding as to what they were undertaking; they do not have that benefit at this late juncture, now at the eleventh hour; they have fully engineered their site, analyzed all the costs associated with it and now they are here and somebody is presenting 4% and by the way in our conversations with the other developer, we were told that the costs they wanted them to contribute 4% of was $8 million, which is obviously a substantial sum of money especially at this late juncture of the game. It's simply something that they can't stomach at this point in time; it's too late in the game for them.

He back up to the other issues, so they would be aware, as Manase had pointed out for them, they will be undertaking as their development Beaver Creek Parkway Commons Drive in front of their project which was approximately 1200 lineal feet or so, and that costs alone will be well in excess of $100,000, so it's not like they are not doing anything and when it comes time to have traffic going to their development or Beaver Creek Commons adjacent to them, they will certainly be going over their road improvements that they are contributing as part of the overall development. More specific, getting to Council Member Jensen's question, they are certainly not objecting to contributing to the light; they are certainly willing to pay their fair share of the light; the only issue or the only comment they had was, that if it were a concept of a prorate share based on what traffic they would utilize, or what traffic flow would go through the light, based on what they generate, they wanted to point out that they were generating 4% to 6% of the traffic flow, and are being asked to pay roughly 35% of the traffic signal costs. With this said, they were not objecting to that, but wanted to be, everybody be aware of what they were contributing based on the actual contribution of traffic flow for that particular signal.

Back to the other issue of the right of way, as pointed out by Manase, early on in this process, that particular right of way dedication was brought up; they worked with staff and came up with resolutions, not the least which was in dealing consistently with the adjacent development, the arm style street lighting which was utilized next door; if that was utilized here the additional 5' would not be necessary. While it's a staff preference, it's not consistent with the neighboring development and they can certainly accommodate that style of lighting, given they not dedicate that additional 5'.

The last issue as Attorney Holt had pointed out, the glass on the exterior of the building, hearing from Kohls, they have a merchandising concept which they use throughout the nation and have a team of people smarter than him when it comes to selling products that devise merchandising concepts within the store; they have gone at great links in this point and time to put a lot of glass in compared to what was previously proposed; in this particular case, they have gone great links to really spice up the exterior thinking they saw the last exterior proposed and approved, and thinks this one is a very substantial improvement from the last one they had seen and approved. He thinks they have gone the extra mile on this one and if anyone has been to the other Kohls in the area, you will see this certainly will be by far the most attractive Kohls within the market place, and frankly in the nation.

Council Member Gossage was not clear they were fine with the trellis or not ok with them. Csapo responded they were willing to do the trellis, if that is what is preferred; the windows are not acceptable, basically the merchandising plan doesn't have the ability to work with the glass. They will be happy to put the trellis in, and talked to staff about improving the landscape around the building, and will do the trellis if Council deems appropriate.

Council Member Jensen asked if access was needed and didn't take the 5' dedication or require it and needed access to do any kind of work, how would it be handled so that we don't run into any problems; he's not sure, asking would they have need to go onto this property. He realized he should ask this later.

Tom Seymour came forward stating he was part owner of this, and thought this deal was pretty well taken care of and had done everything staff had asked them to do. They have had a lot of setbacks by people trying to put road blocks in front of them back in January, and Csapo had to leave and they couldn't work this out; miraculously they found a map in the office of the Planning Department done by DDR saying they could put all these improvements on 60' and all this was already on the map. This is part of the reason they have problems with this. He didn't think Manager Radford knew the whole story Thursday when he called him at 2:46 p.m., and awoke him from sleep, and basically he strong armed him, saying they need to pull this thing so they could do this. This stuff is in the records and these things, everyone of these poles are on this thing, and he has already received a condemnation letter, it's already been appraised, it's already been surveyed; done all that work, so make up your mind what you are going to do. He stated they have a way of doing it right here and get it done, but if it doesn't get done, town would have to do it their way.

Manager Radford asked to respond to Mr. Seymour's comments; speaking to Mr. Seymour, responded he speaks with such emphasis about this fact that what he proposed to do to him was "strong arming him", accusing him of strong arming him on this issue. The issue that this public hearing is called for and the issue that he had sworn too when he chose to speak in this particular public hearing is about a site plan and not about an annexation proposal, which was what he had talked to Seymour about when they talked on Thursday, with Seymour interjecting he did not make that clear to him, with Manager Radford continuing, the item that preceded this one. Seymour understood, and believed that's the way he understood it, because he had said he was going to pull it, with Manager Radford saying consideration for the annexation, asking if that happened, and no, that it didn't. Seymour responded, "No it didn't because he said the consequences would be what was going to happen; he's upset about this."

Seymour continued, secondly the idea of doing this about 4%, addressing Council Member Sutton, that he knew real well that this sewer line was putting in during his reign and believed he donated it, did donate it and didn't take anything for it. They are willing to work with them, but this stuff, the eleventh hour stuff that pulls up in trying to find different things is not going to work. Attorney Holt came forward and thanked Council for their time.

Mayor Weatherly asked Khin if the windows were strictly subjective or if she had a beauty in the eye of the beholder deal, or some other reason than that; he doesn't get it frankly. Rowland responded giving examples of other buildings showing incorporation of windows in designs and stated all they were doing was asking. Mayor Weatherly added, ok, but it's in the form of a condition here, but looks like it's written – provision of additional windows are alternative to additional windows such as trellises asking why aren't the trellises, he guesses would be the question, acceptable if they are willing to make that concession. Rowland responding they were asking consideration of windows and trellises. Mayor Weatherly added, ok, by implication are saying trellises are not acceptable by staff. Rowland responded the trellises are acceptable and are also asking for the windows.

Council Member Jones asked previously asked the height of the windows as shown on the elevations, asking the width of the glass; he sees in looking at it some glass on either side of the entrance and maybe some over the top, and in comparing this elevation is sort of tough – there's a lot of building here and the scale is much different. He asked the total amount of glass at the entrance or entrances. Csapo responded at the east elevation, they have almost 70 linear feet of glass and along the south elevation close to 50 linear feet of glass. Council Member Jones continued there are a couple of other windows at the corners of the building on the elevation, on the east, with Csapo saying they are 8' panels. Csapo pointed out when you take 70' of glass in one elevation and 50' of glass in the other elevation, and you are going up 15' high with these panels, when you flip back to the store examples probably the square footage of glass area is probably very comparable to what they are talking about here, because that store is no where near the size of this store, when looking at it percentage bases; they probably actually have more glass here on a percentage basis then what they saw on some of the photos. Braun added he didn't know from what context those photos were taken, an infill store, or remodel, he just knows what they are dealing with here and the context they have here.

Council Member Schulze wanted to understand the right of way issue, asking if there was or was not enough room to do everything they need to do with the utilities and the multi-use path or not, sounding to him the original comments were it was clearly not enough room and need the 5' asking if he understood this correctly. Khin responded the Apex Transportation Plan calls for 70' and what they would need for this type of road way and all the pedestrian and multi-use path and utilities strip; because it's adjacent to US64, they can't ever get the other 5', but can get the 5' on this side; if this had been anywhere else they would have asked for the 5' at the beginning just like they did, and Beaver Creek Crossings actually dedicated the 65'. They were trying to work with the applicant in regard easements on their property rather than dedicating the right of way; they feel continuation of the Acorn lights is something they would like to see; you can't put an Acorn light in the middle of the multi-use path, as it's a danger to anyone on a bicycle. They do not want to reduce the width of the multi-use path, as it's dangerous to have pedestrians and bicycles on the same path if it's not 10' wide, so they feel it is not currently enough room to do what is required of this development without the additional 5'. If they want to dedicate 5' of easement on their property for these Acorn lights, she thinks that would be fine, but she doesn't think we should have to give any payment for that when they should be dedicating 5' of right of way per our requirements under the Apex Transportation Plan. Council Member Schulze felt the earlier comments were that it was an issue, with Mayor Weatherly adding yes, just with the additional utilization of the 5', asking if they could get an agreement that if the Town chooses to put the lighting on 5' of their property, they could do so without incurring any expense, they would dedicate that for this use, with Csapo responding absolutely. Mayor Weatherly how we would put this in, asking if we need to write this in as a condition, saying that resolves this issue.

Council Member Gossage stated one thing they had mentioned was using a different style of lighting vs. the Acorn lighting, asking what was staff's thinking on the decision to go with the Acorn lighting like Target as opposed to the other. Khin responding it was Planning staff's understanding that the Acorn lighting would continue up Beaver Creek Commons Drive all the way to Kelly Road, given some engineering considerations and right in front of the Crossings, our Public Works Department decided instead to put Acorn lights on metal poles, which they do not feel is within keeping of the character of the shopping centers, and would like to see the Acorn style lights and do not want to see the Cobra head lights out there. Council Member Jensen asked if they had agreed to the Acorn lights out there. Csapo responded if the Acorn lights are on the poles as they are next to them, then they will need additional lighting, but if what they have to their left and not the Target side then Pubic Works put lights on poles and if they can be consistent to what is to their west, then they don't need the additional 5'. If they follow staffs, with a little different from staff and public works, following staff's suggestions and go with what is on Target's side, then they will need 5' for the free standing Acorn style lights. Csapo said they would do it either way.

Manager Radford asked Council to look at the diagram on the screen and imagine on the part that is adjacent to Beaver Creek Commons Drive, picture it with overhead power lines; that is the condition they have in front of the Beaver Creek Cinemas. There are power line, overhead transmission lines with street lights up on them and there is not enough room in there to do both. The Acorn lights will give a much greater appearance; he can take the transmission line across the street and won't have a transmission line up against the front of the edge of the building. Council Member Jones asked the transmission line on the north side of Beaver Creek Crossings. Manager Radford responded, take the majority of the poles on the north side of the building and wind up with one pole, essentially where Green Level Church Road would line up on the opposite side, and save $41,000 in easement costs. Council Member Jones responded this would certainly give a better appearance too. Mayor Weatherly asked if he could do that without an additional 5', he could do this within the… he meant just let them dedicate from theirs 5', with Manager Radford said if he could do it on their property, with Mayor Weatherly and Council Member Jensen saying they had agreed to that. Mayor Weatherly felt this was the solution. Manager Radford asked Khin if she was in agreement to this, with Khin responding yes, with Manager Radford asking they work out the language. Council Member Jones said someone would need to restate these conditions.

Mayor Weatherly addressed the issue of the traffic light, talking about if we accept 25% of the maximum of $90,000, asking is that's what they could reasonably agree upon. Csapo responded he agrees. Mayor Weatherly stated that's less than $25,000 with Council Member Jensen noting Planning Department has $35,000 with Mayor Weatherly not knowing where that comes from. Dalton added this was based on original rough estimates at the time, and was put together rather quickly, thinking those should be considered as a maximum of what they would request; based on the additional information that Green had looked at, a more accurate representation is probably more like 10% or $10,000 than it is 25% or $35,000. Attorney Penry stated that was not consistent with what they said, and thinks Green and Herman were correct.

Council Member Jones asked that in most or some cases at least when a developer pays for improvements adjacent to their site, the costs of those improvements are then deducted from their transportation impact fees, asking if that is correct – off site, asking if this is considered an off site improvement; this is where he's going, maybe really stirring it up here, he didn't know; he said just forget this, it gets complicated. Mayor Weatherly said they were still asking, with Council Member Jensen saying they had agreed to 25% of the cost of the light and thinks it's a fair enough number. Csapo said 25% of $90,000, they were agreeable to that. Mayor Weatherly said that would be adequate, with Council Member Jensen adding that's the expected costs which might be less. Herman asked how they arrived at $90,000, with Mayor Weatherly responding staff had said that would be the cost of the light, with Council Member Schulze adding based on another light, with Council Member Jones adding based on one recently installed. Herman clarified if they give them 25% of $90,000 that staff would assure it was put in for $90,000; their experience was and he didn't know what they were looking at but this piece of hardware – it maybe the number, but the language proposed by staff is a light hanging there on steel poles. Mayor Weatherly responded this was a legitimate issue and was talking about them paying 25% of the hardware and the installation, asking if that is what they were trying to condition. Dalton responded from the point where the signal is approved to be installed by NCDOT, so it would be signal design, installation, materials, and any utility relocations involved. Mayor Weatherly asked he give them a not to exceed amount, with Council Member Sutton and Council Member Jensen saying $35,000, with Mayor Weatherly saying $35,000 and would fairly represent 25% of the total cost of all those things Dalton had just stated. Dalton responded he had a difficult time believing the signal would cost more than … and he believed 25% of $140,000, and he had a hard time believing the signal would cost more than that. Mayor Weatherly asked to jump ahead, they were quibbling over peanuts it looks to him, asking if they could say not to exceed 25% of the total cost not to exceed $35,000, asking if this would satisfy; they want be stuck with that based on own staff's guide, but asked they move ahead. Csapo agreed to this.

Manase clarified, they would take 25% of the actual cost of everything up to $35,000, with Mayor Weatherly responding up to $35,000 and not to exceed $35,000 but is probably going to be less, is what they are saying, but they agree to pay $35,000 of whatever.

Mayor Weatherly closed the hearing at 9:05 p.m. and addressed Khin asking if there were any other issues on the conditions, asking if she had kept a tally sheet, so they would know where they are. She said she thinks on the last one, Manase, stated the language in the condition was they could pay that and it's held for one year and if not installed after one year, would pay 5% of the actual costs once determined, with Khin responding right, and Mayor Weatherly saying they would not be held up – just pay the $35,000 fee in lieu and they are off the hook, but if they want… with Council Member Jones asking if this fee was paid to the Town, or a private arrangement, with Manager Radford responding it is an arrangement with the Town. Council Member Jones was satisfied with this.

Mayor Weatherly asked Khin where they were as far as the conditions and issues relating to the conditions, with Khin responding she thought they had solved everything; the only thing Council would have to decide is the trellises vs. windows and trellises; everything else she thinks has been agreed upon, or some solution.

Mayor Weatherly asked for a motion.

Action: Motion by Council Member Sutton to approve with the conditions as stated by the Planning Board with the exception of provision # 1 delete windows but keep trellises found to be acceptable by staff, and would also like to add the fee in lieu of up to the amount of $35,000 on the lights. Council Member Jones added and the 400 vs. 250 watt lights, with Mayor Weatherly saying specifying 250 watt maximum, and to stipulate the 5' they would not charge us for incursion, with Khin responding she would like to see the condition that they dedicate a 5' easement on their site in lieu of the 5' right of way, with Council Member Sutton adding dedicate a 5' easement on their site under their ownership for the lights. Mayor Weatherly asked Khin if this satisfied everything. With Council Member Gossage asking if we put four Acorn lights on there, with Khin responding just a public utility easement would be better in case a telephone or someone else needs to go in there. Mayor Weatherly said as the motion is so stated, asked if this covered everything that is an issue anybody has with all agreeing. Second to the motion by Council Member Schulze.

Mayor Weatherly opened the floor for discussion. Council Member Jensen asked if this covers if we have to tear it up, then we repair it, with Khin responding yes, it's a public easement and have the right to install, repair and maintain. Mayor Weatherly asked for a clarification from Council Member Sutton asking he deleted the windows, inserted trellises, but the trellises were to the satisfaction of staff not either/or deal, it was just nice trellises, with Council Member Sutton adding trellises acceptable to staff. Council Member Jones clarified that he was deleting from the condition the requirement for additional windows beyond what is shown on the elevation, with Council Member Sutton responding right, not all windows, with Mayor Weatherly saying additional windows was the deletion. Council Member Sutton agreed. Council Member Jensen clarified that he didn't think the 250 watts got in there only, or did it, with Mayor Weatherly saying it did maximum of 250 watts.

Council Member Jensen said he was not suggesting the 4%; they can't but maybe should look at that as a requirement of some sort ahead of time on something like this if it is within a development, but no not do the 4%; we are looking at what was equitable and that's not possible.

Council Member Jones said it was obviously a complex issue and he appreciates everybody's input. On the windows, he thinks it's a matter of scale; the amount of glass that will be at that entrance he thinks is enough and the trellises are a good addition.

Council Member Jensen added we are back to allow people to design their buildings as they need to design as we do allow buffers along railroad tracks.

Council Member Schulze commented on the windows, that he certainly understands the hardship there and willing to back down on that and thinks otherwise developers have been very cooperative in trying to accomplish what staff wanted.

Mayor Weatherly called for those in favor of the motion; motion carried. Mayor Weatherly stated for the record this was unanimously approved.

End of Public Hearing # 3

Mayor Weatherly called for a recess at 9:10 p.m. The meeting reconvened at 9:20 p.m.

Presenter: Dianne Khin, Assistant Planning Director
Public Hearing # 04 – Rezoning Case # 06CU17
Planning Board met July 10, and unanimously recommends approval with condition; no written staff recommendations are provided as this is a quasi-judicial public hearing that requires sworn testimony.
Public Hearing and possible motion regarding Rezoning Case #06CU17, DDR/1st. Carolina Apex Phase III, petitioners, seeking to rezone from Planned Unit Development Conditional Use to Planned Unit Development Conditional Use District classification property located at the southeast quadrant of Hwy 64 and Green Level Church Road containing 130.943 acres.

All persons speaking during this hearing were administered an oath by the Town Clerk. Minutes of this hearing are almost verbatim as this is a quasi-judicial hearing.
Khin oriented Council about the rezone request outlined in the staff report and incorporated as a part of the official minutes; request was to change conditions from conditional use permit #06CU12; June 20, 2006 Council approved the request to allow 180,000 square feet of retail space in addition to the Consolidated theaters to get their COs prior to completion of Beaver Creek Commons Drive to Kelly Road with seven (7) conditions. During the public hearing, the applicant provided information regarding update to their traffic impact analysis that showed the addition of a traffic signal at Creekside Landing Drive and Green Level Church Road would allow the intersection to operate at Level Service B or better, therefore this request to rezone is being done solely to request that all of Phase 3 in addition to Carolinian Towns in Phase 4 which has already been approved, be allowed to open without the connection of Beaver Creek Commons Drive to Kelly Road and to add the condition that a temporary traffic signal be installed at Creekside Landing Drive and Green Level Church Road. Applicant agreed to work with NCDOT to make that traffic signal permanent. Planning Board considered the conditional use rezone at their July 10, 2006 meeting and unanimously recommended approval with the following condition; Staff concurs with this condition: The developer include the Town's Transportation Engineer in the 90% and 100% signal plan reviews and that the poles be metal to be a permanent signal. If the applicant runs into opposition from NCDOT on the "permanent" design with metal poles, they should involve the Transportation Engineer in the discussions to determine how to deal with the idea of wood poles or any removal dates NCDOT may try to impose.

Council Member Sutton asked if the 180,000 square feet was all on the south side, Khin responded yes, it was approved last month in addition to the theater. Council Member Schulze asked Level Svc B status, at what point was the study done, with Khin responding it was done by Ramey Kemp last month. Council Member Jensen asked the total square footage on the south side, with Khin responding 300,000 square feet, plus the theater. Council Member Jensen understood they were looking at the south and north side, with Khin responding no, the Carolinian Towns, a townhouse project was approved a few months ago is in Phase 4 on the north side, and when they did the update to the transportation impact analysis provided last month, they took into account that traffic to make sure the traffic would be accommodated by the traffic signal at Creekside Landing Drive and Green Level Church Road; only the townhomes are going on the north side at this point and nothing for commercial will be able to open beside the Carolinian Towns on the north side until Beaver Creek Commons Drive is connected to Kelly Road and what this condition would require; nothing in Phase 4, nothing north of US64 except the Carolinian Towns is the only thing approved that will be able to open until Beaver Creek Commons Drive is connected to Kelly Road.

Mayor Weatherly opened the public hearing.
Gray Styers, Jr. Attorney, Blanchard, Jenkins, Miller, Lewis & Styers, Raleigh, zoning counsel for DDR/1st Carolinas, appreciates Council's support and approval last month for the opening of the 180,000 square feet which would allow for the TJ Max's and the Boarders. He reminded Council the Planning Board had recommended denial of that change at a hearing at which the Kohls attorney, not Attorney Holt, but another attorney had said that they were concerned about the traffic that would be generated by the Kohls store in addition to the south side Beaver Creek Crossings, and hopes they appreciate where they are at tonight. After that exchange at the last Planning Board meeting, they went back and had Mr. Stephenson prepare an updated traffic study he handed out last month dated June 15, 2006; he looked one of the scenarios, what if everything is opened on the south side, not only the 180,000 approved, but an additional 120,000 and that traffic light was installed and his conclusion, in talking last month, was there was a Level Svc B, so he had floated the idea last month that perhaps they could go ahead and pose the condition of the traffic light, not a part of the condition last month, so now, there is no condition on Beaver Creek with that traffic light being installed. In exchange and consideration for them being able to open the whole 300,000 square feet, as the Town's Attorney pointed out, that had not been advertised last month, and therefore the suggestion was that they should refile, readvertise, renotice and then come back and where they are today. The good news is that this is the one issue that he thinks everyone is in agreement on; had good discussion with Russell Dalton and appreciates his review of this, and thinks the Kohls developer feels good about whatever traffic they are going to produce would be great, the circulation enhanced with the traffic light there. Every traffic engineer can agree on at least one point, which is that this traffic light will accommodate the entire circulation of traffic. He added and made sure he was emphasizing the point that this does not in anyway effect in any respect the obligation commitment and time frame of building Beaver Creek Commons out to Kelly Road. They have tremendous incentive to do that because they can't open the retail portion of Phase 4 on the north side of US64; this has nothing to do with that and still moving forward as fast as NCDOT will allow them to do that and doesn't reduce their incentive or plans or design to do that as soon as they can. He thinks everyone is in agreement with this and Mr. Stephenson, Traffic Engineer has worked with all this as well as Mr. Herman who they had heard from earlier, from DDR.

Mayor Weatherly called those opposed to come forward, with no one else addressing this item, closed the public hearing at 9:25 p.m. Mayor Weatherly called for the motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the rezoning with the condition by the Planning Board as stated. Motion carried unanimously.

End of Public Hearing # 4

Presenter: Dianne Khin, Assistant Planning Director
Public Hearing # 05 – Major Site Plan
Planning Board met July 10 and unanimously recommends approval.
Public Hearing and possible motion regarding Major Site Plan for Salem Street Arboretum, located at 1930 N. Salem Street containing 7.016 acres, for proposed 54,783 sq. ft. of office space.

Khin reported on the site plan for Salem Street Arboretum as outlined in the staff report and incorporated as a part of the official minutes. Background information is included in the report. Applicant requests an increase from 40,000 square feet to 60,000 square feet and must be approved as a major site plan. Design and colors are similar to the ones previously approved. Parking has been expanded and designed for parking underneath. Pedestrian connections are throughout the site. RCA and buffer area has been reduced by 4% but well above the 25% required by UDO by 11%. Aspects of the site plan are the same and detailed in the report. Staff recommends approval of the redevelopment of the old Lucks Stone site. They gained square footage by expanding vertical and are a bit larger, and expanded into areas that were already paved. Council Member Jensen liked the vertical expansion and the parking underneath. Planning Board and staff recommend the site plan.

Mayor Weatherly opened the public hearing at 9:30 p.m. Sean Dolle, Jones, Cnossen and Dolle Engineering representing the owner and noted Khin had covered the site plan, and could answer questions if there were any. Mayor Weatherly closed the hearing and called for a motion.

Action: Motion by Council Member Jones and second by Council Member Jensen to approve the site plan. Motion carried unanimously.

End of Public Hearing # 5

Presenter: Dianne Khin, Assistant Planning Director
Public Hearing # 06 – UDO Amendments
Planning Board met July 10 and unanimously recommends approval.
Public hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance regarding the Small Town Character Overlay District.

Khin presented a general overview of an Ordinance to amend certain sections of the Unified Development Ordinance, Small Town Character Overlay District, and comes from the Small Town Area Plan done a year ago. Purpose of the overlay district is to repeat the spirit of traditional character rather than imitate style and identifies architectural qualities that define downtown character and proposes design standards to maintain that character and new and infill projects. These standards emphasize existing patterns and including building hierarchy, building site relationship, building mass in proportions, building height and roof type, façade patterns, street level facades, and window patters.

These amendments fall into the following areas: central business district – downtown business area, non-residential within the overlay district boundaries outside of the central business district, and shown on the map in blue, green is the remainder – anything non-residential would fall into the non-residential standards and there are standards for residential in the green area shown on the map.

The main three issues affected by these changes for residential: 1) Amount of impervious surface allowed on the lot 2) requirement side setbacks be proportional to sidewall height of the house 3) requirement garages be placed basically to the side or rear of the lot which is what has been done with the traditional historic homes within the area, and not have garages out front. In terms of the central business district: central character of downtown where there is parapet roof type rather than pitch roof type; allowance for the whole site to be built upon; can build up to three stories where many are two stories – example: Duncan Commons on N. Salem Street; utilizing patterns that are in the central business district now and repeating those, having minimum setback lines and not allowing for example the Wachovia Bank as it set too far off the main street and needed to be pulled up to the corner; rules would allow it to be more in keeping with the downtown.

In terms of the non-residential outside of the central business district, but within the small town character area, it would give some specific guidelines in terms of what windows would look like, with the building being vertical rather than horizontal; some things talked about with other projects mainly outside of the Peakway area; within the Peakway area staff feels it should be more within keeping of what the patterns area currently in the downtown that we have vertical buildings and lots of windows within those buildings.

Council Member Jensen questioned the study, asking how the property owners were poled; questionnaire surveys were sent to everyone within the Peakway. Lisa Glover, Heather O'Sullivan-Canney, Council Member Gossage served on the committee and were present. Council Member Gossage reported he had heard from one person who expressed concern about limiting the size of the residence on a lot as far as it having an impact on home values; he was actually in an area outside of the Peakway.

Lisa Glover added the meeting was held in Town Hall and had positive response, looking at pictures of existing conditions in the downtown residential neighborhood. Statements were to keep it as it looks now, with staff standards closely mimicking what they had for lot coverage and how large houses are in relation to lot size.

Council Member Jensen asked if one could request a variance if there was a want to have a larger house, with Rowland responding anyone could always request a variance. Khin stated if there were anything about the changes made, when applications are reviewed and it seems staff made a mistake and not working, staff will come back and change the ordinance; until applications are received, staff may find we are not restrictive enough or too restrictive and willing to come back to make changes. Council Member Gossage reminded this is not without public input and a lot of positive response.

Mayor Weatherly opened the public hearing at 9:40 p.m.

Lissa Glover, 115 N. Tunstall Street served on the committee and lives across from the Tunstall Commons development with nine homes and was reduced to from 14/16; neighbors felt that was too many houses, too large, on too small of a space. She wanted to see what Apex could do to assure they don't have a mansion affect where people tear down homes and put up houses that border setbacks and max out square footage; that's not the character of the downtown Apex and most agree with this. Standards looked at were important that they not be more restrictive than what is out there today, and have reviewed it to make it mimic what's downtown and allow houses today to come back in size and location they are. Not trying to be more restrictive, only wanting neighborhood to keep it's character and important who live there; these standards attempt to get there and if too strong one way or another can come back and fix it, but important to get something done soon. Down from Tunstall Commons is a new house and thinks too more patches of grass that are empty lots and more houses coming; development pressure is on to find every piece downtown has to stick a house on, and the sooner this is in place, they work with it and protects the downtown and in support of the amendments.

Heather O'Sullivan Canney, 311 Olive Street lives downtown and served on the committee, and pointed out as a realtor she looks at property values and dealing with a client who has lost $30 to $40,000 in property value because a duplex was built next door that took 90% of the lot, a huge tall house and works both ways. She ran numbers and on l/10th of an acre lot can still have a 1700 sq. foot print – two stories is 3400 square feet – it's not as restrictive as lots think. Having talking to neighbors and those who came to the workshop, most are under misconception that we have a real historic district, and thinks there are lots more limitations on what you can do than there are; lots are disappointed there is as much leave-way and thinks this is a good median, not the color you paint your house, but protect the value best they can and as we go through the process, there may be changes, but will be made aware of the needs as they come up.

Mayor Weatherly closed the public hearing at 9:40 p.m. and called for a motion.
Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the amendments as presented. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Presenter: John Brown, Director of Parks, Recreation and Cultural Resources
Old Business # 01 –Performing and Cultural Arts Center
On June 6, 2006 Council meeting, Clearscapes was asked for design alternatives/options for front and side additions; June 20 Clearscapes Inc. addressed the design with Council approving the original design, however asking for more information on the proposed glass addition to the front; Schuster intends to bring building materials samples of glass and façade, and will discuss etchings to the glass front. Update by Clearscapes Inc. regarding Performing and Cultural Arts Center.

Steve Schuster, Clearscapes, Inc. came back and talked about materials for the building and part of the original design presentation and have focused on the stair addition. Overall materials were presented with majority of new masonry is a buff color, existing brick having been painted many times will be painted again – layers of paint include lead base paints and do not want to abate it given the texture of the brick, so will paint the brick to match new brick being used and consistent in color. On the rear addition will have a contrasting color so there is a nice combination of colors. Metal on building addition will be a gray color to match paint on wood windows being installed.

Glass itself having talked the possibility of introducing some images, signage and texture on the glass. He presented a notion of how this might look. Conversation was about the obvious prominence of the arches in the existing historic building and one notion is to etch the glass, showing sample, etch from light to darker etching and can see on the sketch a notion of introducing the etching of the glass. An arch over the main stair entry will mimic historic masonry arches of the building of the possibility of etching signage on the glass as well to help identify the building; again this is not intended to be a final proposal, but simply show the ring of opportunities there is – essentially this is a glass wall and can place on the glass as complex or as simple an image or images Council feels will enhance the overall building. As talked about last time, would allow the building a honest example of the 21st century architecture built in 2006 complimentary of the architecture of an early 20th century building using the glass and images in the glass to be a nice connection in transition between two very different architectural periods and in so doing especially at a pedestrian scale, had the continuity of that very significant arch form carried from the historic building to the what they have always wanted it to be, a somewhat quiet and reserved addition, so as not to compete with the historic building. He showed all materials and how the glass can reinforce the important architecture of the building.

Council Member Schulze liked what he saw and sounds like some options available and appreciates this. Schuster wanted to assure the end result reflects not only the community input, but Council input as well. Council Member Jones liked the incorporation of the signage into the glass, with Schuster noting this having been done a number of times in historic buildings for this very same purpose to link the historic building with the newer addition. Council Member Jones added in this way you don't place a sign on the old portion of the building and no need too, with Schuster agreeing that this becomes part of the identity of the building. Council Member Jensen felt in the discussions they were talking about a light arch on the top and not the heavy arch on the bottom. Council Member Schulze stated his point was something to break it up and an arch was a suggestion and is fine, and this does it – he noted it a proposal one idea, with Schuster showing a range of options, with Council Member Schulze noting doing something makes him feel better and not wanting anyone to think he's forcing his will on the Council, he's sure all will come to an agreement on what it looks like in the final product, but happy there are some options. Council Member Sutton felt the etched glass was a good touch. Council Member Jensen wanted to know etched in what way, like etch the arch, with Council Member Sutton responding yes, that's one way the arch or the signage in there – the lettering; it breaks up the plain glass, with Council Member Schulze agreeing, it didn't have to be anything grand.

Mayor Weatherly asked what direction Schuster expected of Council tonight, with Schuster responding anything they would like to do, he was here at their request. Mayor Weatherly noted the positive comments.

Council Member Jensen stated he would have to go along with what had been said earlier, that they were trying to separate the two buildings and doesn't hit him for some reason. He recalled Schuster had said the additional structure was kind of subservient to the original structure and when he put the stair case in asked why he didn't he set it back 10 or 15 feet, with Schuster responding it is set back not that far, only 18 inches and reason was the available land in this slot to put in the front and back stair and elevator and elevator machine room; they are using every square inch of property between what's being put here and the addition on the back and the service court needed to serve the building. It has worked out well to have this additional space, but don't have without compromise the other program issues the space to set it back that far. Council Member Jensen said it didn't show it on the elevation, with Schuster saying it was set back purposely to deemphasize it and not take away from the importance of the historic Town Hall. Council Member Jensen noted the set back most important; he's happy with the previous more than this, with everyone having their own opinions.

Council Member Jones added given the sense he senses what Schuster was showing them, at least going in the right direction, asked what he would typically do now, we have put plans out on the street for bid, with Shuster responding plans were out and they were getting proxies and the etching would be a part of a separate graphics package they do after the contract is selected, and if this is a general approach that Council feels is addressing the feedback from last time, would develop further as a part of the overall graphics package.

Council Member Gossage really likes this and thinks it's tremendous as far as seeing options and has never had a huge problem with the glass on the front, but thinks as far as adding in something to that part of the building is great.

Shuster responded to Council that his mission is clear and will keep moving.

Manager Radford added inclusive of and hearing they like the graphics, and likes the Apex Cultural Arts Center, with Council Member Gossage saying not where it is but the idea, with Council Member Jensen saying it's hard to read at that angle, with Council Member Jones saying he was not sure he liked the orientation. Manager Radford continued if they liked the affect of the foe brick that is in the etched arch, asking if they expected them to bring the graphics back and the Council's response was yes.

Mayor Weatherly after hearing the responses said it would be fine, but would be first on the program next time. Manager Radford confirmed the graphics will come back, with Schuster responding he expects to come back to present the results of the bid opening and ask for award and have an opportunity at that time.

Council Member Schulze asked Schuster to describe what the staircase would look like, materials, carpet, etc. Schuster responded with the stair directly in front of them, obviously going up to the landing and coming back and is a finally detailed steel stair with carpet treads, and see through the glass to the back wall behind it and because it's a cultural arts center, the possibility to see the wall behind as you walk up the stair and will be lit as so a permanent piece of art can be put there or a piece that goes in rotation, and so what they really want to see is the art because that's what this building is about; the display of visual arts and a place for performing arts so the stair is high quality but like the addition hope to be suttle and low key and what's prominent is the art, not the stair itself. Council Member Schulze asked if the banister would be wood, with Schuster responding a wood top and a simple slender steel picket, again there but doesn't call attention to it. The art should be what's in the foreground.

Council Member Jensen asked if they were giving Schuster full direction and he liked the simpler piece before but sees they like the arch in there, asking if that's correct, with Council Member Gossage responding yes, and Council Member Schulze not particularly liking the orientation of the verbiage, with Schuster responding they would look at the signage, and assure it is consistent with the building and reads well. Council all showed appreciation to Schuster for his work and selections.

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.

Richard Nowak, 1102 Heathwood Dairy Road, expressed concern regarding landscape/buffers requirements set forth in the UDO; reducing people from the Appearance Board from 12 to 7 disappointed the town couldn't find 12 people that would want to participate on this board, thinking we need more involved within town and believes 12 would step up and fulfill the membership if those serving are not filling their terms properly; second has discussed with Rowland the Kohls master plan approved and have seen tremendous commercial/retail growth over past 5 years and looking at the requirements for landscape/buffers once put in no one is keeping up after installation, with a number of places where trees are dead or dying within the site plan and knows it's not a major issue but bothers him when approved large retail sites; he knows there are limited resources to see the site plans are up to requirement, but thinks it's an important piece of the town and it's looks to assure these requirements are fulfilled. Look at Target and the landscape and see a number of trees, knowing weather and time of planting – the hardwoods have died, and by the time we get to replace them, could be years from now with the idea, there would be nice vegetative trees in 5 years or so and are loosing ground on that. He has tried to get town to look at some sites and the dead trees, and understands resources are not a priority; the longer we wait, the idea to keep the appearance up to code, thinks we are loosing ground.

Mayor Weatherly responded there are two staff members who attend to this and doesn't believe developers want to plant and have things die and die because of the appearance, however, the time of year is more specific for replacement and not practical in the meantime to plant.

End of Public Forum

NEW BUSINESS

There were no New Business items to be discussed.

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss potential purchase of real property.
Action: Motion by Council Member Jones and second by Council Member Schulze to move into Closed Session to discuss potential purchase of real property. Motion carried. Minutes of Closed Session are recorded separately. Motion was made by Council Member Jensen and second by Council Member Schulze to move back into Regular Session. Motion carried.

With Council back in Regular Session the following action was taken:

Action: Motion by Council Member Sutton and second by Council Member Jensen to authorize the Town Manager and Town Attorney to proceed with the purchase of the Sorrell property located on NC55 in the southern part of the Town. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Sutton and second by Council Member Jones to adjourn at 10:07 p.m. Motion carried.

The above minutes were approved on the 1st day of August 2006.

Georgia A. Evangelist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, August 1, 2006 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order with all Council Members present.
Invocation was given by Council Member Jones, with Mayor Weatherly extending a welcome to those in attendance and recognizing the attendance of Scout Troup 209 working on their communications badge.
Mayor Weatherly led the Pledge of Allegiance.

RECOGNITION

Police Chief Jack Lewis noted Apex Police Car was the first place winner in the Law & Order Magazine in the 2006 Vehicle Design competition, for its increased visibility and reflective markings, with colors being chosen from the Apex Police Badge. He recognized National Night Out held at the Beaver Creek Commons Shopping Center to promote awareness, safety and neighborhood unity and includes Police, Fire, and EMS.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was set prior to taking action on the following items with the following action being taken:

Action: Motion by Council Member Jones and second by Council Member Sutton to approve the consent agenda. Motion carried.

1. Minutes of July 18, 2006 Council Meeting.
2. Minutes of July 18, 2006 Closed Session of the Council (separate cover).
3. Budget Ordinance Amendment Police Department CAD system repair.
4. Ordinance to amend the Apex Town Code: Section 20-100 Speed Limits.
5. Resolution authorizing sale of house at 904 Sharpe Street, Selma, N.C. and approval of Offer to purchase/sell surplus real property for $127,000, and subject to the Upset Bid Procedure.
6. Tax Report Wake County Revenue approved in regular session July 17, 2006 for the Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: June Cowles, Planner
Public Hearing # 01 – Rezoning Case # 06CU13
Public Hearing and possible motion regarding Rezoning Case #06CU13, Sunridge Holdings, LLC., petitioner, seeking to rezone from Light Industrial to Planned Commercial Conditional Use District classification the property located at Lufkin Road and NC55 containing 3.19 acres; Value Place Extended Stay Hotel.

Town Clerk administered an oath to those speaking during this public hearing.

Cowles presented the staff report regarding the above referenced rezoning case duly advertised, which is attached along with supporting documentation and incorporated as a part of the official minutes, and contains the background information, the project description, adjacent zoning and land uses, attachments, Planning Board's recommendation from July 10, 2006 for approval, the applicant's proposal, the project impact on neighboring properties, and restrictions/conditions proposed by the applicant and stated by Cowles. The request is consistent with the 2025 Land Use Plan identifying the subject property as commercial, and noting all standards having been met. Architectural standards are noted on Attachment 2.

Mayor Weatherly opened the pubic hearing.

Ben Kuhn, representing the Applicant asked Council's support on the proposed rezone of the 3.19 acres noting the property to the south is also zoned Planned Commercial Conditional Use. The proposed is consistent with the 2025 Land Use Plan, with conditions in place to protect the property while developing it. Architectural conditions and the rezoning meet all Town requirements, with an access road connection to the south. Ordinance standards will be addressed at site plan. Planning Board questioned if the zoning would all for bar/night clubs and it is not. Planning Board recommended approval for the rezone from Light Industrial to Planned Commercial Conditional Use.

No one spoke in opposition, with Mayor Weatherly asking if there were questions from the Council. Council Member Schulze asked if the conditions of this rezone were comparable to the property to the south, with Cowles responding, all except adult establishment, with this rezoning being a bit more restrictive than the property to the south, however similar in architecture and building materials.

Mayor Weatherly closed the public hearing and opened the floor for a motion.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the rezoning request Rezoning Case #06CU13, Sunridge Holdings, LLC. Motion carried unanimously.

End of Public Hearing # 1

Presenter: David Rowland, Director of Planning
Public Hearing # 02 – Rezoning Case # 06CU14
Planning Board reviewed this item at their July 10, 2006 meeting and recommends denial (4 to 1) for reasons stated on the Agenda Action Request Form; Petitioner requests this hearing be postponed until September 5, 2006; four protest petitions were submitted, however, the Assistant Town Attorney has determined the petitions are not valid because the petitioners do not own property within the 100-foot-wide protest area and or the area proposed to be rezoned.

Public Hearing and possible motion regarding Rezoning Case #06CU14 Hendrick Automotive Group, petitioner, seeking to amend the 2025 Land Use Plan from Office and Institutional to Office & Institutional and Commercial Land Use classification and to Rezone from Residential Agricultural to Planned Commercial Conditional Use District classification the property located on US Hwy 64 between Laura Duncan Road and Pine Plaza Drive containing 34.7 acres.

Rowland addressed Council advising the petitioner was requesting this hearing be continued to the September 5, 2006 Council meeting and stating Attorney Grimes would address this request. Attorney Don Grimes, Counsel for the Petitioner, stated there had been a small turn out at the neighborhood meeting with 80 households having been notified of the meeting and with 13 attending the meeting, and wanted to make a greater effort to speak with the neighbors.

Mayor Weatherly called for a motion to continue the hearing.
Action: Motion by Council Member Gossage and second by Council Member Jensen to continue Public Hearing for Rezoning Case #06CU14 Hendrick Automotive Group to September 5, 2006 Council meeting at 7:00 p.m. Motion carried unanimously.

End of Public hearing # 2

Presenter: Dianne Khin, Assistant Planning Director
Public Hearing # 03 – Rezoning Case # 06CU15
Planning Board considered this conditional use rezone at their July 10, 2006 meeting and unanimously recommends approval.
Public Hearing and possible motion regarding Rezoning Case #06CU15 WakeMed Property Services, petitioner, seeking to rezone from Neighborhood Business-Conditional Use and Office & Institutional-Conditional Use to Office & Institutional-Conditional Use the property located at the intersection of West Williams Street (NC55) and Apex Peakway containing 16.04 acres.

Council Member Jones asked to be excused from voting and participation during this hearing as he has financial interest in the project as he is employed with Wake Med, however, will be sworn in to answer any questions Council may have.

Action: Motion by Council Member Gossage and second by Council Member Schulze to excuse Council Member Jones from voting and participation during this hearing. Motion carried unanimously.

Town Clerk administered an oath to those speaking during this public hearing including Council Member Jones.

Khin presented the staff report regarding the above referenced rezoning case duly advertised, which is attached along with supporting documentation and incorporated as a part of the official minutes, and contains the background information, the project description, adjacent zoning and land uses, conditions proposed by the applicant and stated by Khin, project impact on neighboring properties, Planning Board's recommendation from July 10, 2006 for approval. The request is consistent with the 2025 Land Use Plan identifying the subject property as, and noting the standards the rezone must meet for approval. Staff also recommends approval.

Mayor Weatherly opened the public hearing at 7:20 p.m. and with no one addressing this rezone request, closed the public hearing.

Council Member Gossage asked if the hospital had ambulance service, with Council Member Jones responding no, they have mobile care and transports from one hospital to the other hospital.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Schulze to approve rezoning case # 06CU15 WakeMed Property Services. Vote on the motion was 4 in favor and 0 opposed, with Council Member Jones having been excused from participating and voting on the rezone. Motion carried.

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

There were no New Business items to be considered.

WORK SESSION AGENDA

There were no Work Session 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; and to discuss personnel.

Action: Motion by Council Member Jones and second by Council Member Schulze to move into Closed Session at 7:23 p.m. for the reasons stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion was made and second to move back into Regular Session at 9:10 p.m. Motion carried unanimously.

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

Action: Motion by Council Member Sutton and a second by Council Member Gossage to approve a Group Contract with BlueCross BlueShield as the Town's health care provider effective July 1, 2006. Motion carried unanimously.

Action: Motion by Council Member Jones and a second by Council Member Sutton to take the following action: Increase the Town Manager's salary by a 2% merit; add three (3) weeks vacation leave to the Town Manager's accumulated vacation leave, and for the record noted a "vote of confidence for a job well done." Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Schulze and second by Council Member Jones to adjourn at 9:08 p.m. Motion carried unanimously.

The above minutes were approved on the 15th day of August, 2006.

Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes of Tuesday, August 15, 2006 Meeting
held at 7:00 p.m. in the Council Chambers on the
2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

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

PRESENTATIONS

Presentation No. 1) Update from Fundraising Council David Winslow on the status of the private fundraising campaign associated with the Performing and Cultural Arts Center: expressed appreciation for support and leadership; noted timetable had been revised; campaign teams were in place; contacts were made to numerous financial institutions for contributions and await their decisions; a kick-off campaign is planned for August 31, 2006 hosted by the Apex Arts Council; firm commitments have been made for $200,000; await contributions "in play" totaling $506,000; the project will not happen without private funding; campaign leaders believe it would be helpful for Council to hold bids received and not release them for 60 days, in that there could be a much better level of private support.

Presentation No. 2) Update and review of Bids for construction of the Performing and Cultural Arts Center; Steve Schuster Clearscapes & Associates offered five (5) bids were received on July 27, 2006, with the lowest bidder Progressive Contracting Co., Sanford, NC biding $1,970,000.00; stipulations in the contract will allow for the price to be held for 90 days and would allow for the campaign committee to move forward with their funding efforts; the engineering process has begun and will recommend the total costs; typically 5% contingency will be budgeted for additional/unforeseen construction costs, etc.; Schuster expressed confidence in the work ethics of Progressive Contracting Co. and are known for doing projects such as this; cost of the etching of the glass had not been determined but are being reviewed by artists.

Presentation No. 3) Apex Chamber of Commerce Economic Development Marketing Presentation developed as a part of a strategic planning study with Sanford Holshouser. Nancy Johnson, Market Force, presented an overview of the focus group findings and proposal to "brand" Apex to stand out within the surrounding area; she presented a proposal to unify the look of stationary for the Apex Chamber of Commerce, the Downtown Business Association, and the Town of Apex, by using a new design logo which would be the same for all correspondence, however, identifying the different groups; she agreed with the keeping of the "Peak of Good Living" for Apex slogan. No action was taken.

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

The Consent Agenda was set prior to taking action on the following items, with one amendment to add: Resolution awarding bid of the house at 904 N. Sharpe Street, Selma.

Action: Motion by Council Member Jones and second by Council Member Schulze to add the Resolution to the consent agenda for consideration. Motion carried.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the consent agenda with the amendment (CA-15). Motion carried unanimously.

1. Minutes of August 1, 2006 Council Meeting.
2. Minutes of August 1, 2006 Closed Session of the Council (separate cover).
3. Annexation Petition # 394, Bob S. & Josephine M. Denny, property owner/petitioner, petitioning to annex 3.060 acres including right of way into the Town's corporate limits and located at 1100 Olive Chapel Road; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for September 5, 2006.
4. Annexation Petition # 395, Apex First Development, LLC, Portrait Homes Old Mill Village, LLC., and VRM Development, LLC, now or formerly owners/petitioners, petitioning to annex 4.639 +/- acres into the Town's corporate limits and located on the east and west sides of the Apex Peakway between Old Raleigh Road and Center Street; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for September 5, 2006.
5. Annexation Petition # 396, Joann Wardensky, property owner/petitioner, petitioning to annex 0.0687 acres into the Town's corporate limits, a portion of Lot 3 Don Sutton property, and located on Roosondall Court (driveway connection); 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for September 5, 2006.
6. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU12, DDR/1st Carolina, Apex, PH III, petitioners, for rezone from Planned Unit Development-Conditional Use to Planned Unit Development-Conditional use (to change conditions) located on the north and south sides of US64 at Beaver Creek Commons Drive and Green Level Church Road containing 130.943 acres.
7. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU13, Sunridge Holdings, LLC, petitioners, rezone 3. 19 acres from Light Industrial to Planned Commercial Conditional Use District classification the property located at Lufkin Road and NC55.
8. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU15, Wake Med Property Services, petitioners, rezone from Neighborhood Business-Conditional Use and Office & Institutional-Conditional Use to Office & Institutional-Conditional Use the property located at the intersection of West Williams Street (NC55) and Apex Peakway containing 16.04 acres.
9. Ordinance amending the Official Zone District Map #06RZ16 a.k.a. #06CU16, Barrister Capital Management Corporation, petitioners, located on Beaver Creek Commons Drive.
10. Subdivision Plan for Handee-Hugo's/Bojangles; Applicant United Energy seeking approval for three lots on 5.91 acres located at 1547 and 1607 E. Williams Street.
11. Allow local sellers of conservation products to place advertising inserts in Town utility bills.
12. CSX Pipeline Crossing Agreements #CSX-056047 and CSX-056048 adopting a resolution and authorizing Town Manager to execute the agreements.
13. Apex Arts Council requests closing portion of Templeton Street August 31 from 3:00 p.m. until 7:00 p.m. in order to host a kickoff event for the public fundraising effort associated with the Performing and Cultural Arts Center.
14. Annexation Petition # 397, Lindsey McClamb, Jr., Et. Al. - Michael McClamb, owners/petitioners, petitioning to annex 28.861 acres into the Town's corporate limits, and located at the northern end of Evans Road (SR1147); 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for September 5, 2006.
15. **Add on:** Resolution declaring Morris B. Jackson's bid of $127,000 to be the highest bid for the purchase of the house at 904 N. Sharpe Street, Selma, pursuant to the Upset Bid Procedure, and authorizing completion of sale.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda and asked for a motion to move closed session forward to discuss potential purchase of real property, and potential litigation. The agenda was set as modified.
Action: Motion by Council Member Jones and second by Council Member Schulze to move into Closed Session at 7:25 p.m. Motion carried. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Schulze and second by Council Member Jensen to move back into Regular Session at 7:50 p.m. Motion carried. With the Council having returned to the Regular Session, Mayor Weatherly began the public hearings at 7:51 p.m.

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director
Public Hearing # 01 – Amendment to Unified Development Ordinance
Planning Board will consider the amendment at their August 14, 2006 meeting; staff will report on the Planning Board recommendation; staff recommends approval.
Public Hearing and possible motion regarding amendment to various sections of the Unified Development Ordinance regarding Ambulatory Healthcare Facility with Emergency Department.

Council Member Jones asked to recuse himself from participating and voting due to a conflict of interest as he is involved in the decision with the hospital. **Action:** Motion by Council Member Sutton and second by Council Member Schulze to excuse Council Member Jones. Motion carried unanimously.

Dianne Khin, Assistant Planning Director, presented the staff report and read aloud proposed amendments to the Unified Development Ordinance, with the report being attached and incorporated as a part of the official minutes. Amendments regard to Ambulatory Healthcare Facility with Emergency Department and affect Sections 4.2.2 amending the use table, Section 4.3.2 Public and Civic Uses, Section 5.1.2 Table of Intensity and Dimensional Standards, Section 8.2.6(B)(4) Land Use Classes, Section 8.3.2 Off-Street parking Requirements, Section 8.7.1 Permitted Signs, Location, Size, and Number. The Planning Board met August 14, 2006 and recommends approval; staff recommends approval. Khin answered questions: Helipad has its on use, and included in the hospital definition and would be included in this function and is allowed in the Light Industrial designation, however needed as an accessory use as an emergency function; no future projects are proposed for helipad use. Council Member Jones stated a helipad would require approval by FAA as a designated use however could land in any emergency situation.

Mayor Weatherly opened the public hearing at 7:55 p.m. and with no one addressing the proposed amendments, closed the hearing.
Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the amendments. Motion carried unanimously with Council Member Jones being recused.

End of public hearing # 01

Presenter: David Rowland, Director of Planning
Public Hearing # 02– Annexation Petition # 393
Public Hearing and possible motion regarding Annexation Petition # 393, Henderson E. Hinton, property owner/petitioner, petitioning to annex 6.885 acres including public right of way into the Town's corporate limits; property is located on the south side of Lufkin Road and extending north to US1.

David Rowland, Director of Planning presented Annexation Petition # 393, and needing water for the site. Council Member Jensen noted the realignment of Lufkin Road and asked if this would be affected. Rowland responded the road alignment doesn't affect this property. Council Member Jensen asked that since the realignment was for the public good could it be tied in some fashion to the annexation. Attorney Fordham response was, "that generally speaking adding conditions to an annexation are probably not permissible, not a definitive answer, but the direction he was thinking and would be glad to research it further". Council Member Jensen would like to look at this possibility in future.

Mayor Weatherly opened the public hearing at 7:58 p.m. and with no one addressing this annexation, closed the hearing.
Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the annexation by adopting an ordinance to extend the corporate limits of the Town. Motion carried unanimously.

End of public hearing # 02

OLD BUSINESS

Presenter: Dianne Khin, Assistant Planning Director

Old Business Item # 01 – Bus Shelter Project

Possible motion for allocating approximately $50,000 to purchase three bus shelters and to perform site work for each location, and give permission to solicit bids from contractors for the installation and site work for the shelters.

Khin recalled on May 16, Council attentively approved an allocation of $50,000 to purchase three bus shelters but requested Appearance Commission bring a "scaled-down" version of the design back for further review. Sera Lewis, Appearance Commission, presented a "scaled-down" version of a prefabricated bus shelter design, identifying locations, and cost estimates for the shelter project; Appearance Commission fines money will be used to complete the project. Stops considered for shelters are highest volume stops: Quotes: Shepherds Vineyard 6x12 shelter cost $15,405; two 5x10 shelters: Hughes Street/East Williams Street and Town Campus (Hunter Street) costs $27,750.00. Estimated total project cost $62,855 and over the original request of $50,000; designs and shelters much lower in cost were considered and based on original installation estimates. Lewis explained the Planning Board had taken the installation out for preliminary bid, and the bid came in higher than they expected. Khin explained Columbia had given two extensions on the price and would go up in September; installation and site work estimates for three shelters were $19,700 from Beau Chene Company, LLC, General Contractor and significantly higher than the original quote; it was noted by Engineering staff these costs were upfront and would be a turn key job. Lewis noted additional art work or etchings to the shelters would be an added cost; shelters have aluminum benches.

Council Member Schulze felt the price was too expensive, having agreed with the cap of $50,000; thought it was generous and that there could be a better use of $62,000 and should find a cheaper way to install three bus shelters. Lewis responded cheaper shelters could be installed, using the one at Target as an example however, the Commission desired more professional and sophisticated shelters to set precedent for future development.

Council Member Jones tended to agree with Council Member Schulze, however sees merit in the design and if shelters were put up and he hadn't decided they need to be, he didn't want plain glass structures that could be covered in graffiti. Mayor Weatherly added even the more expensive ones could be covered. Council Member Jones knew there would be maintenance cost as well and hoped the costs would be less than $50,000.

Council Member Schulze asked the number of daily riders: Lewis responded approximately 140. Manager Radford noted three vehicles parked at Town Hall daily, with one walker. Lewis noted Town Hall had the lowest rider stop of the three however the Town Hall site had visual impact. Mayor Weatherly had observed cars parked at Town Hall and either could wait in the shelter or in their cars; Manager Radford added they sit on bench. Council Member Jones had observed the same at Perkins Restaurant; with David Rowland Director of Planning reporting 15/20 cars daily at this site (US64).

Council Member Schulze understood the purpose of the shelters for inclement weather and protection from the sun, however, felt a far wiser use of the money could be used for sidewalks along an unsafe road, and more people would walk along the sidewalk on an average day and be safe, and that there could be other places for the money to be used that would be better for the citizens.

Council Member Gossage asked if there had been requests for bus shelters from the riders, knowing there had been requests for sidewalks. Lewis responded citizens request amenities but unsure if about shelter requests from TTA, but there had been no requests to the Town. Council Member Schulze noted there had been many requests for sidewalks, some for safety, and to him it would be nice to have shelters, for inclement weather, however saw nothing wrong in standing at a bus stop without a shelter. Lewis responded the purpose was partly for inclement weather, also for a visual indicator that stops do exist and to encourage riders to use bus transportation which would reduce traffic, and also would bring outside people in.

Mayor Weatherly opened the floor for a motion:

Action: Motion by Council Member Sutton and second by Council Member Jensen to approve the bid for the bus shelters at a cost of $62,855. Discussion followed. Council Member Jensen felt the additional money sounded high, but on the other hand they were trying to promote use of public transportation by placing shelters, and shows interest in people taking public transportation. He noted shelters would last 20 or more years and was a long term investment. He agreed sidewalks are necessary and desirable and had pushed for sidewalks, but thinks its Appearance Commission money and they had devoted their time to provide the Town with something different and if it's $10,000 over the budget, its money they had to use for something along this line and thinks they should go with it.

Old Business Item # 01 continued

Council Member Jones asked if they would consider reducing the number of shelters from three to two. Lewis and the Commission felt if they had to reduce, they would take out the NC55 Scotts Galaxy Food shelter as this stop has lower rider ship however is the southern most stop on the TTA and everyone comes from the south gathering at this stop; Shepherd's Vineyard stop is first priority with the highest number of riders and Galaxy Foods stop has the second highest number of riders; the Commission would like to keep the Town Hall shelter as a visual anchor to the Town and Shepherds Vineyard stop for the traffic. Council Member Gossage said they had set a maximum $50,000 and doing two of the three was about $13,000 over budget, and if it were a household budget and the money wasn't there and was over in cost, they couldn't get it.

Council Member Jones stated there were no bus shelters in town and before investing more than they collectively had thought they should, thinks they should start with two shelters and see what they look like and what the maintenance issues would be before they proceed beyond two, and would be a way to keep costs under $50,000, with Lewis agreeing.

Mayor Weatherly thinks the idea of bus shelters is good, and if the cost was the factor being looked at, he had not heard any reasons why they need $20,000 bus shelters; his point was, had they rather reduce from three to two shelters going with two that was more expensive, or would they want to go to a more utilitarian design at a lower cost that serves the purpose but may not be as flashy as this.

Council Member Sutton thought the one at Scotts Food (NC55) was the wrong one to eliminate because those people were probably the ones that needed public transportation more than anybody, and had rather see the elimination of the shelter at Town Hall. Council Member Jones agreed. Rowland advised Trailways also stops at Scotts Galaxy Foods (NC55 stop) and goes to Charlotte, with both TTA and Trailways being provided at this stop. Council Member Jones had visited websites looking at various shelters and the Columbia Equipment Co. site, and found more utilitarian shelters, but they were not much more than a glorified phone booth, and this one is the one he had thought would be least expensive, and one they would be happy with, but thought it was less than $13,000.

Council Member Gossage felt since this request was coming from the Appearance Commission and they were invested in the Town's appearance and things done in town, he trusts their input on this and it has value; he would lean toward keeping the $50,000 cap, and saying they make the decision, their preference of either the two or three less esthetically pleasing.

Council Member Jones sees the symbolism of placing one on the Town Hall site and prefers if they go with two shelters place them north and south, with Lewis agreeing; Council Member Gossage also agreed. Mayor Weatherly added if they do this, it does not preclude them from coming back six months from now and asking to they do a third one. Council Member Gossage noted there was a motion on the floor. Council Member Jones asked if he could offer an amendment to the motion. Mayor Weatherly stated an amendment was in order.

Action: Motion by Council Member Jones and second by Council Member Gossage to amend the motion to change the number of bus shelters from three to two, not knowing the resulting cost, but assuming less than $50,000 and that it would be for one shelter to be located at the Perkins Restaurant shopping center (US64), and one at the Galaxy Foods (NC55). Council Member Gossage asked if this meant provided it comes under $50,000, and looking at the numbers doesn't feel it will be a problem, with Council Member Jones responding yes. Discussion on the amendment followed: Council Member Schulze stated he would vote for this, however, cost per shelter still rubs him the wrong way, but was willing to give this a try. Motion carried unanimously on the pending motion. Mayor Weatherly stated the amendment was adopted, and this recurs to the motion on the floor, to vote on the motion as amended, which is to change from three to two bus shelters, with the cost not to exceed $50,000. With no discussion, vote on the motion was 5 and 0. Motion carried.

End of Old Business

PUBLIC FORUM

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

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

Public Forum continued

Randall Sink, Cal North, Dan Brubaker, Kathy Turner, Tonya Forbes, Kay Hanser, Vivian Joyner, Carolyn Sink, Paul Barth, New Hill residents shared concern with Council regarding site for the wastewater plant, and potential impacts on New Hill:

Issues addressed follows: New Hill residents ask to be participants in the report requested by NC Department of Environment and Natural Resources (DENR) from Western Wake Partners to provide more information concerning the proposed regional sewer plant facilities in New Hill; noted inconsistencies with site selection process and with DENR not concluding the appropriate sites had been evaluated and having little input from New Hill residents on the site selection or development of the draft environmental impact study; they want to insure data is accurate from Western Wake Partners and given opportunity to be included in the process as recommended by DENR; addressed adverse affects on the Historic District and questioned action of the Western Wake Partners in placing such facility in a historic district; asked to change the site for the project; noted Cary's record of waste spills and wanted to let Cary know this will not work, and allow New Hill residents to work with Western Wake Partners and Apex for a solution for a new site, noting Apex would be a part of this area in the future; noted cost information to justify the Seymour Farm as a site for the facility was not addressed and a mistake; that undetected leaking sewage transmission lines could contaminate their land, private wells and water systems, septic systems, irrigation ponds for crops, livestock and pets and create other health issues; asked who would be accountable, who would monitor and repair the lines; what would be the response time for clean-up; New Hill residents should be involved in this activity as there would not be a luxury of time regarding fresh water needs; impacts of the water reclamation facility outside the town's jurisdictions was not addressed in the master plan and addressed only in service areas and asked they follow DENR recommendation and address the area affected by the facility and their impacts: growth, increased traffic in rural area, increased run off and pollution in creeks, ponds and wetlands; lost of economic development of the New Hill downtown area and lost of open space and small farms and lost of rural life style chosen by New Hill residents asking how Town plans to mitigate; after water quality hearing, environmental impacts with site selection differed from the demographics of the Western Wake Partners; community has already born gas pipe line, Harris Plant, environmental hazards and asked for an alternative site that doesn't affect them but protects and preserves their community and asked Western Wake Partners listen to them and work together for the best of all people; that Apex is in a position to take a stand, and no decisions are consistent across the board, asked they make a wise decision that New Hill is like everyone else and everyone has responsibility for its character and destiny. DENR recognized there was not enough New Hill Community input into the draft DIS and thinks because of the lack of involvement the document ended up incomplete, inadequate; they want to work with the towns and correct mistakes made in the document and make it complete and adequate.

Council Member Sutton asked the Manager if they could get a report from the Partners on the reply to the state in view of the draft DIS, before it goes back to the State. Manager Radford reported they could. Mayor Weatherly stated he would as a member of the Partners bring a report prior to it being adopted by the Partners and would submit this request to the Chair, and wouldn't move forward with a response to DENR until they had looked it, no need to adopt it, but look at it. Council Member Jensen asked if they could give input into it at that time, with Mayor Weatherly responding he's not sure they have any vehicle to give input into it, as its from the technical review committee, a technical document, that will be put together as a response to DENR, but this board would not have any independent or any unilateral responsibilities to modify that response, with Manager Radford adding not unilaterally, however, may have the opportunity to make suggestions to the advisory board, with Council Members Sutton and Jensen agreeing with this. Mayor Weatherly added in that review process they certainly if a substitutive suggestion came up, then they could bring it forward to the advisory board.

End of public forum

NEW BUSINESS

Appearance Commission Representative

New Business Item # 1- Grant Opportunity

David Rowland Director of Planning asked the Council to consider appropriating $10,000 to the Appearance Commission for a grants/writer researching grants in the area of public arts, landscaping and trees, bus shelters and pedestrian amenities. They would prepare grant applications, pursuing additional grants, etc. After the $50,000 Bus Shelter appropriation, there remains $30,000 in reserve funds approved in last years budget dedicated to the Appearance Commission, and could consider this an investment for seeking money for future projects and a follow up from last year.

Mayor Weatherly asked if the town didn't have in-house staff to address this, giving Parks and Recreation grants as an example. Rowland responded they could pursue the grants, but the Appearance Commission wanted to see this type person that would be dedicated, have time and expertise to research grants and find grants that should be applied for. Mayor Weatherly asked if there had been grant opportunities that the Appearance Commission had not been able to respond to in the past. Rowland didn't know and had not been directed to find grants; Khin noted the number one priority of this person would be to find what grants are out there and the grants they need to pursue.

Mayor Weatherly continued that beyond whether needed or not, wanted background and references of Wendy Painter who had offered a Letter of Agreement for a service fee not to exceed $10,000, and proven track record and success stories, and what opportunities were out there. Rowland advised he would provide this information, but knew her personally and thinks she would be an excellent person for this; her background had been in getting grants in house type projects, and has a background in architecture, and had worked with the arts council, with her specialty in affordable housing, with grants being similar. Mayor Weatherly stated he would feel more comfortable about this if there is a person with a proven tract record, and had success stories. Rowland added that finding someone that specializes in grants writing – had not found a lot of people that fall into this category; he thinks it would be a good profession for someone to pursue. Mayor Weatherly would like to see someone successful in grant writing with Rowland willing to provide her extensive success. Mayor Weatherly would like someone on staff to provide for him opportunities out there, what they are looking for and the potential. Rowland responded they had not had time to research. Mayor Weatherly added that someone believes, assuming it was Rowland, that it is worthwhile to spend $10,000 because there are opportunities that might be successful if they had the right person to writ these grants, and thinks opportunities are there, then the $10,000 investment would be worth it, asking what they are, and they give him an idea. Council Member Sutton added staff could give examples of other municipalities that had received these kinds of grants. Rowland responded he had not put a huge amount of time into looking at other municipalities as not having time nor directed to do so. Mayor Weatherly doesn't see this idea as a bad one, but wanted to justify the request and doesn't believe the justification is solid based on what he sees.

Lewis stated previous volunteers had grant samples that were missed out on, but she didn't have those with her. He noted this was a problem with an all volunteer commission and not having time themselves to research grants, noting the Planning Department was running at high capacity and did not have the opportunity to do projects for them all the time; they are hoping to get someone whose job it was to investigate their projects, and truly believe they will have a high turn around investment and can fully refund this money by chasing grants. Mayor Weatherly wasn't saying it's a bad idea, he was sure other municipalities do this successfully, asking the Manager if we didn't have someone we could dedicate to do a good job to research the internet or however to find opportunities. Manager Radford responded it would be difficult for us to dedicate someone to this fulltime; Mayor Weatherly didn't mean fulltime. Manager Radford noted what they are seeing is about 100 hours worth of effort from anyone given rate like this, and certainly could find someone to dedicate 100 hours. Lewis asked if they thought there was someone on staff that could research for them; Manager Radford was willing to give it a chance.

Mayor Weatherly noted the Recreation Department had been quite aggressive, with Council Member Jones noting they had some well defined grant opportunities and help in defining those from Wake County Parks and Recreation, state agencies that John Brown was affiliated with, and maybe a different situation and a bit unfair to compare recreation to general economic development and/or planning or appearance type grants. Council Member Sutton felt contact are important for who ever is writing grants and John had them. Council Member Jensen reminded Council that John did have a consultant, Hazen Stanziale. Council Member Jones reminded that our master plan has help identify some of those grants. Manager Radford felt there were more grant opportunities in the recreation area than in the arts area. Council Member Jensen asked if grant writers worked on a commission basis where they get three or four percent of the grant achieved; could benefit the grant writer and not cost up front; we need to do something – we've done a lot better lately than four years ago on grants. Rowland responded thinks this will find those grants that they might could fund through a commission basis, but thinks this base information will provide what's out there to begin with and then if they can write a successful grant, then it might be that we could pay part of that salary, subject to receipt of that successful grant; could probably arrange it anyway. Council Schulze asked the duration of the arrangement, with Rowland responding as far as the $10,000 goes. Lewis added they had interviewed Wendy at one of their meetings and gave her an assignment, and when complete come back to them and they would go forward; they do not plan to write the check up front. Council Member Schulze added if we go through with this, he would like to know at the end of the arrangement, did we get the grant. Lewis stated their request was research four grants, find one worth pursuing and write up the grant application and research and results become our property. Mayor Weatherly asked Rowland to come back to them as soon as he has the equal opportunities and more detail about this potential consultant as far as track record and professional credentials; how long in the field, and who she has worked with, etc. Rowland had this, however did not include it.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session to receive legal advice.

Action: Motion by Council Member Gossage and second by Council Member Jones to move into closed session 9:00 p.m. to receive legal advice. Motion carried. Minutes of Closed Session are recorded separately. Motion by Council Member Schulze and second by Council Member Sutton to move back into regular session at 9:22 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Schulze to adjourn at 9:23 p.m. Motion carried.

The above minutes were approved on the 5th day of September, 2006.

Georgia A Evangelist
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes for Tuesday, September 5, 2006 Town Council Meeting,
and was held at 7:00 p.m. in the Council Chambers on the 2nd Floor,
in the Apex Town Hall and Town Campus, 73 Hunter Street.
Mayor Keith H. Weatherly presided over the meeting with all Council Members attending.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

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

RECOGNITIONS

Plaques were presented to the Parks, Recreation and Cultural Resources
2005 Volunteers of the Year:
Athletic Program Dave Duncan and Non-Athletic Program Joan Mullings

CONSENT AGENDA

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Town Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action on the following items. Council Member Jones asked Item #10 be considered separately.

Action: Motion by Council Member Gossage and second by Council Member Schulze to consider item #10 under New Business. Motion carried.
Action: Motion by Council Member Jones and second by Council Member Jensen to approve the consent agenda as amended. Motion carried.

1. Minutes of August 15, 2006 Council Meeting.
2. Minutes of August 15, 2006 Closed Session of the Council (separate cover).
3. Minutes of August 15, 2006 Closed Session of the Council (separate cover).
4. Minutes of August 25, 2006 Finance Committee Meeting.

5. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU07, JVI Construction, petitioner, for rezone from Residential Agricultural and Conservation Buffer District to Planned Unit Development Conditional Use District, property located at Center Street and Forest Grove Road.
6. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU08, Susan Castlebury and Junius Earl Maynard, petitioners, for rezone from Traditional Neighborhood District Conditional use District to Traditional Neighborhood District Conditional Use District, property located at US Hwy 64, north of Haddon Hall Subdivision.
7. Findings of Fact & Conclusions of Law and Ordinance regarding rezone #06CU17, DDR/1st Carolina Apex, PH III, petitioners to rezone property located on the north and south sides of US64 at Beaver Creek Commons Drive and Green Level Church Road.
8. Budget Ordinance Amendment and Capital Project Ordinance Amendment.
9. Resolution # 06-0905-21 declaring Apex Town Council's intent to annex Town-owned property, Annexation # 398, containing 6.708 acres located on Kelly Road (SR1163) and north of Beaver Creek known as the Horace Johnson property next to Kelly Road park.
10. Renew Agreement for extension of water service for additional term of ten years pursuant to Section 7 of the Agreement between the Town of Apex and with Castlewood Oasis, Inc., dated December 17, 1996 (considered under New Business).
11. Wake County Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 01 – Rezoning Case # 06CU10

Review: Petitioner requests public hearing be continued to September 19, 2006 Town Council Meeting

Public Hearing and possible motion regarding Rezoning Case #06CU10, Apex First Development, LLC., and Douglas W. Duncan, Trustees, petitioners, seeking to rezone from Light Industrial and Residential Agricultural to Planned Unit Development Conditional Use the property located at US64 on the north, Hunter Street on the south, and CSX Rail Right-of-way to the east and west, and containing 119.2 acres.

Presenter: Dianne Khin, Assistant Planning Director stated the petitioner had requested hearing for case #06CU10 be continued to September 19, 2006 due to conflicting schedules.

Action: Motion by Council Member Schulze and second by Council Member Jones to continue case #06CU10 to September 19, 2006 meeting. Motion carried.

End of public hearing # 1

Presenter: David Rowland, Director of Planning

Public Hearing # 02 – Rezoning Case # 06CU14

Possible motion to continue Rezoning Case #06CU14 to September 19, 2006.

Review: Planning Board reviewed this item at their July 10, 2006 meeting and recommended denial (4 to 1) for reasons stated on the Agenda Action Request Form; Petitioner requested this hearing be postponed until September 5, 2006; four protest petitions were submitted, however, the Assistant Town Attorney has determined the petitions are not valid because the petitioners do not own property within the 100-foot-wide protest area and or the area proposed to be rezoned; petitioner requests hearing be continued to September 19, 2006.

Public Hearing: Rezoning Case #06CU14 Hendrick Automotive Group, petitioner, seeking to amend the 2025 Land Use Plan from Office and Institutional to Office & Institutional and Commercial Land Use classification and to Rezone from Residential Agricultural to Planned Commercial Conditional Use District classification the property located on US Hwy 64 between Laura Duncan Road and Pine Plaza Drive containing 34.7 acres.

Presenter: David Rowland, Director of Planning stated the petitioner had requested hearing for case #06CU14 be continued to September 19, 2006 to allow for additional time to justify to NCDOT the installation of a traffic light at US Hwy 64 and Knollwood Drive.

Action: Motion by Council Member Jensen and second by Council Member Jones to continue case #05CU14 to September 19, 2006. Motion carried.

End of public hearing # 2

Presenter: David Rowland, Director of Planning

Public Hearing # 03– Annexation Petition # 394

Public Hearing and possible motion regarding Annexation Petition # 394, Bob S. & Josephine M. Denny, property owner/petitioner, petitioning to annex 3.060 acres including right of way into the Town's corporate limits and located at 1100 Olive Chapel Road.

Presenter: David Rowland, Director of Planning stated the property owners are in need of water; property includes right of way. Mayor Weatherly opened the hearing at 7:10 p.m. and with no one addressing this annexation, closed the hearing and opened the floor for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve Annexation # 394 by adopting an Ordinance to extend the corporate limits by 3.060 acres including right of way. Motion carried.

End of Public Hearing # 03

Presenter: David Rowland, Director of Planning

Public Hearing # 04– Annexation Petition # 395

Public Hearing and possible motion regarding Annexation Petition # 395, Apex First Development, LLC, Portrait Homes Old Mill Village, LLC., and VRM Development, LLC, now or formerly owners/petitioners, petitioning to annex 4.639 +/- acres into the Town's corporate limits and located on the east and west sides of the Apex Peakway between Old Raleigh Road and Center Street.

Presenter: David Rowland, Director of Planning stated the property is a portion of Old Mill Village and completes the annexation of the property. The property to the east will be allowed a drive cut, and has to provide access to the town homes. Mayor Weatherly opened the hearing at 7:13 p.m. and with no one addressing this annexation, closed the hearing and opened the floor for a motion.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve Annexation # 395 by adopting an Ordinance to extend the corporate limits by 4.639+/- acres. Motion carried.

End of Public Hearing # 04

Presenter: David Rowland, Director of Planning

Public Hearing # 05– Annexation Petition # 396

Public Hearing and possible motion regarding Annexation Petition # 396, Joann Wardensky, property owner/petitioner, petitioning to annex 0.0687 acres into the Town's corporate limits, a portion of Lot 3 Don Sutton property, and located on Roosondall Court (driveway connection).

Presenter: David Rowland, Director of Planning stated the property is a drive connection for a home moved onto a lot from Sutton Place development. Property owner had problems getting access with Wake County; entire lot now facilitates this development and has water and sewer. Mayor Weatherly opened the hearing at 7:16 p.m. and with no one addressing this annexation, closed the hearing and opened the floor for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve Annexation # 396 by adopting an Ordinance to extend the corporate limits by 0.0687 acres. Motion carried.

End of Public Hearing # 05

Presenter: David Rowland, Director of Planning

Public Hearing # 06– Annexation Petition # 397

Public Hearing and possible motion regarding Annexation Petition # 397, Lindsey McClamb, Jr., Et. Al. - Michael McClamb, owners/petitioners, petitioning to annex 28.861 acres into the Town's corporate limits, and located at the northern end of Evans Road (SR1147).

Presenter: David Rowland, Director of Planning stated the property is slated for a future subdivision to be developed by Joey Iannone and provides water and sewer. Mayor Weatherly opened the hearing at 7:17 p.m. and with no one addressing this annexation, closed the hearing and opened the floor for a motion.

Action: Motion by Council Member Sutton and second by Council Member Jones to approve Annexation # 397 by adopting an Ordinance to extend the corporate limits by 28.861 acres. Motion carried.

End of public hearings

OLD BUSINESS

Presenter: David Rowland, Director of Planning

Old Business Item # 1- Grant Opportunity

Review: Council met on August 15, 2006 and after review of this request, asked staff return with more information concerning the consultant and possible grant sources.

Presenter: David Rowland, Director of Planning led the discussion relative to a $10,000 request from the Appearance Commission to fund a grants/writer; item was continued from Council's previous meeting with Council requesting more information concerning the consultant and possible grant resources. Sera Lewis, Chair of the Appearance Commission presented credentials of the consultant being considered and addressed various type grants that could be applied for.

Mayor Weatherly addressed the recommended consultant's qualifications and experience in the area of arts, seeing more experience in housing grants writing. Rowland explained it was difficult to find specialists in the specific area of arts grants and felt this consultant was qualified to write grants and would fit general grant writing, noting she is an artist with some of her work having been on display, and felt she would do a good job, was capable and willing, however, open to other suggestions. Mayor Weatherly questioned whether Triangle J Council of Governments could provide a grants writer under the scope of their services to the Town. Manager Radford advised TJCOG has consultants that could be hired for writing grants, however, has not used them and unsure of the cost for this service. Council Member Gossage too was unsure, however, expressed willingness to look into this suggestion.

Council Member Jensen expressed concern with the cost of $90 per hour, and had paid half the cost for the consultant used by John Brown. He suggested perhaps staff attend Wake Tech classes at a cost of $55 and also offers keys to find grants, and was suggesting to try another path before paying the consultants asking price.

Council Member Sutton saw $10,000 as an investment to gain more from the $10,000, with Lewis sharing the opportunities for grants for more than $10,000 with higher end grants up to $60,000.

Council Member Schulze expressed hope to gain from the $10,000, and felt it didn't require a lot of skill to go after grants, having to lay out facts, and at $90 an hour didn't see grant writing as a specialized skill, and more inclined to look at another route. He asked Rowland if there was a staff person that could be considered for Wake Tech classes. Rowland responded staff had a full plate, and no grant writing was slated in this year's budget. Manager Radford expanded on this statement, that staff was capable, but had not worked on pursuing grants into this years work plan. Council Member Gossage asked why, with Manager Radford responding programs of the arts had never been said and had not been a priority. Council Member Gossage felt this set precedent to hire consultants outside Appearance Commission grant writers. Manager Radford noted the southwest plan had been recommended by the Planning Board and suggested hiring a consultant; Lewis was suggesting the hire of a consultant, Town was making the recommendation.

Mayor Weatherly was not adverse to conceptual hiring of a consultant, feeling the amount was modest; qualifications at best surprised him, thinking it's a good market, a viable niche for someone with these qualifications, with Lewis adding this is of a free lance nature.

Council Member Jones noted the grant writing would be done on a part time need too basis; he too had concerns with $90 an hour, however, would be gotten back at some point; this was part time over six months and even with a busy budget felt they could find something. Manager Radford asked to delay the decision for two weeks while he made a conservative effort to find someone with a different track record for the arts.

Council Member Sutton sees hiring the consultant as seed money, to invest $10,000 to pursue grants for more of the type projects the town needs and could use more of these types of projects in Town. Mayor Weatherly noted the money was from Appearance Commission funds and the Commission was allowed to have some discretion in spending. Council Member Sutton called attention to the painted mural in the downtown and was more into arts. Mayor Weatherly noted the Appearance Commission does a lot of projects and he was willing to let them choose, knowing they would be accountable, and after the discussion asked if there was a motion.

Action: Council Member Sutton made a motion to approve the Appearance Commission's request to hire the grants writer, and hiring this consultant at a cost of $10,000, with Council Member Jones making the second to the motion. Council Member Jensen wanted to delay decision for two weeks to allow the Manager to look into other paths getting more information before making decision, thinking it's a good idea if they get the correct person and then if no one else is found, then this would be the one. Council Member Schulze agreed $90 an hour troubled him and felt the same could be accomplished at a lesser fee. Mayor Weatherly asked if there was a motion to delay action for two weeks.

Action: Motion by Council Member Jensen and second by Council Member Schulze to allow two weeks for the Manager to look further into this matter with the vote on the motion to delay the decision by two weeks being 5 and 0. Motion carried to delay decision by two weeks. The underlying motion failed.

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: Council Member Jensen

New Business Item # 1- Stormwater Management

Council Member Jensen requested a revision in stormwater management for the Upper Northwest Tributary of Williams Creek. He noted NCDENR had designated the basin as an impaired stream with the 2003 study of the Upper Northwest Tributary of Williams Creek saying future stormwater flows will increase approximately 12% at build-out of the drainage basin under the present stormwater management rules; he noted Apex only controls peak flows from development to pre-development levels and sees the study as flawed due to the CN numbers. He stated Shepherds Vineyard folks had expressed concern with water spilling over into residential areas and due to the increase of stormwater flow within the basin; feels in order to prevent increased stormwater flooding from developments, Apex must apply controls to total water volume released from the developments during a storm, with 35% more retention pond area being required for volume control over that area required for simple flow control. He stated the Shepherds Vineyard folks have continuously requested assistance in mitigating this problem with flooding in the basin and time was running out for the council to provide this assistance, and if it didn't work, then it could be changed back. He provided a flow distribution table showing existing conditions and with new culverts downstream of Vineyard Station and gave specific instructions for adding a special district for the Swift Creek watershed whereby an additional section would be added to the UDO under section 6.1.7. The section number could be 6.1.7.1; for the new section, Section 6.1.7 A) 2) would read: In addition, the post-development peak runoff rate shall be limited to the pre-development runoff rate for the l-year, 24-hour, 10-year, 24 hour and the 25-year, 24 hour storms. Furthermore, for the defined storms the total water volume passing from the development shall be limited to pre-development values during the storm. 80% of the detention volumes stored to reduce flows shall be released within 120 hours to allow for subsequent storms.

Manager Radford stated the 2003 Study of the Upper Northwest Tributary of Williams Creek had been conducted by Wooten Co, a reputable Civil Engineering group and in their conclusion and recommendation stated because this basin is already heavily developed, no significant changes to the flooding patterns for large storm events will be changed based on development, and seeing no significant difference does not propose to make the suggested change; however should there be a choice to change, it would be given consideration, however feels there should be compliance with what the study said. Mayor Weatherly stated the retention pond on campus was raised by 10 feet due to potential of flooding, with the parking lot having had considerable amounts of water from severe storms. Manager Radford asked Director of Public Works Tim Donnelly for his determination of the study. Donnelly stated the summary was accurate and accepted by Council, noting Council Member Jensen's issue was based on philosophy as he believes in volume control, and noted they were talking about man made structures. He noted volume control basins increase stream erosion, and talking 1000 cubic feet of water per second, would have to build something big; he further recommended keeping people out of the floodplain areas, and noted this is natures way with the storms, where there was development or not, and was a mistake to let houses get too close to creek

basins, knowing residents get upset, but nothing now will change this, it's reality and if the choice was to make changes, the consequences could be damaging; he explained the time for flows to spill over and water to discharge over a longer period of time.

Council Member Jensen added larger retention ponds don't dump so fast; it was noted that the costs studies to build huge retention ponds was not feasible and not correct and that these houses have water under them. Donnelly responded the flood study stated they infringe on the flood plain with intent to keep it off finished floors, and that this will not change anything for those homes.

Council Member Schulze was open to the idea, but has not seen anything that makes a difference and has talked with other experts about this. Mayor Weatherly added this had been to the council on three different occasions and asked if anyone wanted to make a motion regarding the suggestion.

Action: Motion by Council Member Jensen and second by Council Member Sutton to designate the Swift Creek stream under duress and to do volume control within the basin. Council Member Schulze was not willing to vote on this until he saw something that would make a different and the study says it would not make a difference and he would want an expert opinion that any change would make a difference. Council Member Jensen felt 25% more retention was worth trying. Council Member Schulze thoughts were that volume moving over a period of time increases stream overflow. Council Member Jensen commented the release rate not so fast, was the stream reasoning and that the streams have changed from perennial streams and as water moves down stream, it changes the topography.

Council Member Jones respects the request from Council Member Jensen and questioning the volume and what's proposed, but doesn't know the cost involved, particularly for this area as its pretty much built out and he didn't want to ignore the conclusion and recommendations of the study. Council Member Jensen added upstream impacts downstream; he looks at wetlands and sees trees coming up, and when development does not harm downstream is his philosophy and the stream is under duress.

Council Member Gossage would take staff's advice and noted the study shows no cause for any further erosion and seems neutral at best to maintain and has been stated from the best. Council Member Jensen says it scars the philosophical view.

Mayor Weatherly called for a vote on the motion. The vote on the motion was two voting in favor (Council Member Jensen and Council Member Sutton) and three voting in opposition (Council Member Jones, Council Member Gossage, and Council Member Schulze). The motion failed.

End of New Business Item # 1

Consent Agenda Item # 10 moved for separate consideration regarding Castlewood Oasis, Inc.

Renew Agreement for extension of water service for additional term of ten years pursuant to Section 7 of the Agreement between the Town of Apex and with Castlewood Oasis, Inc., dated December 17, 1996. Council Member Jones asked if this extension was stated in the original agreement. Tim Donnelly Director of Public Works responded the intent of the original agreement was to renew the agreement for an additional term of ten years by either party. He explained Castlewood Oasis, Inc. had built out the waterline with the pressure being placed on those that are not tied into the line, and if the agreement were to go away, they would loose out on the money already invested, and were asking to renew the agreement. The HOA charges a tap fee and one would pay acreage and capacity fees if not an original member with approximate cost in the neighborhood of $2250 water and lot $1500. He noted wells failed in Castlewood and they had built the line with about 20 out of the 40 residents tying into the line. He stated the Town had no way to exclude the next person if the Town owned the waterline and operates it for them. Attorney Fordham advised there was no choice in this decision.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to renew the agreement with Castlewood Oasis, Inc. for an additional term of ten years. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following items, with item 4 being requested to be added by the Town Attorney. Action: Motion by Council Member Jones and second by Council Member Gossage to move into closed session at 8:05 p.m. Motion carried.

1) Receive legal advice from the Town Attorney regarding utility customer bankruptcy matter.
2) Receive legal advice from the Town Attorney regarding proposed termination of contract.
3) Receive recommendation from Town Manager and advice from Town Attorney concerning settlement with Progress Energy of potential litigation for reimbursement of leased facility charges to Town of Apex in relation to purchase of substation # 3.
4) Discuss Personnel.

Action: Motion and second to move back into regular session at 8:49 p.m. Motion carried.

With the Council having moved back into regular session the following **action** was taken:

1) Motion by Council Member Sutton and second by Council Member Jensen to authorize the Town Manager to finalize a proposed settlement plan electing a cash payment from the Winn-Dixie Corporation. Motion carried.
2) Motion by Council Member Sutton and second by Council Member Schulze to terminate a contract between the Town of Apex and Mr. Steve Sebastian regarding a land purchase of the northeast corner of US64 and Lake Pine Drive due to being unable to obtain highway access to the property. Motion carried.
3) Motion by Council Member Sutton and second by Council Member Schulze to accept the proposed settlement of $192,000 between the Town of Apex and Progress Energy regarding the purchase of the Point-of-Delivery # 3. Motion carried.

End of Regular Session

ADJOURNMENT

With no further business to come before the Council, a motion was made and second to adjourn at 8:50 p.m. Motion carried.

The above minutes were approved on the 19th day of September 2006 with minutes submitted by the Town Clerk.

Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for Tuesday, September 19, 2006 meeting,
held at 7:00 p.m. in the Council Chambers on the 2nd Floor,
Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

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

PRESENTATION

Jennifer LeCates Emergency Communications Network presented: "Code Red" Emergency Public Notification System. This web based notification system, with 30,000 system minutes that would contact each household in town from a data base including cell phone numbers. Chief Haraway researched many systems and recommends this system which requires no hardware maintenance costs at an annual cost of $10,000. Questions and discussion followed: Council Member Gossage felt there were many private vendors and competitors and should put this out for bid. Council Member Schulze felt they should wait two weeks and look into other companies. Council Member Sutton saw this as invaluable and to alert folks would save lives and $10,000 was not much money; he had confidence in the Chief and his research, and noted there was no legal requirement to go out for bid. Council Member Jensen agreed with the cost for one year and then could consider other systems in the future. Action: Motion by Council Member Sutton and second by Council Member Jones to accept the cost proposal of $10,000 to implement the Code Red Emergency Public Notification. Motion carried unanimously.

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 was set prior to taking action on the following items.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve the consent agenda. Motion carried.

1. Minutes of September 9, 2006 Council meeting.
2. Minutes of September 9, 2006 Closed Session of the Council (separate cover).
3. Minutes of September 8, 2006 Personnel Committee meeting.
4. Annexation Petition # 400, Thomas E. Seymour, Trustee and Sidney W. Seymour, Jr., now or formerly owners/petitioners, petitioning to annex 16.553 acres (known as the Kohls site) including public rights of way (Beaver Creek Commons Drive and US64 Hwy) into the Town's corporate limits; property is located south of US64 Hwy and west of NC55/US64 intersection and extends north; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for October 3, 2006.
5. NC Municipal Report of Fire Conditions and Authorize the Fire Chief to sign Conflict of Interest Statement noting compliance of policy.
6. Purchase bucket truck w/material handler following piggybacking procedures and award of bid Altec Industries low bid $134,982.

Consent Agenda continued

7. Correction to development fee schedule regarding re-submittal fees.
8. Possible motion to approve Budget Ordinance Amendment No. 4 and Capital Project Ordinance Amendment for the Williams Creek Sewer Improvements.
9. Personnel Committee recommendation: policy revisions and position classification.
10. Wake County Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 01 – Rezoning Case # 06CU10

Review: Planning Board recommended denial of this request for rezone; Council approved petitioner's request to continue the public hearing from August 15, 2006 Council meeting to September 19, 2006 Town Council Meeting.

Mayor Weatherly advised a zoning protest petition had been received and determined invalid by the Assistant Town Attorney due to intervening railroad right-of-way; the protest signatories do not own property within the 100-foot buffer area extending along the boundary of the subject tract.

Public Hearing and possible motion regarding Rezoning Case #06CU10, Apex First Development, LLC., and Douglas W. Duncan, Trustees, petitioners, seeking to rezone from Light Industrial and Residential Agricultural to Planned Unit Development Conditional Use the property located at US64 on the north, Hunter Street on the south, and CSX Rail Right-of-way to the east and west, and containing 119.2 acres (Trackside Development).

Town Clerk administered an oath to those speaking during this hearing. Presenter: Dianne Khin, Assistant Planning Director gave sworn testimony orienting to the property location, a mix of old agricultural fields and wooded areas. Current zoning: Light Industrial and Residential Agricultural. Requested zoning: Planned Unit Development-Conditional Use. Current 2025 Land Use Plan designation: High Density Residential, Commercial and Office and Institutional. Staff report is attached and incorporated as a part of the official minutes and gives project data: 852 units for the entire development and has been reduced from initial discussions; RCA is 20% of the site; PUD Plan buffers are listed on page 2. Project will utilize town service; storm drainage meets all UDO requirements; Parks, Recreation and Cultural Resources Advisory Commission recommendations are included as conditions within the PD Plan and listed on page 3 of the staff report. Recommended language by Transportation Engineer Russell Dalton is included within the PD Plan page 9 with language included on page 3 of the staff report; it was included that there is no current timetable for completion of the Peakway for this property to Salem Street or Laura Duncan Road and limits certificates of occupancy within Phase I until such connection is made; Phase I includes a maximum of 411 units (north of the Peakway) and 441 units (south of the Peakway).

Public hearing # 1 continued

Planning Board considered this rezone at their August 14 meeting with a motion made and second to approve the rezoning, however, the motion failed with a vote of 2 ayes and 3 nays. The reasons for those voting against: 1) too much traffic for the two right-in/right-out access points planned for US64 and Hunter Street; 2) Density too high, and 3) Phases too large. The one that stated the dissenting vote was not against the project, but the limited access coupled with high density and the number of units within Phase 1. All agreed the project would be better if Apex Peakway would cross over the CSX railroad tracks. Staff recommends approval. Council Member Jensen was concerned with the density and that the Phase 1 to the north did not include mixed use; Khin noted the mixed dwellings; Council Member Jensen felt they would never see a walk to work situation with no mixed use. Staff agrees with high density they can walk where they want to go. PD Plan is attached and incorporated as a part of the official minutes.

Mayor Weatherly opened the public hearing at 7:45 p.m. and Alan Manase, BBM Associates and representing the applicant spoke in favor of the Trackside development having worked on the project for two years, however the property has an access issue. They had considered office, however feels it's unrealistic given access of right-in and right-out, does not see it feasible; if they had full access on US64 it would be different, but NCDOT did not allow for this. He noted retail is included in the southern portion Phase II; keeping the northern portion residential.

No one spoke in opposition to the rezoning; Mayor Weatherly closed the public hearing at 7:50 p.m.

Council Member Jones confirmed the medium and high density number of units per acre. Staff advised Phase I meets the density, with Phase II mix proposed higher than normal high density, but notes this is a transit area and development is proposed higher. The Green was noted having 6 – 8 units an acre, but was noted this is a traditional neighborhood connected by roads and a different situation. Staff noted this between medium and high density with Council Member Gossage feeling confident the right-in and right-out could handle the density. Council Member Sutton felt the same and felt it better to discuss this after the Peakway item was discussed.
Action: Motion by Council Member Sutton to table this item until after discussion of the Peakway. Second by Council Member Gossage. Motion carried.

End of Public Hearing #01

Presenter: David Rowland, Director of Planning

Public Hearing # 02 – Rezoning Case # 06CU14

Review: Planning Board reviewed this item July 10, 2006 and recommended denial (4 to 1); Council approved the petitioner's request to continue this hearing to the September 5, 2006 Council meeting; four protest petitions were submitted, however, the Assistant Town Attorney determined the petitions are not valid because the petitioners do not own property within the 100-foot-wide protest area and/or the area proposed to be rezoned; Council approved the petitioner's request to continue this hearing to September 19, 2006 Council meeting. Petitioner has withdrawn rezoning petition #06CU14.

Public Hearing and possible motion regarding Rezoning Case #06CU14 Hendrick Automotive Group, petitioner, seeking to amend the 2025 Land Use Plan from Office and Institutional to Office & Institutional and Commercial Land Use classification and to Rezone from Residential Agricultural to Planned Commercial Conditional Use District classification the property located on US Hwy 64 between Laura Duncan Road and Pine Plaza Drive containing 34.7 acres.

Public hearing # 2 continued

Mayor Weatherly advised a letter had been received to formally request withdrawal of the rezoning petition prior to the public hearing and asked Council for a motion to accept the request to withdraw.
Action: Motion by Council Member Jensen and second by Council Member Gossage to accept the request to withdraw rezone petition #06CU14. Motion carried.

End of Public Hearing #02

Dianne Khin, Assistant Planning Director

Public Hearing # 03 – UDO Amendment

Planning Board recommended approval of the amendment.
Public hearing and possible motion regarding an amendment to Sec. 8.6 "Exterior Lighting" of the Unified Development Ordinance.

Dianne Khin, Assistant Planning Director, presented the proposed amendment to the UDO as stated in the staff report which is attached and incorporated as a part of the official minutes. The purpose of the amendment is to provide additional guidance on lighting plan requirements and to amend illumination standards, mounting heights, location, architectural/site compatibility, glare control, wattage, building/ground mounted/accent light, and final inspection of lighting. Planning Board considered this amendment at their September 11, 2005 meeting and unanimously recommends approval. Staff recommends approval.

Mayor Weatherly opened the public hearing at 7:58 p.m. and with no one addressing the proposed amendments closed the hearing.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve the amendments as presented by adopting an ordinance to amend Section 8.6 of the UDO. Motion carried unanimously.

Presenter: David Rowland, Director of Planning

Public Hearing # 04 – Annexation # 398

Public hearing and possible motion to adopt an Ordinance to extend the corporate limits of the Town; Annexation #398, Town of Apex, owner/petitioner, petitioning to annex 6.708 acres (known as the Horace Johnson property) located on Kelly Road (SR1163) and north of Beaver Creek.

Presenter: David Rowland, Director of Planning oriented to location of the property, noting it additional property acquired for the substation, open space and potentially for a future sewer line.

Mayor Weatherly opened the public hearing at 8:10 p.m. With no one addressing this petition, closed the public hearing.

Action: Motion by Council Member Jones and second by Council Member Schulze to approve the annexation by adopting an Ordinance to extend the corporate limits. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Presenter: Town Manager Bruce Radford

Old Business Item # 1- Proposed Peakway Crossings

The Town Manager proposed options for the Peakway project to be constructed between N. Salem Street and Laura Duncan Road, stating certain sections of the Peakway had been built with bond money, and development along the Peakway with signature projects Trackside, makes it extremely important to finish as much of the Peakway as possible. The primary stumbling block to completion of the Peakway and all of its sections has been CSX railroad crossings, having struggled with them for several years, having had many discussions about at grade crossings vs. grade separated crossings.

Council asked staff to provide options to obtain Peakway rail crossings. Recommendations are outlined in the attached memorandum proposed by the Manager. Manager Radford stated the Town is in the road business and opportunity exists for the Town to complete the Peakway ourselves. Requirements by CSX and anticipated is to close Moore Street at-grade railroad crossing to vehicular traffic and to close three private railroad access crossings within Trackside projects or the north portion. Peakway construction cost is estimated at $3,500,000. Town would construct the 2 outside lanes of the Peakway just north of Old Raleigh Road and behind Vineyard Station to N. Salem Street which would extend 3500 feet. Project would include at grade separation by way of a two-lane bridge over the high speed CSX railroad and an at-grade crossing of the low usage line next to N. Salem Street. NCDOT Rail Division has been advised of the plan however, are not the final authority for the railroad crossing, and told the Town there was no chance to get the Peakway done without closing crossings and as a result to close Moore and the private ones and make a grade separation crossing over the Peakway high speed line, feels the plan as proposed is do-able. Financing sources are outlined on page 2 of the memorandum. Build out anticipated 1500 and 2400 units in Trackside north and south; taxes from this project would show after the third year would meet the debt service if the town had to borrow money; this program shows borrowing a million and one-half dollars, however an audit will certify a million to a million and four dollars available that would enable the town to not have to borrow money. Anticipated 1500 units at $4500 each for water and sewer fees is $6 million, recreation fees $700,000, and acreage fees $300,000 equals almost nearly $7 million worth of resources, and feels this would make Trackside, north, west and south a reality and enable people who own this land, know what it will be.

Manager Radford asked for discussion in the town's involvement from the Peakway from behind Food Lion on Old Raleigh Road and would connect with a bridge in the middle to Salem Street and to the next section of the Peakway through Haddon Hall to NC55 and existing section Olive Chapel Village to Olive Chapel Road and to the next section from here to Old US1, and again hampered by a railroad crossing; however thinks this should be taken on one at a time and would be a great opportunity to start with this project; the northern crescent having been talked about all along.

Mayor Weatherly stated they had asked for options and exhausted all but what is outlined and there have been long discussions and feels they have been presented with the best option, and in those discussions as it relates to the railroad feels it is now or never on a decision; $3.5 million is not an exciting option, but probably the best that can be done.

Old Business Item # 1 continued

Council Member Sutton asked to be recused from voting and participation in this item as he had done consulting work with East/West Partners potential developers for Trackside South.
Action: Motion by Council Member Jones and second by Council Member Jensen to recuse Council Member Sutton from participation and voting on this item. Motion carried.

Council Member Jones asked confirmation regarding the connection that would connect to the Peakway stub from Old Raleigh Road with Manager Radford responding yes. He also confirmed the other part was to close three private railroad crossings and asked if those folks being affected were aware and a part of this deal, having talked with them over the past years. Manager Radford responded if not mistaken, all three private crossings are on the property of Apex First Development, integral to the Howington property. Council Member Jones didn't think this was the case, with Mr. Bill Booth saying he still has a crossing on his property, with Manager Radford asking if there was four total. Jackson noted there was four. Council Member Jones wanted to assure if this were a part and was not a part of building the Peakway, but if they were going to have an at-grade crossing at Salem Street then it more than likely is; Council Member Jones wanted everyone to be aware. Manager Radford will look into this and is his belief.

Mayor Weatherly clarified that he was saying the deal would be to close three and three are on the property, so they are exclusive of the other ones. Manager Radford responded there were three on the Howington property if he's not mistaken. Jackson stated they connect on property owned by others, and Mr. Radford noted this is where Mr. Booth's property is on the opposite side, with Jackson responding yes, and his understanding the Trackside property is inside with the properties on both sides.

Mr. Booth owner of the property advised one of the crossings cross his property on both sides of the property; there's a strip of land kept because of the cell tower and he has a long standing contract with the cell folks to be able to get to the property; he pointed to the property on the map and noted the Trackside development did not buy the strip the cell tower is on; unless other arrangements made elsewhere cell tower folks have to get to the tower. Council Member Jones wanted to assure this was factored into whatever arrangements the town has with CSX, with Manager Radford agreeing, and added that once access is gained on that side, there will be a mired of ways to get to the cell tower. Alan Manase responded they would be more than happy to work out an access to the cell tower property, he did indeed reserve a piece next to the railroad and will be happy to give alternative access through their property to the cell tower and make this a condition of any decision made.

Manager Radford responded to the Mayor's question about the financing, that he was comfortable with the $3.5 cost estimate for the construction of the Peakway proposed by the Engineering staff and has come down somewhat since working on this over the past three weeks or so, and also told them as a result of studying further some of the other projects that the Town is involved he believes there will be an additional million dollars left in current bond money and possibly more than that; usual expectations of under-anticipated expenses, he believes this to be accurate.

Mayor Weatherly was curious about a project of this magnitude asked when they would go to construction phase if approved tonight. Kent Jackson, Director of Construction Management responded that he estimates the design of the bridge six months, then a review by CSX (impossible to project) and NCDOT (2 to 3 months) of the bridge structure, and this aside probably nine months to get this ready to take bids.

Old Business Item # 1 continued

Council Member Schulze clarified the Bridge would be two-lane and eventually the Peakway would be four lanes asking if this would cause a bottle-neck, with Jackson responding the bridge would be expanded when the additional two lanes are done. Council Member Schulze asked if it would be wide enough to hold four lanes, with Jackson responding not initially, a bridge design would be chosen that could be widened similar to the NC55 bridge over US1, designed with knowledge to be expanded in the future.

Council Member Jones shared concern for closing Moore, but not as much about Chatham and/or Center; if one has to be inevitable, this is the lesser of the evil, and as said, the Peakway has been in their radar for a long time 30 to 40 years, and its time to step up to the plate or back off; its good to hear development as proposed and if approved, pay for it, but he's of the opinion they should do it anyway, regardless of Trackside, obviously it's a key component of Trackside; we need to make the connections so traffic can move around Town more efficiently; we (town) said we would and we need to do it.

Council Member Schulze asked about rearranging the bond money to make this work and asked what would be given up. Jackson responded staff has not made those type decisions, but have talked about the connector from NC55 over to Schieffelin Road that was part of the bond program initially; may not be able to afford that. Jackson noted it was $750,000 or so and would have to choose to not do that if this is done.

Council Member Jensen asked when Haddon Hall and Whitehall Manor was developed, didn't those folks install the Peakway or parts of it, as done with most developments, with Manager Radford responding yes. He continued with the bridge and the cross-over in this situation, it's more expensive. He discussed tax increment financing, meaning development will pay for the bridge by the increased taxes the town gets from the development, with Manager Radford responding yes. Council Member Jensen continued the people are taxed to supply them with fire, police, and other protections and when he says without having a surtax on these properties, we are going to take the tax money out of the properties to pay for the bridge, but then we are subsidizing this with other tax payers to pay for their fire and police protection and other things; if you have an improvement district and don't increase the taxes on that specific district, then you are subsidizing with all the other districts; we set a tax rate to support this town operation and if we take that tax money out of the district to pay for the improvement, then we have to float tax money in from everyone else to do this; he can see doing this to a degree but the problem he has is the town will foot the entire bill the way it's set up; he could see going up to bat, but thinks the developer should have to swing the bat with a certain percentage of the costs like Haddon Hall or Whitehall otherwise we are being unfair to those who have paid; we are giving this away for free and he didn't think that was right. Manager Radford responded Haddon Hall and Whitehall Manor folks got fees-in-lieu, and got transportation fee reimbursements and those came from road projects that were slated throughout town rather than just their own area.

Council Member Schulze was assuming like those two subdivisions, whether paid for directly or indirectly through fee-in-lieu, this he would expect Trackside to pay the same portion, imagining if the Peakway were to be a normal Peakway since it has railroad crossings, they would have to pay a certain amount, asking are they still paying that certain amount. Manager Radford responded Trackside South would dedicate the right of way for the road, and at the cost of that land being significant. Council Member Schulze asked about what was across the road, with Manager Radford responding at this point were not asking them to do that because part of the bond money was to finish the Peakway in places where they anticipated that it could not be done because it was prohibitedly expensive or development was not expected.

Old Business Item # 1 continued

Council Member Jones asked how much bond monies is for the Peakway. Jackson responded $7.1 million. He continued for this we are doing this around town already, the town is footing the bill for the Peakway rather than the developers and he sees the point and felt the same way when he thought about it; he feels we need to make this connection just like the Town has done in other places, unfortunately, it's burdened by the bridge over CSX.

Council Member Schulze had no problem spending the extra money, but he would still want the developer to contribute their fair share like the other neighborhoods did. Council Member Jensen expressed the areas they are looking at connecting, it isn't that there is development coming on each side, we are looking at putting the Peakway through without the development; in long term they win out, but here is a situation where Haddon Hall and Whitehall Manor… they are ready to develop and should foot part of the bill, like everybody else. He thinks this amount of money – the bank financing and the tax financing is basically - the Town is buying it, and they are not. Manager Radford responded that he was not suggesting a tax increment financing program. Council Member Jensen interjected it isn't exactly that but it will pay off because of the taxes we are getting from the development, with Manager Radford adding just like any other development that we would do in Town. Council Member Jensen stated the trouble he had with this is that it isn't on the same playing field as the other developers have had, and could make it that way if we wanted too.

Council Member Schulze asked why they aren't doing this, he didn't understand; he wouldn't expect them to foot the whole bill, but seems they should at least contribute the same portion as others did and was trying to get to the bottom of this, with Council Member Jensen agreeing. Mayor Weatherly asked if this issue had been broached with the developers with Manager Radford responding yes, the developers have told them in this particular instance as a result of the bridge and the cost of the Peakway that this would be unaffordable to them, with Council Member Schulze saying that they weren't asking the foot the whole bill. Manager Radford responded he understood; the amount of recreational land they have been asked to set aside, the amount of buffers they are asked to set aside, the route of the Peakway itself stranded significant amounts of land and they told them the project is not feasible.

Mayor Weatherly went back to the point Council Member Jones had raised, that if they didn't have the issues of development Trackside north or south, and they were confronted as have been for twenty-five years, completing the Peakway, asked would they do this anyway; would we want to have this crossing, knowing we dwindled down our options basically to what we are looking at tonight, would we not still want to do this project or not, thinking this is the salient point, if we say no, we wouldn't do the project, and that would lead into a discussion of developer contributions if we are going to do it anyway, with a commitment made by our folks at the referendum last November to allow us to borrow $20 million for transportation including $7 million for the Peakway, then thinks that argues that they have made a commitment to complete this Peakway, irrespective of development in any places along it's route.

Council Member Schulze did not disagree with this, but the expectation along the way as far as he understood was as the Peakway is being built, if the developer doesn't pay for it the town will pay for it and get them infrastructure in and then get reimbursed when development does come. Mayor Weatherly responded that was not his understanding when they did the bond, they were going to go ahead and have the money to complete, with prioritization that Manager Radford has described. Manager Radford added the most recently completed section of the Peakway was from Old Raleigh Road to Ten-Ten was whole Town of Apex funding.

Old Business Item # 1 continued

Council Member Gossage felt the point was valid, responding to Mr. Radford's comments, but what it comes down to is the difference between where he was at and where Council Member Schulze was at was the bridge, the cost of the bridge, would we do this, would we encumber tax dollars, would we encumber what we borrow, and would we borrow more money on top of this to do the bridge and the project is being pushed by the fact that … asking what is pushing the project, is it town wide motivation to get this Peakway done, or is it because a developer wants to develop the land, asking is it both or is it more one than the other, which one is it? To him this is the question.

Mayor Weatherly stated he did not know any compelling public interest just to develop the land, he thinks the quality of the development that they probably anticipate here is extremely high and would be extremely attractive for the use, but not sure development for the sake of development is any compelling public interest, asking is the completion of the Peakway a compelling public interest. Council Member Gossage responded that's what he was saying, he doesn't know if they are talking across one another here; what's motivating them to spend $3.5 million to do the bridge to complete the Peakway; he doesn't think that was in mind when the Peakway was drawn out, that .. if we run into really high costs because we have to do grade separated crossings, we'll go ahead and do that anyway, in fact if the land value is high and someone want sell us their land, and we have to go through procedures to get the land, and it's really expensive, we'll push ahead no matter what, because the primary number one goal is to get the Peakway done, and he thinks if that were the case, the Peakway would have been built already; we would have said that's our top goal. Council Member Jones added we would have if we had the money. Council Member Gossage responded we have had money when we did the transportation bond we didn't say, all $10 million is going to go to the Peakway, with Council Member Jones adding 70% of it, with the rest going to sidewalks.

Mayor Weatherly recalled on this they had never resolved the railroad crossing issue, and they are now saying this is the only option until two or three months ago, or meetings ago were discussing other options to force these crossings. Council Member Gossage was not saying he's wrong, or Council Member Schulze… with Mayor Weatherly continuing they had tasked the Manager to come back to Council investigating the identified options for crossing the railroad and thinks unless there is some new revelation these are the options and he has completed his task by giving them this recommendation that this is the best available option to them to do the road, and thinks the other manifestation of this they have potential money to pay for it with the development that it would attract. He continued his question was, that this has been on their plan of work for decades to complete the Peakway and now they are at the place where they know this is the only way to complete the Peakway, up to as early as one month ago, they were not convinced this would be … tasked about a month ago, and now it has evolved to this point. Council Member Gossage felt Council Member Jones had gotten close, that the question was would they do this even if the development weren't going to happen, are we just saying one of our jobs is to build the road, the road has been on the plan for 30 years, we just need to build the road, and that's the point for what's up for debate, because not everyone agrees that's the point.

Old Business Item # 1 continued

Council Member Schulze agreed with the option and he's willing to move forward, and need to take it a step further by having the developer pay a fair portion and wanted to follow up on this; he's not sure what their fair portion is, but like everyone else that built along the Peakway had to pay, with Manager Radford interjecting, not everybody. Council Member Schulze then asked how this works, asking with Haddon Hall, did they pay their part of the Peakway, with Manager Radford responding they did and received transportation impact credits back, with Council Member Gossage asking dollar for dollar, with Manager Radford responding not dollar for dollar. Council Member Schulze they gave some kind of money for transportation costs asking if we were asking the same from Trackside, if not now, but come time for them to build, are we asking them to give us money for a portion of the Peakway. Manager Radford responded we are not, but the most recent precedent for a completed section is between Old Raleigh Road and Ten-Ten which is wholly Town built.

Council Member Jensen added it was completed because they were trying to fix the disaster of the cut throughs through Surry Meadows and one of the driving factors, and thinks we are trying to weigh what was the community needs and if the community needs are very high to get this done, then we spend community money and he's not so sure the community needs are so high that we have to spend 100% of community money on this project; we can ask or have the developer pay his fair share as Haddon Hall did and is on the same page with Council Member Schulze, there's a problem with the bridge and things like that, we take care of that part, but there's a fair share, there's a fair part of the bat that should be swung by this developer.

Council Member Jones stated this development – this is 3500 feet of proposed Peakway, asking how much, assuming this developer, you mean Trackside north, how much is on that piece of property, with Jackson responding probably one-third. Council Member Jones in talking about this developer or whatever term being used, because it's on the same agenda tonight, he wanted to assure they were not trying to say that trackside north or any other should bare all the total cost. Council Member Jensen was not saying that, but thinks he and Council Member Schulze is they should swing their part.

Mayor Weatherly stated they could apotheosize all night, and it wouldn't get them anywhere, but if's, saying the point whether it's going to be a developer contribution toward this project, and would make the decision for them, if the answer is no, then they need to know that answer up front, so he asked why not suggest a two week delay and let Manager Radford assess the generosity of the developers in this regard and if the answer is no, then it will be, "fish or cut bait time" in two weeks; we decide if the answer is yes, then obviously makes it likely we will proceed, he was making an assumption, but asked if they wanted to give some guidelines as to what expect, .. the developer would say, thinking Council Member Jones was going along this route, is it reasonable, with Council Member Jensen saying he would like to ask the Town Manager to take a look at the other developments such as Haddon Hall and While Hall Manor to see how we worked with those folks and determine what fair share this developer should be chipping into this project, and then look at and decide if we think it's time to push through with town money, because Jackson has said we will not be able to do other things if we pay the whole thing. Mayor Weatherly thought it would be appropriate if they put some of their expectations out, asking what % with Council Member Jensen saying he didn't know until they find out, with Manager Radford thinking it was premature to ask this, with Council Member Gossage adding it was part of what the Manager needed to find.

Old Business Item # 1 continued

Manager Radford stated one additional comment, he had the idea of additional utility involvement; the projects being talked about, Haddon Hall to no where, frankly now, from the NC55 connector of the Peakway to Haddon Hall is truly a connector to no where and less than functional as a result of the fact that it does not touch Salem Street; that short distance there, finished and tied to the section across the three various Trackside proposals would truly add transportation utility and that is an extremely important element of this entire process.

Council Member Jensen added that short section being talked about between NC55 and Salem if they had to come up with their money, and town money has a community need that justifies doing that, if there is not somebody there that is going to develop it at this time; the situation realistically could be that we put the road in and two months later someone is going to be wanting to develop, and can't control that, with Manager Radford adding, that's no question, with Council Member Jensen continuing it's a waiting game and we don't control that unfortunately and if they look at community needs to be there, then he's willing to certainly spend money on that.

Action: Motion by Council Member Jensen and second by Council Member Schulze to continue this for two weeks. Mayor Weatherly added with instructions to come back for them to assess the possibilities of the developer contribution, continued to the October 3, 2006 meeting. Motion carried.

Attorney Fordham clarified if the motion was just referring to this particular agenda item, or if they were trying to include the other agenda item, suggesting they do this as two separate items, come back to the item that was tabled, bring it off the table….. with Council Member Jensen interjecting if they continue this for two weeks, the other would be continued it doesn't matter. The motion carried unanimously.

Mayor Weatherly then noted the agenda recurs to public hearing item number one to delay consideration until after that item, asking for a motion to continue the public hearing, with Manage Radford noting the public hearing was closed. Attorney Fordham suggested he reopen the public hearing, first to take it off the table. Mayor Weatherly asked for a motion to remove rezone case #06CU10 off the table.

Action: Motion by Council Member Jones and second by Council Member Schulze. Motion carried unanimously.

Mayor Weatherly then stated the issue was rezoning case #06CU10, then he reopened the public hearing and asked for a motion to continue it to the first meeting in October or October 3.

Action: Motion by Council Member Gossage and second by Council Member Schulze to continue the rezone public hearing for #06CU10 to October 3, 2006. The motion carried unanimously. Mayor Weatherly stated both items would be brought to the next meeting.

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.

Dan Brubaker of New Hill stated New Hill folks had asked to be a part of the process for the western wake sewer facility site selection and design; were surprised before they got an answer, found the Western Wake Partners had submitted response to DENR and finds significant problems with the comments; no additional information was provided regarding cost or site weighing factors; income demographics for the area affected still uses census node which NCDR asked not to use; there's insufficient explanation related to elimination of Progress Energy property (basically restated what was in the previous technical memoranda); New Hill was not a part of the secondary and accumulative environmental impacts, although it does say they are part of the long-range urban service area; there is no specific information about impacts to New Hill; influent/effluent pipeline concerns raised in the public hearing were not addressed, they were, but someone needs to explain to Western Wake Partners mitigation in a densely populated urban area is different then in rural agricultural/livestock areas; they should have a public hearing before sending a response; flaws in the document are inherent and have seen and sees it more as window dressing gets placed on it to try and correct problems; "no matter how much lip stick you put on the pig, it's still a pig" asking to step back and include New Hill in this process and work towards a correct conclusion and a mutually satisfactory solution to the site selection issue.

Guy Meyer, 2020 Olive Chapel Road, addressed conservation of natural resources understanding the town is in the road building business and was an important part of a municipality however important to conserve natural resources as lives depend on clean air, water and benefits from trees. He lives down stream from a branch of Beaver Creek and noted it does not flow the way it use to. He went behind Beaver Creek Shopping Center and saw silt fences and how they were maintained, level with silt going to Beaver Creek; it should and could be corrected. He noted time taken to rework the light ordinance, but unfortunate time spent in the office meant no one was in the field watching what was going on in development and reason silt and tree protection fences are lying down and why clay is on top of tree protection fences. He noted down Olive Chapel Road tree roots are peeled up and hanging in the air and no one seems to pay attention. He didn't want to be hard on the town nor hard on staff, but would like to see staff in the field before his stream is choked and all the trees are dead and there's no attractive town anymore. He understands there's lots of staff on the first floor managing construction, and a flurry of activity there, with people in the field all the time; he understands there's not much staff on the second floor that gets out into the field and the reason his stream is full of silt. He would like Apex to hang on to what's left of its natural resources before it turns into the ugly concrete ridden gray space that a lot of folks are moving away from and moving to Apex for. When allocating resources, when looking at determining what the enforcement staff does, he asked to consider water, air and natural resources left. He's not here to point fingers, but thinks natural resources, green space and clean water is, and all should agree, important and takes very little effort to maintain. He would like the town to allocate more effort towards that and less towards getting houses inspected as fast as we can, and building roads as fast as we can, and have a little more balanced look and is an important function of what the town should be doing. He hopes people here and in the building will pay more attention to this in the future. Council Member Gossage asked Manager Radford if he had comments on the silt fences along Beaver Creek, and Mr. Radford responded he did not. Council Member Jensen commented there are river watch people who volunteer time to watch rivers, and wondered if the town could develop a volunteer program where people see something wrong would feed it back to town staff noting it difficult for town staff to travel around and get the information back to us. He believes they try to do their best and thinks they do a very good job and still have problems, as he sees silt fences here and there.

End of public forum

NEW BUSINESS

New Business Item # 1 – Resolution Opposing Mandatory Year-Round Schools

Mayor Weatherly presented for consideration a Resolution Opposing Mandatory Year Round Schools. He noted a meeting was facilitated on town campus for concerned citizens who were opposed to the current school board policy to convert 19 elementary schools to year-round including all of Apex elementary except for one and six in the immediate area in this school board district. He asked if there were suggestions, he presented it for consideration, noting Council on record last year opposing the concept of mandatory year-round; year round works for some families, it's the mandatory portion this resolution speaks too – the requirement certain based assignment schools be year-round and forces those children and families to conform to the year-round calendar.

Council Member Jensen supports the resolution and thinks its good, and suggests telling them what they want to see, and hopes council suggests something; he doesn't think year-round works so well, it gets more productivity, but have four groups – two good and some not so good and the last not good at all; give them 20% of 30 students is six students and maybe tell them to increase the size of the classes by six and have assistant teachers that float. Mayor Weatherly liked the positive aspect of providing suggestions, and sorry he hadn't been at the meeting as that group had isolated positive things and made suggestions. One suggestion to increase capacity of the schools on the 19 hit list by two students per class that would take care of capacity for next year. Other issues: investigate trailers, no one loves them, but families find that more favorable than mandatory year-round, another option the school board refuses to look at; another charter schools. Council Member Jensen doesn't think they look nice but functional and lots of teachers like them, because there's no hallways. He thinks maybe those suggestions could be formed as something a town council would endorse. Mayor Weatherly asked they adopt this resolution and follow-up with something positive for the board to consider; he doesn't believe the board is willing to consider much of anything but the direction they have gone, and helpful to open the dialogue.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the resolution opposing mandatory year-round schools. He noted the school has said they have exhausted all alternatives as far as increasing capacity and clearly not the case. He says there's a waiting list for voluntary year-round schools and they continue to close the door on charter schools that it's not an immediate solution, and if they never do it, it will never be a solution at all, so they need to work to do this now, so hopefully it would be lifted and would be charter schools waiting to open up. He stated they try to disconnect this issue from the bond issue and noted they are clearly connected and believes there's $20 million in the bond issue just for mandatory year-round schools so if they say it's a separate issue, it's not, if the bond goes through, you are basically saying you are ok with mandatory year-round schools and that's not the case. Mayor Weatherly added they will make this connection quickly once the bond passes. Council Member Jensen is also concerned about the bond if they don't do something different; another thing the fire chief can evaluate the rooms and say you can add more people without a fire problem. Mayor Weatherly didn't think it's an issue, with Council Member Jensen not thinking it is, with Council Member Schulze thinking it's a state law.

Mayor Weatherly wanted to state for the record, he heard an interview with Laurie Millberg, a member of the school board said, every municipality in Wake County refuses to consider additional trailers on school campuses, and knows this is absolutely not true because they have approved six in the past year and have approved thirty requests in a row, no pending applications have been rejected, no verbal inquiries about such, and he does know one campus in Wake Forest says they are maxed out and there's no additional… and reasonable to say, it can't be approved if you don't have land to put one on; she was implying the town's had put up a barrier to consideration of trailers and absolutely not true for the record in Apex. He doubts for very many other towns, not knowing if there is any that absolutely refuses to consider requests for additional trailers. Council Member Jensen added education capability in a trailer is every bit as good, no doubt about it; they are modular class rooms. Motion carried unanimously. Resolution will be sent to the appropriate folks.

End of New Business

WORK SESSION

Work Session: Presentation by Tommy Esqueda

Tommy Esqueda, CDM, Consultant for project Partners, presented proposed response to comments from NCDWQ's July 27, 2006 letter requesting Partners address their recommendations made by NCDENR Hearing Officers Report dated July 20, 2006 for the Draft Environmental Impact Statement (DEIS) for the Western Wake Regional Wastewater Management Facilities. This is additional information to April 2006 DEIS (original in Clerk's Office) and specifically addresses issues referenced in NCDWQ's letter: WRF Siting Process, Environmental Impacts, Influent and Effluent Pipeline, and Public Input (attached report). Document belongs to the State, and being prepared on their behalf, in accordance with guidance and direction given. Public hearing was held on EIS; fourteen items are addressed in the document and could not be released to public for comment until the state dictated so. NCDENR determined it a suitable document May 2006; Public hearing June 15, 2006 held in Apex: hearing officers were selected with an independent objective of the process and having no knowledge of the project, whereabouts, the nature, etc. Hearing officers prepared a report on their findings and recommendations from public comment, and not addressed to Partners but to NCDENR as it was their hearing. NCDENR staff met with hearing officers, and submitted this guidance letter and the basis for the response dated July 27, 2006.

Esqueda reviewed the process used to prepare this report, addressed comments and responses and incorporate comments from the partners and comments from CG&L staff and then will make changes to the binders (original) which will go to the clearing house, and then will have public comment period.

Siting Process:

Comment 1 (additional information on service factors, weighting factors, and cost analyses used to select the current proposed WRF site) – taken from EIS already written; called them dedicated headings.

Comment 2 (Environmental Justice) additional demographic data, described two circles drawn, center of property to a point in two circles.

Council Member Sutton asked how the site was rated? Esqueda responded: you get a demographic number – 30% of population within the two circles - meet census criteria data: age, income, race; asked to provide data back to them (in book based on the descriptive circles drawn). Council Member Sutton stated to him this raised a red flag, and knowing the community, low income, high percentage of African-Americans, nursing home, historic district, and other things. Esqueda, asked if he meant the construction grants and loan letter, and responded to him the comment was, draw two circles, provide data within the two circles and they evaluate it, not us.

Council Member Schulze had issues, stating the document was cold to him and he had no basis to make comments one way or the other, with Council Member Jones saying that he was not planning to make comments, he was listening.

Council Member Schulze asked if they (Council) had opportunity to give feed back, with Esqueda responding they have the Technical Advisory Committee representative, and through the Policy Guidance Committee. Tim Donnelly Director of Public Works stated the following: all technical documents have been prepared by consultants and project Partners technical teams; each item is generally not brought before Council, and if they want to talk about things, the consultants provide the information because there is prescribed way to do environmental impact statements: 14 questions have to be answered; there are environmental impacts - you can't do any project this big without impacts, so people ask questions, such as, did you fully describe in accordance with the policy within the rings the population demographics are; the data provided. Someone else will review the document and decide whether they want to issue the acceptable permits or not. This is saying the document accurately describes what they are proposing to do. Esqueda continued, to get to this point on the Environmental Justice question, they have reviewed this with construction grants and loans and they saw the approach and technique and adopted it – this was in the EIS (EIS is for the whole project based on all the raw water stuff – the project area) and the hearing officers report recommended additional analysis be done just for the water reclamation facility. The summary table for census data is enclosed in the report, recommended by the CEQ - best source of data available. Council Member Gossage asked when was this published, with Esqueda thinking no later than 2000, and is the latest data. Donnelly stated this is a work session to make Council comfortable with where they are now, and not to vote on anything, but know how the process works; the technical advisory team does the work.

Council Member Schulze thought this was a feedback session based on Council Member Jensen's request and he can't give feedback since he doesn't know what he's looking at yet, with Donnelly responding it is opportunity to provide feedback. Council Member Schulze wanted another opportunity to provide feedback. Donnelly explained two ways to provide feedback: 1) Mayor Weatherly is on PAC and Donnelly stated he is on the technical team. Council Member Schulze wanted to know the time frame to do so; Donnelly responded Partners meet next week and technical team meets each month. He informed Council the Partners are moving on with their schedule trying to meet the 2011 deadline; if Council wishes to slow it down, they have to make it known through the two avenues they have.

Comments 3 (Progress Energy) information was provided to them that Progress Energy had made a request to Partners to make an assessment of how much flow could be generated from some of their property and asked when they were pursuing an outfall, and still are pursuing an outfall to the river; when you get down to the river where the state has said this is where we want you to discharge, Progress Energy owns all the land down on the river; they met with Progress Energy to talk about acquiring some land, either purchasing it outright or getting an easement of some type to access the land; they asked how big, how much, what kind of flow are you talking about, they said 38 mgd discharged into the river; they questioned, asking is that all, can anybody ever get anymore wastewater into the river after that is put there; they said the exercise to understand that is to do a water quality model that will tell if you get beyond some threshold the river can't support, and that will define whether you can put more than that – they put 38 million gallons in the model, the river did not respond negatively based on model data, so Progress Energy's indication was, we might want you to run another number and see if we can get more in there; since they had the model, they could run it, however they wanted data provided, if they wanted to give them land information, then they will make projections, if they wanted to give a flow number, they will put that in the model and is how they left it with them on this particular issue and they didn't ask them to do any water quality models; the issue dropped and they never came back – but, they did execute agreements with Partners, actually with Cary, to allow them to get onto their property to do assessments down at the river and road access; they still got the agreements they wanted for access to their property to do the environmental studies they needed from their property. This had to be written into the document that it was related, and they did not come back to ask anything else with it.

Environmental Impacts:
Comments 1: There was confusion, not clear to them, what the ordinances are that govern development in New Hill area; again they clarified with CG&L; they explained until the area is annexed, the development standards will be Wake County ordinances; in the event Apex annex's this area then Apex ordinances will govern it; secondary accumulative related are stormwater, buffers, roads, streams, all resource conservation areas.

Comments 2: Environmental impact related to Progress Energy (PE) (in document) hearing officers had information they were trying to negotiate a land swap with PE; they want road access for the project to be off Shearon Harris Road and to get from this road to the site you have to cross PE land; have been negotiating with PE to buy some of their land. Recalling this particular site – there's a little triangular piece that sits south of US1, the project Partners have no need of it for the project; idea is PE swap this land, give us land we need for the access road, and we would give them the triangle piece for a part of their holdings; question from CG&L was, is this land going to be put into the game lands bank, same as PE does with all their other land; again they clarified this for CG&L they are not sure what PE will do – they haven't given them any indication what disposition or how they are going to handle it; they are trying to swap these two, and they ask this be written down on this particular piece of land, if it conveys to PE you don't have any ability to dictate what PE does with the land; so they will make this clarification.

Influent and Effluent Pipeline
Comments 1: Document reports that govern spills and operations and maintenance, etc: they will include these two documents; a lot of local governments, Apex being one, and Cary, have to have a wastewater collection system permit; it's been a lot of years now, there are occurrences of overflows and pipeline breaks, and pump station failures, etc.; the state has a permit for wastewater plants, they are also permitting wastewater collection systems, and give things they want you to do for maintenance, for inspections, and assess capacity - a whole list required in the permit, all designed to mitigate the potential for spills; we are guided and indicated that we will do exactly what the state tells us to on wastewater collection system permit; the other document is the spill-response action plan, that everyone has; they clarified this is how they will deal with these items and they asked them to write it up in the book for response.

Public input
The proposed meeting: October 5, 2006 held in Apex 7 pm. to 10 pm., date set in trying to get Division of Cultural Resources and Army Corp of Engineers to participate; working with Corp to get announcements out and make information available about this date.

These are the comments asked and responses; prior to writing, this will be the document, will meet with them, however meeting is not yet scheduled; they will tell if this is sufficient or add more, and the process they have been in with them for eighteen months; it's no different than what they have been doing, down to this report; this is more efficient to give the one smaller document to look at.

Council Member Sutton noted in the DWQ letter, noted, that in the event other sites are considered, should be analyzed in a similar manner; that and the environmental justice; asked if they didn't consider this to be red flags to look at other sites to get it out of the middle of this community. Esqueda responded no. Council Member Sutton continued, what they know, if they got it out of the middle of that community, their public opposition is gone, he knows that they still have to go through analysis to satisfy DWQ but the public opposition is basically gone if they get it out of the middle of the community, but he didn't. Mayor Weatherly added he's not sure that they know that for sure, with Esqueda, responding exactly. Council Member Jones added, depending on where that other site would be, with Esqueda adding correct. Council Member Jones added, he was assuming… with Council Member Sutton interjecting, if you put it on the back side you would have more opposition, but to move it out, like the site Mike had picked or down the road, or out in the country, your opposition is gone, he knows that; you are still betting on the farm on this. Esqueda responded the proposal is based on the site presented in the EIS, correct. Council Member Sutton said the worse case scenario is not just turning down this site, by them, but turning down this site six months from now, or some time in the future, you have to go through all of this because you did not consider another site as a result of this public hearing; he doesn't make this decision, they do, with Esqueda adding that would be the purpose of the meeting with them to go through the process, the meeting with CG&L; this is a draft document, they have yet to comment on; again to go through the notes, answer this, put it together, now meet to see if it sounds good translates into - that captures what they are looking for. Council Member Sutton continued, then if they are still not satisfied, then they will let them know, and Esqueda, responded yes, and the beauty is it's their document, so they do things like this giving them prescriptive direction – here's what we want you to do, and that's what they would expect if the decision was to move the site; move it for certain reasons because… with Council Member Sutton, interjecting, they did not say that in this first letter, and he knows that, it seems like they suggested, to him suggesting to look at other sites, with Esqueda responding correct.

Council Member Jensen echoed what Council Member Sutton had said; he read the same thing out of the document, that they were suggesting strongly that the Partnership consider and develop looking at other sites. The thing that bothers him a lot is site 30, he didn't think NCDENR or anybody else ever really saw that, other than the Partnership; he saw the results and the consultants, which he guesses is your company (CDM) put together an evaluation, to evaluate site 30 against the site that he had selected based on the criteria; you get involved with these sorts of things and you get slanted to liking the one you picked, and he certainly would have preferred to have a different consultant look at the valuation between this and site 14 because his folks came up close, not quite but close, and he thinks a site not quite but close should have been presented to NCDENR along with those other sites of which one site was half in Chatham County and could pretty well be certain the legs would get cut out of that because it was in Chatham County; there's no doubt about that, and surprised they even bothered to put that site in there; the other one which didn't have expansion. He thinks we should be putting site 30 before NCDENR to look at it, and not even sure they have had opportunity to look at site 20, just the ones we run up to them.

Esqueda ask to respond: NCDENR had the same position, and said the same thing; they met with them and they asked them to generate… we had all the data for all 12 sites and they said they want them to generate all the data for site 30, they wanted a map showing the outlined site, all data, and they gave them a package of about six pages, they circulated it through NCDENR, it was sent as an independent package through all the NCDENR agencies, and got back a letter from the agency indicating their preference was site 14 vs. site 30; with this letter NCDENR and CG&L staff they work with said they were good to go for the public comment. Council Member Jensen wanted to see this letter, with Esqueda responding, he would get that letter for them. They had the same comment and tried to make sure before they went to public comment, they let the agencies check on this.

Council Member Jensen looked at how site 30 was shown on the map and it's a distance away from Shearon Harris Road; part of the land along side of new Hwy 1 that's between what is shown as site 30 and Shearon Harris Road is certainly Progress Energy property, and one of the things he saw in the evaluation was expansion was not as good as site 14, but seems it depends on how you pick topography, as to how you pick your site, and he questions how he developed the decision that was the borders of the site and didn't include the PE property that could be a form of expansion in itself. Esqueda responded on site 30: they did include the PE site; one of the comments from the agency was it would take basically the southern portion of the site all PE, that amount of quality game lands out of the game land system and was one of the letters on that particular site, was the game land impacts. He agrees its all PE's site, but it happens to sit in game lands which is the purview of the Wildlife Resources Commission and their comment was, they sure would like to see them do something to preserve game lands and not do anything to reduce them. Council Member Gossage asked if game land preservation was part of the initial criteria. Esqueda responded game lands was one of the initial land values that was scored, wetlands, streams, slope, game lands; a number of other criteria related to that.

Council Member Jensen said, he would suggest tonight, they just bought their approved bringing into the Town six acres to off-set something we did; there's a way to off-set situations; the Department of Transportation does it day in and day out and that's pretty much a solution, and personally, he loves animals and hugging trees, and thinks finding ways to exchange because animals and game lands are important, but to him where they are sitting, this in the middle of New Hill with people all over the place is every bit as important in this situation. He thinks we should look at exchanging(s).

Council Member Jones stated his comments are relative to site 30 as well, and thinks its already been said they need to make or have some vehicle to make comments if its before next Tuesday's meeting of the Partners, if that's on the agenda, before the final EIS goes in, have opportunity either individually or collectively, with Esqueda responding right.

Council Member Jensen stated this is late in the trip, but if the categories of criteria – existing land use, adjacent land use, he thinks he brought this up before, criteria is what you try to do to cause this process to be objective best you can; the problem that bothers him is one criteria is being left out and it's the future use of the land site, what are the total different potential future uses of the site we select; it's not just today, we are projecting off 30 or 40 years for this plant, we should project off 30 or 40 years for the site and it just kills him that this was not in there because if that future land site use was in there, using his criteria, and his evaluation, he can guarantee him that site 30 would beat out site 14 in a heartbeat. Council Member Gossage asked if this were something the state wants as a part of their document. Council Member Jensen responded they don't want it, but maybe if they knew about it, they would want it. Esqueda added these are the things, like recreational areas, game lands, water resources, those are the things on site 30. Council Member Jensen continued the down site selection, and has been gone through before, but continues to jump out at him – we threw out all the sites west of Hwy 1 because Holly Springs dropped out, asking if that's the situation. Esqueda responded the site selection process was done in a way where when they started the site selection process, there were a number of things they did not know at that time, first where they discharge it too, with preference Jordan Lake, but can't convince the state otherwise, or the Cape Fear River, those are the two places and they didn't know at that time when they started the 30 site analysis, the other thing they didn't know was how this program was going to come together, so there were some options on the table where Apex was sharing a plant with Holly Springs; two scenarios with Apex sharing a plant with Holly Springs, with one scenario 95% of Apex and 95% of Holly Springs flow was going to come together at some place, logically south of US1 in those family of areas, the other scenario was half of Apex and still a lot of Holly Springs was going to come together

and again, they needed to find possible sites that could fit all the combinations of plants they were looking at, and so they ended up, they didn't know, so they looked at all the sites and ended up working through the process and found the solution, there would be one plant and the one plant solution basically, Holly Springs was not in it, it was Apex, Cary, and Morrisville, and in that model, those family of sites are kind of in the north of US1 and south of US64 in that corridor and where the critical mass of all the flow has to pass through on its way to the river; that's how they wound up eliminating those sites south or west or east he guesses north of US64, because they weren't going to pump Apex flow all the way up US64 and back down, get the flow going it's natural way and down through onto the river and how they came to the decision on which was the final set of sites to pursue once the solution was picked which was Apex, Cary and Morrisville doing the plant together and not doing anything with Holly Springs.

Council Member Jensen stated it bothered him site 25 ranked high # 3 looking like it had access under Hwy 1 and asked why they would switch over to 11 and 12, and not 25, its way close to new Hwy 1; this is history, but criteria is galling him.

A citizen in the audience wanted to provide input, however Mayor Weatherly responded no, lets not have a dialogue, not a cross exam, he's here to brief Council tonight; the citizen wanted to share information going to NCDENR, with Mayor Weatherly responding this was a Worksession for the Council; he's welcome to listen but not to actively speak.

Tim Donnelly Director of Public Works stated there is a website with information and any requests should go to the lead agency, which is Cary, they have all agreed to do this and if Council asks questions, they will answer, but they have agreed and decided it was more logical that all requests for information go to the lead agency or the Partners website, and there's FAQ's and information and then people can go to the state agency for public information requests also.

Mayor Weatherly asked the next step, with Esqueda responding they meet with CG&L staff to see if this is close, what they are expecting, concurrent with that, if want to provide comments, either through the Mayor or Tim would have Council's input, CG&L input and that would constitute comments they will use to change the original two big binders that will go to the state. Mayor Weatherly asked the timing, with Esqueda responding meeting with the state will probably not for two weeks, and turn around time has been about two weeks assuming closure with them, would be mid or late October to submit the document to CG&L to give to the clearing house.

Mayor Weatherly stated he and Mayor McAllister of Cary have had conversations in the last couple of days about this, and the Mayor said he had let him (McAllister) know fairly aggressively that we (Apex) expect some input into this before it becomes final and will certainly be a part of the process and will not be just a unilateral submission; there is no agenda now drawn for Tuesday and he doesn't know what's on the docket. Manager Radford responded it came out today, with Mayor Weatherly adding McAllister had not seen it yet. Esqueda had not seen it yet either. Mayor Weatherly asked to be informed as to the progress with staff, not asking him to do inform them unless necessary and asking Manager Radford or Tim to let them know the progress.

End of Worksession

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session for the following:

1) to discuss proposed property acquisition related to Apex Peakway construction.
2) to discuss acquisition of real property for parks.
3) to discuss acquisition for easements for sewer and power improvements.
4) to receive legal advice and updated information regarding negotiations with Rodney's Custom cut Signs involving encroachments on Town property related to the Performing and Cultural Arts Center.

Action: Motion by Council Member Jones and second by Council Member Gossage to move into closed session at 10:00 p.m. for the reasons stated. Motion carried unanimously. Minutes of closed session are recorded separately. Motion by Council Member Jensen and second by Council Member Jones to move back into regular session at 11:01 p.m. Motion carried unanimously.

With Council having moved back into regular session the following action was taken:

Action: Motion by Council Member Sutton and second by Council Member Jensen to adopt a Resolution authorizing eminent domain proceedings related to the project for the improvement of the Apex Electric System known as the Holland Road-Kelly Road Electric Project. Motion carried unanimously.

Action: Motion by Council Member Sutton and second by Council Member Schulze to adopt a Resolution authorizing eminent domain proceedings related to the Williams Creek sewer project for the improvement of the Apex sewer system. Motion carried unanimously.

End of Regular session

ADJOURNMENT

With no further business to come before the Council:
Action: Motion by Council Member Gossage and second by Council Member Schulze to adjourn at 11:03 p.m. Motion carried unanimously.

The above minutes of the September 19, 2006 Council Meeting was approved on the 3rd day of October 2006.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of the Tuesday, October 3, 2006 meeting,
held at 7:00 p.m. in the Council Chambers on the 2nd Floor,
Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting, with all Council Members present.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order, gave the invocation and extended a welcome to those in attendance. WWBLS Pack 224 led the Pledge of Allegiance.

RECOGNITIONS

Mayor Weatherly expressed recognition and gratitude to Mr. Jamie Knott, for his heroic action in assisting Apex citizen Karen Gould from her burning home.

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 that was set prior to taking action on the following items. Action: Motion by Council Member Jones and second by Council Member Gossage to approve the consent agenda. Motion carried.

1. Minutes of September 19, 2006 Council meeting.
2. Minutes of September 19, 2006 Council Closed Session meeting (separate cover).
3. Contract between Town of Apex, and Capital Area Preservation, Inc. to cover basic preservation consultant services and to expand the Register Districts.
4. Budget Amendment transferring funds from Recreation Subdivision Fee Account to undertake repairs and renovations to the existing section of Public Greenway located in Haddon Hall.
5. Minor adjustments to existing equipment and room rental fees associated with Parks, Recreation, and Cultural Resources Department.
6. Execution of Progress Energy's formal encroachment agreement which allows Town to construct a power line within PE's Cary Regency Park-Durham 230KV transmission easement.

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Public Hearing # 01 - Rezoning Case # 06CU10
This hearing was moved to be heard after discussion of the Peakway Project (Old Business).

Presenter: Assistant Planning Director Dianne Khin

Public Hearing # 02 – Rezoning Case # 05CU20
Review: Petitioner requests public hearing be continued to November 7, 2006 Council meeting; as a result of the request for continuation, Council must vote to continue this hearing to November 7, 2006.

Public Hearing and possible motion regarding Rezoning Case #05CU20 East West Partners, Management Co. Inc., petitioners, seeking to rezone from Residential Agricultural to planned Unit Development – Conditional Use located Apex Peakway on the north, Hunter Street on the south, Laura Duncan Road on the east, and CSX rail right-of-way to the west, containing 50.44 acres.
Presenter: Assistant Planning Director Dianne Khin stated Mr. Scott Murray, Landscape Architect representing the petitioner requests this hearing be continued to November 7, 2006 Council meeting.

Action: Motion by Council Member Jensen and second by Council Member Jones to continue the public hearing for Rezoning Case #05CU20 to the November 7, 2006 Council Meeting. Motion carried.

Public Hearing # 2 continued to November 7, 2006

Presenter: Director of Planning David Rowland
Public Hearing # 03 – Annexation # 400
Public hearing and possible motion to adopt an Ordinance to extend the corporate limits of the Town; Annexation # 400, Thomas E. Seymour, Trustee and Sidney W. Seymour, Jr., now or formerly owners/petitioners, petitioning to annex 16.553 acres including public right of way (Beaver Creek Commons Drive and US64 Hwy); the property is known as the Kohls site, and located south of US64 and west of NC55/US64 intersection and extends north.
Presenter: Director of Planning David Rowland presented the annexation petition known as Kohls site, including public right of way; Kohls site planned has been approved. Mayor Weatherly opened the public hearing at 7:15 p.m. and with no one addressing this petition, closed the public hearing and called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve annexation petition # 400 by adopting an ordinance to extend the corporate limits of the Town by the 16.553 acres including public right of way. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Presenter: Town Manager Bruce Radford

Old Business Item # 01- Proposed Peakway Crossings

Review: Recommendations from the Town Manager were presented to Council September 19, 2006, concerning proposed Peakway crossings of the railroad track facilities between N. Salem Street and Laura Duncan Road; Council voted to continue this item to October 3, 2006, asking staff to provide additional recommendations concerning financing for the proposed Peakway extension across planned Trackside developments.

Manager Radford reminded Council they had asked staff to reconsider participation of developers within two project areas known as Trackside; earlier discussion with Apex First Development, Mike Howington (Trackside north) was willingness to pay transportation fees and dedicate right of way to build a section of the Peakway, with it being a Town owned project. At that time was unsure as to how developers of East/West Partners (Trackside south) would feel about their contribution of transportation fees and right of way dedication toward this same facility. Has talked with both developers - both are in agreement to pay transportation fees and dedicate right of way in building this project. He noted this similar to the way projects had been in the past; bond money was to build projects in places where there was no developer; other cases Town took responsibility for an entire Peakway section (i.e. SR1010 to Old Raleigh Road); other sections in a cooperative agreement with as many as two partners and may discuss later on another project bid openings of Friday; this is in keeping with town process, transportation fees they have agreed to will be paid. Staff feels Trackside as a whole will be what Town envisioned when talked about long ago; utility provided by having the Peakway go from SR1010 to NC55 is crucial to transportation works of the Town, and will nearly finish the north-western crescent, with the last remaining section from Olive Chapel Road to Old US1-Salem Street. There is tremendous number of elements involved in the project - staff believes this is what was asked from citizens to provide bond money given two years ago and a promise on the Town's part to finish the Peakway project.

Council Member Sutton reminded Council he had been recused from the last meeting from participating and voting on this item due to conflict of interest.

Council Member Jensen asked if participation from developers is based on 1500 units, and if it goes down asked if Town would pay more, with Manager Radford responding the estimate was 1500 based on the lowest possible number; discussions with both developers would push the entire potential residential development to 2400/2500 units, and used the lower number.

Council Member Gossage asked if the development were not approved or goes away, will the Town move forward with the Peakway, regardless of contributions, does not in any way tie to the development proposed across the street, with Manager Radford responding this was true, and in the event there was no developer, Town would be building out this project.

Council Member Jensen asked if it were built out without a developer, and if the developer comes in and pays their fees - or this project does not move forward, asked how the town gets the dedication, with Manager Radford responding if the project does not go forward, town would be required to try to acquire the right of way through the current owners, by whatever means necessary. Council Member Jensen reminded the Peakway from Old Raleigh Road and SR1010, a number of property owners donated right of way and it enhanced the value of their property, and is what he would suggested they try to do this – it's the only way this property would work, with Manager Radford responding that's what they would like to try to do, is show the enhancement.

Proposed Peakway Crossings continued

Council Member Gossage asked if the development project doesn't go through or through with the proposed numbers, then revenue generated from that will be less than estimated here, and he assumed since taking money from the bond package, for this section of the Peakway, which had not originally planned to do, then other projects they had planned to do using the bond money, are going to be left unfunded, but we are counting on the revenue of this development to fill the gap, is this correct.

Manager Radford responded this was true, and had done one measure to reprioritize and is the piece of the Peakway from NC55 to Schieffelin Road; its priority has been reduced based on the desire to finish the northwestern portion and is in the most southern portion at one-half million dollars. Council Member Gossage asked if the development were to completely fell through and did not have any of this money, how much was being taken from the bond package, the full $3.5 million, with Manager Radford responding no, if there was no developer money in this at all, but he assumes it to be around $2 million… with Council Member Gossage asking that would be used from the bond package, that had not originally planned to take from the bond package, asking what projects – working from the bottom prioritizing projects from the bond, what adds up to this money, with Manager Radford responding a project depending on the south western side of town, one anticipated that the town would have to spend bond money for the Peakway project that is currently being developed by developers and a section believed the town will not have to build at all – the southwest Perry Road connector over to the Upchurch property – with Jackson responding it would be minimal amount of money. Council Member Gossage had come to $600,000 and felt there was still $1.4 million asking where it would come from. Manager Radford responded in the event, there was no developer money at all, and original proposal talked about borrowing money, and in excess of a million dollars, and how it would be financed. Council Member Gossage asked if this left $400,000 to come up with, with Manager Radford responding, if $400,000 short would make it up from a contribution from General Fund balance.

Council Member Jensen asked if the $1 million they had planned on financing based on the housing that was on this development, with Manager Radford responding yes, and the other thing talked about was as soon as our next audit is out, we will have an additional million and a half dollars, thereabouts, in General Fund money that is gone into reserve that we would also suggest we use prior to getting a bank loan.

Council Member Gossage wanted to assure – it could be a problem Council has with the project, or could be the project itself, the economy or the market, they for some reason delay the project and he wanted to get a sense of where the money comes from for all the priorities laid out already; he would think citizens would also be familiar with what was originally laid out when we passed the bond, when they passed the bond to begin with and those things are important too; he wants to assure the finances are there to cover that and sounds like they are. Manager Radford responded that he felt very comfortable with it.

Mayor Weatherly asked if there were further questions, stating it was certainly an integral part of the project having talked about it as long as any of the Council had been there, predating all of them, and have dwindled down the options to having a crossing over the railroad tracts down to this, basically building the bridge; he's not sure there's much left to say if they want to do the project, this is our option. He asked if there were further questions or discussion, he opened the floor for a motion.

Council Member Schulze asked if this section of the Peakway would have a bike lane, with Manager Radford stated this section proposes a two foot bike lane. Russ Dalton, Transportation Engineer stated it does not per the revised UDO, not on the Peakway, they were not bike lanes, they were considered wide outside lanes originally discussed the Peakway, and when the transportation plan was updated from that, they took the recommendations and updated the UDO, passed by Council, which included a section that did not have the wide outside lanes.

Proposed Peakway Crossings continued

Manager Radford stated the previous typical section called for a ten foot wide bike lane, with Khin interjecting multi-use path, all sections will have this, with Manager Radford adding in the first phase, with Khin responding no, with Manager Radford continuing that ten foot multi-use path comes in the second part of the development. Council Member Schulze understood and said there was no schedule for that.

Council Member Schulze did not understand why the two foot extra width in the lane for a bike path was removed, and he wanted Council to consider adding this back to the Peakway all sections; he noted some have bike shops and do like the bike lanes, and he's thinking further as a vehicle driver he would like the way bike riders are out of the traffic lanes and he doesn't have to worry about getting around them.

Council Member Jensen agreed, as a bike rider, the extra two feet along Old Raleigh Road, he uses, and that this is important. Council Member Schulze didn't think the extra expense would be much at all. Manager Radford didn't think it was.

Council Member Gossage asked the size of the bridge, two or four lane, with Manager Radford stating the bridge is proposed to go in initially as two lanes because the road will be two lanes, with Council Member Jones thinking it was expandable. Manger Radford stated there will come a time when there will be four lanes there, but this particular first initial bridge structure would not accommodate four lanes. Council Member Jensen thought it would easily be designed to add four lanes, with Manager Radford responding yes. Council Member Gossage noted the key word "easily", and wanted to assure it's built so it easily fits into a four lane design.

Council Member Schulze asked how to approach this, vote, change UDO, or what. Manager Radford responded on this particular project you want it changed, basically a construction management issue to tell us to change this one, and before we get to the next one, if they choose to change the UDO will have to go through the process to do so. Khin didn't know if they should have more discussion regarding the bike lanes in a separate meeting, staff has opinions.

Mayor Weatherly felt this could be a substantial conversation that staff needs to prepare for and didn't want to catch them cold on this, and unprepared to do a full discussion tonight. He asked the Attorney what kind of motion could there be to approve the project subject to further discussion on this, or did they need to defer the discussion again, which will hold up other things that has been deferred in respect to this project. Attorney Fordham thinks what they are doing if they choose would be stating what they intend to do, otherwise, a motion to proceed with this, not entering into a binding contract with someone to do it, and if there are changes that need to be made to the UDO or at least discussed, thinks that could be dovetailed into this. Mayor Weatherly stated they could approve the project that staff has brought to them, and then amend it later, asking could they not, with the Town Attorney responding yes, and Mayor Weatherly continuing, so that their decision on the development petition that is pending, they could make it based on a yes or no on this, but then could choose to enhance this project later, with Manager Radford adding through design.

Council Member Jones added they were not being asked to approve the design or contract to build, asked how long it would take to design the $3.5 million project, thinking they have plenty of time to talk about the cross section of the Peakway; his concern is – he's ok with the bike lane thinking it's a great idea, but doesn't want a bike lane from point A to point B and then not one, knowing they had cross section issues with the Peakway anyway and wants to assure they talk about all of it before they go too much further.

Proposed Peakway Crossings continued

Mayor Weatherly stated the floor was open for a motion on what is being proposed and basically allocating $3.5 million as described and the design phase will come later and should incorporate any kind of decision on this part and if that would ultimately result in a more expensive project, then could make the decision to allocate additional funding later, with Manager Radford agreeing.

Mayor Weatherly stated the floor was open for a motion if someone so chose to make one.

Council Member Gossage wanted to ask a question, based on what the Mayor had said, allocating funds based on how he described … allocating those funds in a way described ties us to a minimum of 1500 residential units, and based on his reading of this, part of the $3.5 million comes from the transportation development fees, and noting equals fee estimated based on 1500 residential units, 80,000 square foot retail space and 33,000 square foot office space; if it comes in less than that, we need to allocate the money not based on how he's described it, the motion should reflect…. with Council Member Jones saying the motion should reflect we are allocating $3.5 million for sources to be determined. Council Member Gossage felt this would be fine, as opposed how they are described, they are described specifically and may not come in this way. Manager Radford stated they are asking for the authority to spend $3.5 million and proceed with this project.

Mayor Weatherly said the floor was open for this purpose. Attorney Fordham pointed out one thing to be made clear is that we are not obligating town to any third party to do this; there's nothing about this motion implies they have to do it; you are telling staff how to proceed. Mayor Weatherly stated the motion was to signal their intent to proceed; floor was open for a motion.

Action: Motion by Council Member Jones to proceed with planning and design of Peakway sections that have been proposed and authorize staff to move forward with the plan for $3.5 million expense in this regard. Second was made by Council Member Jensen. Vote on the motion was 4 and 0, unanimously approved, with Council Member Sutton having been recused from participation and voting.

End of Old Business # 1

Presenter: Assistant Planning Director Dianne Khin

Continuation of Public Hearing # 01 – Rezoning Case # 06CU10

Review: Planning Board recommended denial of this request to rezone; Council approved petitioner's request to continue the public hearing from August 15, 2006 meeting to September 19, 2006 meeting; a zoning protest petition was received and determined invalid; Council voted to continue this hearing to October 3, 2006 with the hearing being held open.

Continuation of Public Hearing and possible motion regarding Rezoning Case #06CU10, Apex First Development, LLC., and Douglas W. Duncan, Trustees, petitioners, seeking to rezone from Light Industrial and Residential Agricultural to Planned Unit Development Conditional Use, the property located at US64 on the north, Hunter Street on the south, and CSX Rail Right-of-way to the east and west, and containing 119.2 acres.

The Town Clerk administered an oath to all those planning to speak during this hearing.

Presenter: Assistant Planning Director Dianne Khin reminded Council this hearing was considered September 19, 2006 and continued to Old Business after discussion of Apex Peakway and continued, necessitated continuance of this hearing. Planning Board recommendation of August 14, 2006: a motion was made and second to approve the rezoning; motion failed 2 ayes and 3 nays - votes against: there was too much traffic for two right-in/right-out access points planned for US64 and Hunter Street, density too high and phases too large. One voter said it was not the project itself, but limited access coupled with density and number of units included with Phase 1. All agreed project would be better if it crossed over the CSX railroad tracks. Staff recommends approval of the rezone. A protest petition was submitted against the rezone however determined invalid by the Town Attorney.

Mayor Weatherly asked if there were questions. Council Member Jones asked Khin review conditions on the rezone. Project data: 411 units in Phase I (north of Peakway), maximum 441 units in Phase II (south of Peakway) or total 852 units for entire development, considerably less than Planning Board heard August 14, where over 600 units were discussed in Phase 1, over 700 units in Phase 2. Maximum densities are in the north section – 3.65 du/acre and 12 du/acre in Phase 1 and 17 du/acre in Phase II. RCA is 20% of the site (23.88 acres) and includes existing streams with buffers, street buffers and required land use buffers. Buffers: 30' Type A along the railroad tracks to the east and west, 30' Type E thoroughfare buffer along the Peakway, 15' Type E thoroughfare buffer along Hunter Street, and a 40' Type A buffer along US64 and per the UDO minimum buffer that can be approved by the Council is a 40' Type A buffer. Public Utilities: applicant acknowledges Town will not be held to any time table for appropriate utilities. Storm Drainage: plan to meet all UDO requirements - requires post development rate on site stormwater discharge from entire site will not exceed predevelopment levels.
Parks and Recreation: plan to meet Parks and Recreation Commission recommendations:
1) Public Parkland dedication: 6.09 acres 2) Provision of a 20 foot public greenway easement along a 10 foot wide public greenway trail built to Town standards 3) Fee in lieu: credit for 212 units approximately $560,000 for the higher number of units left 4) Work with staff to design the park and greenway trail 5) As previously committed, the developer to maintain two flat open space areas (.75 and .43) acres at lawn quality. 6) Although there is uncertainty about development of newly acquired property – public park should be in place prior to 50% of the COs for the original site (they were talking about the property north of the Peakway rather than 50% of the entire project); wanted to see the parkland dedication and greenway built at 50% of this phase rather than waiting for 50% of the overall project. Access and Circulation: Trackside north includes a collector street(s) on 60' right-of-way from Hunter Street to US 64; developer shall provide improvements on Hunter Street to ensure right-in/right-out operations at site driveway.

Current language is there is no timetable for completion of the Peakway based on traffic analyses this development plan shall be limited to certificates of occupancy only within Phase One until the actual connection to North Salem Street and or Laura Duncan Road is made; those were standards included in the PUD Plan. Council Member Schulze asked if voting for the rezoning, are they voting on this particular plan. Khin responded the PUD rezoning requires a PUD Plan and is this plan.

Council Member Jensen asked how this impacts sewer, adding a tone of housing built out by 2010. Khin responded the way it was handled in the PUD Plan is that it would be dependent upon the pump station at Apex Community Park and why there's language approved by town attorney that basically says the Town has no obligation to provide them with water or sewer; they are taking all risks that the pump station will be completed. Council Member Jensen was not concerned about the pump station, but the total capacity 4.2 million gallons counting with what Raleigh has, and will be eating into this with this number of houses; the question, is this the type development we want to see with the amount of capacity left. Manager Radford responded if assuming 1500 units at 300 gallons if single family residential units, believes it to be four hundred fifty gallons of wastewater and a drop in the bucket – a minimal amount of sewer use based on the amount of capacity we have left – 1.9 mg – 900,000 g left on our own and an addition 1 mg from Raleigh. Manager Radford offered the last report, but one half mg wastewater will not be significant. Mayor Weatherly confirmed the usage would be over many years, with Manager Radford agreeing many years of build out, but not consumed in the first year. Council Member Jensen responded no, but concern we have capacity until 2011 capability assuming Western Wake Wastewater Facility comes on line at that time, so it doesn't matter whether we consume it today or four years, we still consumed it before we have opportunity to turn on the other. Manager Radford stated he had budgeted 300 gallons per household per day – single family rate, and the rate is 200 gallons per day for townhomes or apartments, so what we know about these projects is the majority or great number of them will be townhomes.

Council Member Jensen stated Seagroves is coming on line and one on Olive Chapel Le-Hermitage, a number coming on line; one day they need to summarize where they are sitting again. Manager Radford responded capacity for those was approved and reduced of the gross number at permitting of site plan. Council Member Jones added it was included in the flow calculations. Council Member Jensen added allowing for the 900,000; jog his memory, but Town has sent wastewater to Raleigh already because of some situation that occurred. Manager Radford responded it has been turned on, and sent overflow to Raleigh during a period of high flow from storm, remember we took a tremendous amount of infiltration and inflow during a storm a year or so ago, and sent that excess flow which was primarily stormwater through those lines and a great opportunity to test that system and it worked great. Council Member Jensen added, and then it kicked on some costs at that point, with Manager Radford responding it did.

Council Member Jensen asked what would happen if we consumed 1 mg and run into the same stormwater problem. Manager Radford responded the million gallons is an average flow, so it couldn't be calculated for a storm or heavy rain event. Council Member Jensen knew, but if we had a heavy storm and ran our capacity or sewage flow into the plant up to that same amount, this time we had the relief valve to send it to Raleigh, what would we do, sit on it or dump it into the stream untreated. Manager Radford responded, no we will not send it into the stream untreated, and seemed his assumption was it is sent all in a thirty minute period, it's a day and a half long period that you could send, probably 3 mg and making an assumption, a tremendous volume of wastewater through that system in that period of time. Council Member Jensen stated we have contracted with Raleigh for a million gpd. Manager Radford explained to send them an average of a million gallons per day so if we are not using it, for three weeks, then send them a million and a half, are well within the confines of our agreement. Council Member Jensen asked if we could send 30 mgd in one day, with Manager Radford responding they would not be happy with that, and not sure you can move that much at one time, but somewhere between the two is a happy meeting.

Mayor Weatherly opened the public hearing at 7:50 p.m.
Alan Manase, BBM Associates representing Apex First Development, petitioner for the rezoning, was there to answer questions. Council Member Jensen asked if office is planned, or total housing. Manase responded they are reserving some retail in the southern portion (Phase II). Council Member Jensen understood nothing was put to the north due to traffic problems. Manase responded it would not be feasible given access to the northern site with a right-in, right-out on US64. Council Member Jensen noted a Planning Board member had talked about bringing this back into line, conceived by the Planning Department five years ago, to have office and other things to the north is bridge the low-speed rail line at the north accessing Salem Street, giving folks almost direct access both ways onto US64 which to him would make a much better development not dumping tons of traffic onto Salem Street or Laura Duncan, asking if they had considered this. Manase stated at one point, there was consideration of a private bridge and proved to be cost prohibited, before the Peakway discussions evolved where they are tonight also. Council Member Gossage asked where was he thinking of putting a bridge. Council Member Jensen pointed on the map indicating by the pond to the north. Council Member Gossage continued that it would connect the interior of the development to Salem Street close to US64. Council Member Jensen said this would allow for commercial and make this much more integrated development supporting itself, reducing traffic not only because of better access, but also because of possible interaction between the community with respect to housing. He continued if we are doing the Peakway, he could see the Town helping out there, if we are allowed to do so. Mayor Weatherly reminded we are still in public hearing.

Tom Colhoun, 1490 N. Salem Street, thinks the development is a great opportunity and needed, knowing it doesn't follow exact planning or intent with Trackside with possible light rail, now TTA is pretty much shot. The development of this property he thinks is key and essential, a tie that surrounds Apex and needs to be brought into that part, and industrial was not the use of that piece of property. Rezone for this is tremendous, a positive thing and especially hearing what is wanted to be done with the Peakway, lends itself to make this happen. He has one concern, Salem Street and Laura Duncan Road are only two lanes and if they build out 1,119 single family homes or however divided out, you have to think about the traffic, there are already issues on Salem Street and Laura Duncan; dealing with the school on Laura Duncan, and trying to maintain Salem Street as two lanes, keeping traffic slower and preserving character of the entrance into downtown Apex; the town will have to work on this, not the developer, the transportation on these two roads. He thinks this development is great and would add tremendously to the town.

With no one else speaking in favor of the petition, Mayor Weatherly called for those in opposition to the petition to come forward.

Susan Zep, resident of Brookfield, Laura Duncan Road, addressed stormwater, creeks border her property; asked what happens if it floods, what is her remedy. Attorney Fordham responded, this is complicated and difficult to answer, as it involves giving legal advice and difficult for anyone to do including him, as he does not represent her. Mayor Weatherly responded he would take this concern under advisement. This is a public hearing, and complicated to answer, and not sure it lends itself to the format of public hearing.

Penny Smeltzer, 1107 Fallen Oak Drive, Brookfield, addressed concerns with 119 acres and 850 homes built, sounds high; asked if anyone of them would like to live on this acreage. Enjoys the town, almost did not purchase a home here thinking resale value would not be good; has constant noise, increased traffic, allowing for development here would increase noise; problems in recent years to get onto Laura Duncan Road and would worsen with increase of residents. She has concern with access into this project, with no access to US64 west bound lanes. Any traffic would have to go down US64 and make a u-turn to get into the west bound lanes; noted a school crossing zone, with one student having been hit there; overcrowded schools, students within town limits are bused out of town to school seats available, not to mention current debate and unhappiness of residents whose children are forced to attend year round schools because of space constraints. Adding these residents will exacerbate this problem. Concerns with storm drainage noting this higher plain than Brookfield, having creeks that cross their property; no great storm drainage during hard rains; sewers can hardly handle the water as is.

She emailed Council with her concerns with response by some of them. She doubts developers will be living in this planned unit development and doubt they live in her moderate income neighborhood either, thinking what does it matter to them; she's against this project it doesn't seem workable, but not against development.

Steve Burgenoff, Fallen Oak Drive, expressed concern with this number of units, and the number of students with those attending the high school, how would they walk there; asked if a fence is planned along the length of the railroad tracks so kids can't walk over to school; noted relocation for deer; drainage – power mini station, with rain storm, power would go out, it was relocated and has had good power; he doesn't understand power problems – noted air units that can rotate and black out areas, asking if it's done – not sure we can supply the power they need. This kills the light railroad parking lot, and ride to Morrisville and Raleigh, a great idea, TTA gone.

Robert Clemmons, 111 Fallen Oak Drive, his property backs to railroad, name on petition deemed invalid and he lives 94 feet, less than 100 feet. He doesn't know this is smart development; resolution before Council opposed year round schools, with Mayor Weatherly adding, mandatory year round schools; he commends Council, on other hand we build 800 homes next to a school with trailers; we contribute to the problem we are condemning, and those residents will have children and will exacerbate the problem already reaching a critical mass in this county; one billion dollar bond to build schools – he sees no provision here for schools or to add on to the high school, with kids going to Panther Creek; purchased his property and it was not planned unit development – most expect the development of this site would look something like their subdivision in terms of density. Traffic on Laura Duncan Road will have more problems, a great generator of revenue, but create more problems then it solves, asking Council to reject the petition.

Brookfield resident, lady, had emailed her concerns within the 100 feet with concerns being addressed by others; major concerns are schools and traffic; children are bused out of Apex, asking where they will go to school, with proposed year round and how she will get out of her neighborhood; takes her fifty-five minutes to get to Duke – and then on NC55 under construction for seven years; she has concerns for water and sewer as well, and storm drainage.

No one else from the public addressed this item, with Mayor Weatherly asking Council if they had questions.

Council Member Sutton addressed density, asking if this was a site plan issue. Attorney Fordham stated the zoning will have a large impact on what density is legally permissible. Council Member Schulze noted not only are they approving zoning, but the plan which includes density, with Council Member Jones asking if this includes the maximum number with petitioner being held to this as a limit, correct, with Khin responding correct 852 units maximum for the entire development in terms to residential.

Council Member Jensen asked the Town Attorney if it were legal for the Town to participate in a bridge over low speed rail, asking should they desire one, so the property could develop in a better manner. Attorney Fordham asked if the property it were to be built on was in the Town, an Apex Street – given those two conditions yes. Council Member Jensen had a problem with traffic circulation and considering better access, this property is mixed use of houses and not uses; as a whole the Board should get developments to be self-supporting and dependent on themselves and he doesn't see that with this the way it's being proposed. He's in favor of development, as this has been in planning a long time, and thinks there has to be a way to participate in making this an asset and he doesn't see it as an asset the way it's proposed.

Mayor Weatherly asked if there were questions of staff:
Council Member Jones asked a review of the consistency with the Land Use Plan; Khin stated the 2025 LUP identifies the proposed site - mixed use area includes all of the Trackside south, and north property , and requires in those areas high density residential, medium density residential, commercial and office and institutional uses. There's no requirement for mixed use of office, retail, medium and high density in anyone small locations of the entire project area. Council Member Jensen asked if we require any percentages of office and institutional… it is a joke; he can put one office if he wants to make mixed use and can have 500,000 houses there. Khin responded Council has the discretion to decide if he mix is appropriate.

Council Member Sutton asked if this were a site plan issue, with Khin responding she didn't believe so, it was a rezoning issue. He continued on the site plan for the south, there is planned commercial with Khin responding yes; project leaves open the option for office and retail on the south side of this project within this area and would be something to consider, but not proposing anything but residential on the north side of Trackside north.

Council Member Jones asked from density residential, how does this compare with the Land Use Plan. Khin responded overall density 852 units on 119.2 acres is just over seven units per acre; six units per acre is considered medium density; the plan was split – 3.62 units per acre is between low density and medium density; would consider it medium density. Other areas 12 du/a would allow up to 14 units per

acre under high density multi-family zoning; another area 17 du/acre and over what staff would consider high density multi-family, but in a planned unit development can be higher than the 14 units per acre if approved.

Council Member Gossage felt this should be looked at not in sections, but … with Khin interjecting 7 units per acre overall. Mayor Weatherly noted this consistent with the land use plan. Khin stated the Land Use Plan says you should have a mix of high density, medium density, commercial and office for the entire area that was conceived as Trackside originally, it's been split into two pieces, with Council Member Jones saying because of the tract.

Manager Radford asked the density of Scotts Mill, with Khin responding less than six, with this being higher. Council Member Jensen wanted to do a comparison, average density of Scotts Green and Scotts Mill combined – we are saying houses in high density – lets compare both of them combined on an average with this combined on an average – its only fair.

Council Member Sutton asked if this were considered urban development, with Rowland responded as – he would like to think the units being proposed hopes will help feed and revitalize downtown; you need people surrounding downtown to make it viable and we need to keep promoting this; this will feed and help keep downtown in an upward trend.

Mayor Weatherly asked, the concept Planning Department has had, conceptualization of Trackside, is this consistent with the original concept, with Rowland responding yes, the only part that is somewhat different is the part where they were trying to promote offices along US64 and thinks there are access issues; there are some reasons to have this higher density in this area. He thinks you have to look overall – looking at the Trackside plan 5 or 10 years ago, this was predominantly residential and the other area office and commercial which was pretty much following what they come up with. Council Member Jensen thought this to be the opposite of what was said, the layout described from five years ago, the offices were put closer to downtown and houses away, with the objective to have enough people here to keep downtown happy. Rowland thinks a good transportation network to downtown – sidewalks, greenways, streets, will help to enhance downtown. Council Member Jensen thinks this is a set aside from downtown, but understands him to say it will help downtown, with Rowland responding he does believe it.

Mayor Weatherly asked if there were other questions of staff, and without so, closed the public hearing at 8:20 for deliberation.

Council Member Schulze had two primary issues: 1) use of the property, talking five years ago high density and ok with it because there was proposed office and other that would serve people there, and good, and keeping them off roads is beneficial and ok with the TND concept; he sees mostly with this proposal high density houses and no services – no office space to work there, going out to the grocery store, etc – it's not serving purpose the way he envisioned it. 2) Access – roads in the area can't handle this kind of density – they all are going to go out to US64 for most part – he envisioned office space, and doesn't see that with this proposal.

Council Member Gossage felt the idea of infill was good and wants to encourage even some of the folks that spoke against were supportive of the idea of developing the property; he sees more ways out than ways back in; leaving to go to Raleigh or RTP there are right-in and right-out and they don't have to go out to Laura Duncan or to Salem Street to leave – they could use the Peakway or use the US64 right-in or right-out, but coming back in things get tricky; to get off at Salem Street you come up Old Apex Road and back down, at 5:30 or 6:00 p.m. its backed up to use the proposed right-in here; there's the Peakway but its for others as well – infill idea is good, but the density issue is killing him. Council Member Schulze agreed it would be a boost for downtown. Council Member Gossage continued you can do less and still be a boom for downtown.

Council Member Jones shares some concerns, and if this is the way they feel about it as a board, should change the LUP, as it meets the requirements, does not exceed the LUP and consistent with what's proposed. He noted it a unique piece of property boarded by two railroad tracks, US64 and Hunter Street – he agrees there's need for some non-residential uses within what they have traditionally called Trackside, this is a portion not all of it, and would be neat if it came to them in one big package, but does not. One entity doesn't own, manage, control and have authority to bring it this way – he doesn't see too many places on this particular wedge that would be suitable for many non-residential uses. He shares the concern for the overall number, just on this piece, but as they have talked, you have to look at overall or how things should develop adjacent to it. He added they didn't have a crystal ball, but this property has unique issues that need to be considered; he doesn't know on one hand say this is our plan – this is what you can bring to us, but then when they bring it to them, we say, no that's too much.

Mayor Weatherly emphasized what he was saying, how ironic in two cases of late, there has been comments made at the table to dissuade or say we are not going to have a project because it is not consistent with the Land Use Plan. He doesn't think they should have it both ways – either the Land Use Plan should be a Planning document they would use when it fits, but then turn something away when it doesn't fit, but then also not use it as a guide when it does fit.

He thinks Council Member Jones is saying that the adjustment needs to be in the Land Use Plan as a guide tool, not only to us but to those folks that want to do business in Town. Council Member Jones was not saying there are not issues they have to deal with, but their responsibility to deal with them – they had put the plan out there.

Council Member Gossage agrees and thinks every single person sitting on the Council at one time or another had said the Land Use Plan is a guide, something that they can say is a general direction that they are headed, but when it's down to the specifics of a project … we don't look at whether there is a right-in or right-out at Hunter Street when creating a Land Use Plan… with Council Member Jones interjecting sure we do, we have the Thoroughfare Plan as part of our Land Use Plan. Council Member Gossage asked, so all the way down to a level of right-in and right-out they can … we are sitting here and looking at the real nitty-gritty of this and seeing the general guide the LUP really fits for the specifics of this project and doesn't know if they change the LUP or not, but knows when looking particularly at traffic, that this kind of density would cause, it gives him great concern, especially with Salem Street which has been downgraded to a minor thoroughfare, Laura Duncan Road which is NCDOT responsibility to change to four lanes, and who knows when this will happen; he's very concerned about traffic issues.

Mayor Weatherly stated this is good discussion and debate, but there's nothing before them to debate. He asked for a motion.

Council Member Sutton stated he was going to vote against the project because of the right-in and right-out until the Peakway was approved, and this changes the whole project the traffic – he thinks there's a lot of work to be done on the site plan when it comes before us, and thinks this project is consistent with the Trackside as it was envisioned, but believes on the site plan, would encourage the developer to come back along the Peakway and put non-residential – offices, commercial – they didn't have the Peakway when a lot of this was designed, he doesn't think the Peakway was in there when they designed this density, and thinks there are some improvements to be made, some adjustments they could make regarding the density problem and shares Council Member Schulze concern that its all residential and he knows Trackside south saves that mix with commercial and retail and office and the overall project meets the criteria. He also thinks on the site plan, its incumbent upon the Engineering Department to make sure the run-off, and that the Town has responsibility on that, that the run-off does not exceed the pre-construction levels to insure this, and the Town's responsibility; their engineer designs it, but the Town checks it and thinks they owe that to them; he will be looking very closely at the site plan but thinks this does meet the Land Use Plan – they have been working with the Planning Department for months on this, maybe years, months for sure, and he made the motion:

Action: Motion by Council Member Sutton to approve the rezoning of this property. Council Member Jones asked, with the conditions as proposed – the conditions that are already in the package, with Council Member Sutton thinking the conditions that he was putting on this was site plan issues that would come before them – he then added yes, that are already in with these conditions, and believes the Peakway will actually perhaps help the traffic on Laura Duncan Road, it gives an additional traffic light that will help get in and out. Council Member Jones made the second. Mayor Weatherly restated the motion to approve the conditional use rezoning.

Council Member Jensen added the Planning Board recommended no, and was the higher density, but feels this is still extremely high density and believes the Planning Board was right in their assessment. The original guide for this had office and institutional along US64 making it a true mix use, and he does not see this as mixed use; they have to make decision tonight to what will go there, because by the time it gets back to them under site plan, they would have very little control to get this in properly. He added they had never looked at a bridge before across the top, and thinks it's a mistake not too; to have a plan with office and commercial without considering traffic circulation, thinks they should have, and should wait before they do this and work with the developer; as the Town Attorney had said – we can work with them to put a bridge across there and thinks it would be town money well spent to provide far better circulation, better tax base on this whole thing and create an integral unit; he would like to see Trackside developed, and thinks infill is the right way to go. We have to accept growth and get it in properly; he doesn't see this properly; thinks we need to look at getting a bridge built, get true mix use and work with the developer who will come out fine in the end and we will have a better Town for it when they leave, because they will leave after this and we will live with it. He has concern with run-off; Town only controls flow and not volume and can be a big problem as flow mix creates a bigger problem for folks; flow control is not total control, and need volume control with this. He would like to see this moved off and work with the developers and consider a bridge. He doesn't like spending town money on these things, but should consider this as well spent money for a bridge at the north to allow commercial properly, as it is to bridge across the high speed line to the south and spend town money; he thinks we've worked on this seven or eight years or ten years, lets do it right; make Apex the best they can.

Council Member Gossage didn't understand the bridge, but understood having where there are 852 homes times two people per house, where these folks go to work/shop, and another concern is taking fee-in-lieu for this because you have people that can't stay there for parks/recreation space, have to get in their cars and go out. Khin stated there is money to put park amenities on six acres of open space. Council Member Gossage misunderstood that. Council Member Jones added plus public greenway. Council Member Gossage added regardless, we still want things both ways, we want to look at this as just this project and not consider the one next to it, but in the same breath we want to consider the one next to it and amenities it will provide for us as far as working/shopping opportunities.

We need to choose which it is and for him, we have to look at this on its own merits, and seems density is high for residential. Council Member Jensen explained the developer had said no office and institutional to the north due to the traffic circulation problem and he thinks a bridge would elevate that problem; instead of having traffic to US64 west, doing a loop, or down to the Peakway and go Laura Duncan or Salem Street would have to upgrade or NCDOT would, maybe it would be better spent to bridge, keeping people to the north; maybe added office and institutional so people would work there and others from outside would come across. He asked to put this off and work with the transportation folks on this.

Council Member Schulze responded to the Land Use Plan comments of Council Member Jones, sharing this concern thinking they owe it to developers to say our intentions for this area, and that we need to have flexibility built into the document for reasons stated by Khin, you treat this as a case by case basis where they see in general principal what we want but in this case, whatever the proposal, its not quite right, and thinks the density is a little too high and not enough office to serve this density and where he disagrees. Council Member Jones asked when he said office, he meant non-residential, with Council Member Schulze responding non-residential yes, but specifically office too. Council Member Jones stated the Land Use Plan doesn't specify office. Khin stated it can be, with Council Member Jones saying it doesn't specify that mixed use has to be office, with Council Member Jensen adding it gives them discretion, with Council Member Schulze agreeing, and the kind of discretion he was taking hold of now.

Council Member Jones sees the Land Use Plan giving flexibility for the things they see that are safety and other issues that they should be able to deal with, but in general, what they put on the Land Use Plan if it comes back to them and it doesn't have any specific issues that … instead of 14 units per acre it's 16 or there's only a right-in and right-out, the thing they have dealt with for the past three months with this particular project, being traffic. Now that has been dealt with whether the timing was awkward to say the least, but now we are saying, we don't like it anyway. Council Member Schulze responded that he felt bad about this, it's a sticky situation. He stated the alternative is to saying in the Land Use Plan an office will go there, houses there and we don't want that; we want flexibility – there has to be give and take there, and he feels bad its at this point and doesn't want to say it's being discovered now, but this is where the rubber meets the road and where the decision has to be made.

Council Member Jensen added this has changed quite a bit from what Planning Board had actually looked at also, one option would be … he thinks it will go down tonight and maybe should refer this back to the Planning Board, look at opportunities to change this so its more acceptable to members of the Council and doesn't impact the developer to such a degree as absolutely saying no; he would like opportunity to take time to do a bridge.

Council Member Jones asked bridge to where. Council Member Jensen showed on the map a bridge over the rails to come .... with a bridge over high speed rail, he's suggesting bridge over low speed rail to get circulation with office and institutional to the north and would greatly improve this, so folks don't jam up; would tie into North Salem in some manner to these properties. Mayor Weatherly asked he show the linkage on the transportation corridor, with Council Member Jensen showing on the map. He agrees with Council Member Jones.

Council Member Sutton asked Council Member Schulze if he would feel better about this project if the developer reduced residential and had this commercial and office and institutional added into the project. Council Member Schulze responded this is the right direction with density coming down. Council Member Sutton was thinking along the Peakway, it wasn't there before and wondered if there is any adjustment they could make. Council Member Schulze declined to say one way or the other until he could see a plan.

Alan Manase addressed concerns: idea of commercial along the Peakway can't be more than is being done, they are reserving residential uses on the south frontage of the Peakway; north frontage is a pond they are having to leave as is, and the Apex park, so they are not going to control that frontage anyway, they will have a stormwater pond there also for their run-off. This is Guy C Lee and they don't control; there is limited potential of that, they do have 60,000 square feet of retail in the southern portion which as they have always felt was consistent with the original Trackside plan – they know what developers of Trackside south are planning and have coordinated those issues and tried not to come up with competing uses to some extent because there is only so much that can be supported; office as he stated on the north access will not work, idea of the bridge not withstanding, they have been working on this for two years, and that idea came up when they thought the Peakway may not work; they couldn't support it and there are landowners to deal with that will take some amount of time and some great amount of money also; he doesn't see a lot of viability in that option and without that thinks everyone agrees office would not be supported along US64 with that access; he doesn't think the town staff would approve such. He's hearing concerns with the overall residential density, concerns with access, but there is a desire for office and commercial which could make the traffic worse, those are counter intuitive proposals – they went through this a long time ago in their plans for Trackside north, and a shame it's not coming to the town as an integrated development under one control, one plan you would see those uses being requested are in it, there's only a certain amount that can be supported. If density in itself is an issue, one issue of the

Planning Board was the phasing of it, Phase I and Phase II, Phase II can't occur until after the Peakway is completed, they are willing to reduce the density of Phase I to put more density in Phase II so the Peakway would be complete before those homes are built, more specifically could … showing a red pod which was 12 units per acre could make that part of Phase II, leaving the green pod predominately single family as Phase I; that would be a proposal, nothing south of the Peakway nor that tract along US64 could develop until after the Peakway is complete.

Mayor Weatherly stated a motion was on the floor and this is out of order. Council Member Sutton offered to amend his motion to include this. Mayor Weatherly stated there shouldn't be a dialogue during the motion on the floor. Council Member Gossage reminded the public hearing was closed. Mayor Weatherly stated to Council this was a good explanation of the perimeters of the project of any project, not only this one, but whatever might come next unless they are planning to not approve anything consistent with the Land Use Plan, market forces aside as far as what offices and access clearly would exacerbate transportation issues and did point out the unique aspects that has already been referred to of this site; he's not sure in his own mind how … with Council Member Sutton asking does the developer proposal amendment become part of the record, does this not become part of the record, with Mayor Weatherly asking if he were referring to the phases. Mayor Weatherly asked the Town Attorney for a response. Attorney Fordham advised that they would want a very clear and definitive statement of exactly what additional condition or proposal they are making and thinks it probably needs to happen not during deliberation on a particular motion. Mayor Weatherly stated if this is something the board sincerely wants to consider now, you can withdraw the motion and the second and go back into general discussion or can vote on this motion, and then proceed depending on the vote, asking their decision.

Council Member Schulze stated he was not in favor of the current motion, but open to consider other motions although he doesn't want to be under pressure to consider what's here, this is too important and thinks they need to do this right.

Mayor Weatherly stated action can be deferred for two weeks instead of making a haphazard decision tonight.

Action: Council Member Sutton withdrew the motion with Council Member Jones withdrawing the second. Mayor Weatherly stated there was no motion before them ruling this action in order, and asked to proceed, asking if there were another motion to come before them. Council Member Jones stated they have had the developer here a number of times, asking if it would be… if they allowed the application petition… for the other portion of this Trackside south deferred to November asking if it were appropriate to ask that they put them both on the same agenda so they could see both at the same time.

Manager Radford stated right now Trackside south is to be heard November 7, 2006. Council Member Jones asked would it be worthwhile to ask them if it's ok to put it off until November 7, 2006; there's concern about how the overall Trackside from the beginning, how it looks from a mixed use perspective, how this meets with that, he doesn't know its worthwhile. Council Member Schulze liked this idea.

Alan Manase stated that based on conversations of tonight, they probably don't have a choice, whether two weeks work better or a month, will leave it to Council to decide, whether to hear it together or separately. Council Member Jones had not seen Trackside south, maybe not vote on them both at the same, and should not vote on them at the same time, but at least would know what they both look like.

Manager Radford stated Trackside has been on the docket for a very long time, both conceptually and on paper. Apex First has brought this same development in several iterations over the past 45 days or so. Trackside south has been working for nearly two years, Apex First for over two years, and thinks its worthwhile on these issues of Trackside to have a special meeting because we get so bogged down in other issues whether simple as an annexation, to something as mundane even though it doesn't' seem mundane to us, its mundane to the public as a road project elsewhere, consent agenda, he thinks the gravity of this project might necessitate that it be looked at individually, schedule a meeting, call for the public involvement and let those most closely affected be aware of it and have opportunity to sit down and give the developers an opportunity to draw the very best plan possible.

Council Member Jensen felt the only one they have had a long time on is this one. Council Member Schulze said he would support this, thinking they could focus on it and work this through. Council Member Jones reminded they had taken action earlier to delay the south side until November 7, 2006 meeting. Mayor Weatherly thought they could reopen the first one and continue the public hearing without putting a date on the first one. Attorney Fordham advised he could do that but would have to readvertise it. Mayor Weatherly asked if there had to be a date certain, with Attorney Fordham responding if you want to avoid re-advertising. Manager Radford added it didn't matter if it had to be readvertised, it would be weeks out; if creates a deadline problem for the developer, then would need to know that; a deadline problem for East West to go the next week after the scheduled date to do it on a date by itself, that's not a problem.

Council Member Jensen said he could agree to that providing that they send emails to those folks here specifically to ensure everyone who's interested has opportunity and doesn't miss the advertisement. Manager Radford stated their goal was to have as many folks here as possible.

Council Member Gossage was fine with this. Council Member Schulze asked if he would post this on the website as well, with Manager Radford agreeing. Manager Radford reminded them the public hearing was opened and closed on this particular part, not once, but twice.

Mayor Weatherly opened the floor for a motion to delay further action and not reopen the hearing, and didn't intend to do that, just defer action on this until date to be determined, not advertising, leaving what they have already done with Trackside south and will readvertise. Attorney Fordham advised if they want to have the opportunity for public hearing can advertise it as a public hearing.

Action: Motion by Council Member Gossage and second by Council Member Schulze to delay action on this item. Motion carried unanimously. Mayor Weatherly stated this would be dealt with in a comprehensive way. Council Member Jensen wanted to contact folks by email as well. Mayor Weatherly suggested they post an informational sign if consistent with the sign ordinance.

Alan Manase asked what new or additional information Council would like to hear from him or staff specifically for this; what he or staff should be working on. Mayor Weatherly thought that when he offered a condition that previously was not submitted, would suggest he massage this and provide that in a written format to incorporate that and if that is as far as it goes, that's as far as it goes.

Council Member Jensen would personally like to find out what the bridge would cost and how they could help fund the bridge to make it a viable project with a better mix. Council Member Gossage added he obviously had heard a lot of concern about density.

No decision made; will be given a new date for consideration of rezone # 06CU10

End of Old Business Session

PUBLIC FORUM

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

Mr. Weaver, Brookfield: his property backs up to this area and was here for Rezone #05CU20 which was deferred for public hearing and he didn't speak. He asked if low-speed rail was tied into TTA. Mayor Weatherly stated no, high speed rail is what was said. Council Member Jones stated it was once planned to be, but TTA is not….. with Mayor Weatherly saying CSX line is what is being talked about, with a long range plan to bring a bullet train through town and are going to try to get all at-grade crossings out of here or as many as they can before high speed comes through. Manager Radford stated they did not want to confuse AMTRACK with TTA project. Mr. Weaver clarified they were not planning density for the TTA, with Mayor Weatherly responding, no he was assuming TTA is not going to happen. Mr. Weaver asked if NCDOT has denied petition for a stop light intersection on US64. Council Member Gossage didn't know where he meant, but yes. Mayor Weatherly continued they had denied any more access on US64. Mr. Weaver asked how they would do a right-in and right-out without access, with Mayor Weatherly responding there was already access at that right-in and right-out grandfathered in, its there; any new access to US64 would virtually be impossible and discovered there is this one grandfathered that was not known, and don't be surprised if they talk about another access, but it's a federal access highway now. Mr. Weaver is for development, Apex has a unique opportunity to develop all land contiguous to downtown and this is a feeder for the development of the community for all of us, it's a good thing. When you start getting into 17 units an acre he starts to screech to a halt, and really say that's way too high. His concerns are portions south of the Peakway – 17 units an acre, asked if this is considering business or housing or mix, with Mayor Weatherly responding it's multi-family housing, apartment/condo complex, that density when you do multi family, with Weaver continuing, for people who live there, not people that work and live there, that's residential. Weaver stated this gives him great concern when looking at Trackside south east of the railroad, would be an equivalent number, the CU20 proposal, not knowing density, but heard 600 units, and packed into a similar space; well over 15 units an acre and a large area across the street asked where the kids would go to school. He's lived here a while and has a child coming up and an eight year old and wants them to go to Apex schools, do not bus them to Raleigh, he can't afford to put them in private school, but doesn't want to be forced into year round, or forced to bus to Holly Springs, or Carpenter or anywhere else; they are Apex Elementary, Apex Middle, Apex High School family and neighborhood and wants to be sure they can stay that way.

Mayor Weatherly addressed the growth in the schools issue, saying if they had a policy here that they wanted to put their growth to zero, and refused to put another house inside the city limits of Apex, that would not make one bit of difference where his children are assigned to schools, he promises him that, he's saying what is with the school board policy, it's a county wide consolidated school system and our school board believes that as long as there is a yellow school bus that can carry your child to wherever they want to put an empty seat, your child will go there and they don't look at Apex as a school district or school assignment. Mr. Weaver thinks they will have a wake up call, with Mayor Weatherly hoping so, and would see him at the polls, and they need an attitude change about that. Mr. Weaver agreed, but the more the problem is fed it will be the beast that consumes us, and that type unit numbers is a lot of congestion to our schools in this area. Mayor Weatherly responded absolutely, thanking him.

Mayor Weatherly closed public forum at 9:00 p.m. moving into new business.

NEW BUSINESS

Presenter: Director of Construction Management Kent Jackson

New Business item # 1 – Apex Peakway Project Contract

Possible motion to award construction contract for Apex Peakway Project (Olive Chapel Road to S. Salem Street).

Mayor Weatherly understood they would not be awarding the bid for the contract, calling on Kent Jackson to explain. Jackson stated he was right, having taken bids on sections of the Peakway, 5800 feet. Bids for construction were competitive with eight bidders with some rejected and low bid just over $2.6 million; estimate was $3+ million and pleased to get this bid amount. Prevention of awarding contract is the development agreement that exists on this project. A summary of costs is attached reviewed by Jackson at almost $3.2 million. Partner shares are outlined and attached. The development agreement has things that have to be done and outlined those things to be done, notification of results to partners, and intent to award the contract. This is accomplished at this meeting. He hopes to award the contract at the October 17, 2006 meeting. He answered questions for clarification regarding the project sections.

Council Member Schulze asked if the plan calls for a bike lane, and it does not, and he proposes to Council, asking do we want to have a bike lane, thinking staff has some objections. Mayor Weatherly stated staff could come back with a comprehensive discussion of that, thinking they could go ahead with this. Jackson stated an analysis had been run anticipating the costs and using this bid would cost $54, 000 to add two feet, and in both directions $108,000 or $4.70 per square foot. Council Member Schulze stated this was more than he expected, however, would still like to consider it.

Attorney Fordham called for a brief closed session for legal advice on the contractual.
Action: Motion by Council Member Gossage and second by Council Member Jensen to move into closed session at 9:10 as requested by the Town Attorney. Motion carried. Minutes are recorded separately.
Action: Motion by Council Member Jones and second by Council Member Schulze to move back into regular session at 9:20 p.m. Motion carried.

Mayor Weatherly asked if there were a motion to come before the Council.
Action: Motion by Council Member Sutton and second by Council Member Gossage to provide BRG Construction Company and Peakway Village Development company with notice under Paragraph 9C of the Road Improvement Agreement dated August 11, 2005 and to include in the notice that the Town has determined S.T. Wooten Corporation to be the lowest responsible bidder and that the Town intends to award the contract to S. T. Wooten Corporation if neither BRG Construction Company nor Peakway Village Development Company terminates the Road Improvement Agreement under Paragraph 11 of the Road Improvement Agreement. Motion carried unanimously.

Attorney Fordham asked the Mayor to add an additional motion due to the time authorizing Manager Radford to sign the notice. Action: Motion by Council Member Gossage and second by Council Member Jones to authorize the Town Manger to sign the notice previously authorized. Motion carried unanimously.

End of New Business # 1

Presenter: Mayor Weatherly

New Business Item # 2 – Appointment Apex Board of Adjustment

Mayor Weatherly recommended the appointment of Terry Rowe for a 3 year term on the Apex Board of Adjustment; term would expire December 31, 2009.
Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the appointment. Motion carried unanimously.

End of New Business Item # 2

New Business continued

Presenter: Mayor Weatherly

New Business item # 3 – Appointment Apex Planning Board

Mayor Weatherly recommended the appointment of Lisa Carley for a 3 year term on the Apex Planning Board; term would expire December 31, 2009.

Action: Motion by Council Member Jones and second by Council Member Jensen to approve the appointment. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session 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, there was a motion by Council Member Jones and second by Council Member Gossage to adjourn at 9:30 p.m. Motion carried unanimously.

The above minutes were approved on the 17th day of October, 2006.

Georgia A Evangelista
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Statement of October 4, 2006 Seagroves meeting.

Mayor Keith H. Weatherly was Moderator for the meeting

Mayor Keith Weatherly called a Special Meeting for the purpose of facilitating community engagement related to the Seagrove's Farm Subdivision with the meeting being held at the Apex Town Hall, 2nd Floor Council Chambers, 73 Hunter Street, Wednesday, October 4, 2006, 7:00 p.m. There was discussion by citizens concerning issues related to the Seagrove's Farm Subdivision construction with the developer, builder and Town of Apex staff. Individual Council Members did not address the issue and no action was taken. The agenda is attached with topics listed, that was followed accordingly, along with an area map of the development.

No official minutes were taken.

Statement prepared by the Town Clerk:

Georgia A. Evangelist

Georgia A. Evangelist, MMC

Keith H. Weatherly

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for Tuesday, October 17, 2006 Meeting
held at 7:00 p.m. in the Council Chambers on the 2nd Floor,
Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order, with all Council Members present.
Invocation was given by Pastor Warren Harvey, Ambassador Presbyterian Church.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATION

Mayor Weatherly called on Fire Chief Mark Haraway, to summarize the events resulting from the fire at Environmental Quality. Mayor Weatherly praised Chief Haraway for his role as Incident Commander and other emergency personnel that assisted during the October 5 chemical fire at the EQ site on Investment Boulevard, forcing evacuation of thousands of town citizens due to a gas cloud that hovered over parts of the town and that extinguished on Saturday morning. Fire Chief applauded fire and police personnel. The audience applauded the Chief and gave a standing ovation.

Remarks were given from State/County Agencies: Robin Smith, Assistant Secretary for N.C. Department of Environment and Natural Resources commended emergency management responders for their decisions made under pressure, having contained the fire on site reducing water quality impacts. NCDENR includes Division of Waste Management who issues permits and provides enforcement and compliance over-site for hazardous waste facilities; also includes Division of Air Quality and Division of Water Quality. She summarized response efforts stating immediate air quality tests found no exceediences in air quality standards for potential contaminates; tests continued over the three day period of the event and did not detect any exceediences for contaminates they monitored for. Water Quality began surface water testing down stream and worked towards the facility, looking particular at water supply areas, and to date no abnormal water quality conditions have been found. Ground water tests have begun – existing ground water wells are on site as part of the permit for the facility and they do not expect to find ground water contamination because of the concrete pads; ground water wells give background information and once the waste materials are removed from site, EQ will be required to check the concrete pads for cracks that could be a conduit for groundwater contamination; if found, testing will be done under the pads; if there is no conduit for groundwater contamination, you do not want to disturb the pads as they prevent contamination. Waste Management is responsible for overseeing cleanup activities on site and are in process of looking at draft plans for clean up of the facility, approving initial phases of those plans which involves doing initial tests of materials on site will tell what contaminates they should be looking for in water/air quality testing; also tests for metal debris from the building;

testing will be on-going; all initial tests for water and air quality have not found any exceediences; swipe tests of exterior surfaces of buildings will be taken to assure there is no residue; all signs are good and will proceed to make sure they have as much information as needed; anything of concern will be tested further out from the facility and will follow through with results. Swipe tests are done off site and will be analyzed. Soil testing is required as part of the second phase of cleanup and assessment plan, however not done yet. EQ will do soil tests looking at wind directions at the time of the incident, and looking at other directions in which contaminants may have moved and focus on those areas. Air Quality is putting together the protocol for swipe tests however unable to tell how many.

Wake County Health Director Gibbie Harris reviewed the past weeks efforts; helping with sheltering; community rallied around those folks with support addressing concerns and needs. Continued calls come in with health issues; the State states testing does not show any contamination that would concern them with the health of the community; exposure to fire, smoke, etc. would cause expectation of some difficulties who have respiratory issues to begin with; those are generally the ones they continue to hear from; will continue to respond to calls as they come up; will work with state/county environmental services to assure they are addressing the concerns as they develop as more testing is being done.

Earth Tech Consultant, Tommy Harrelson will analyze data and be advocate for the Town. Earth Tech has been involved with emergency response and recovery and has helped with other response events, having worked with NCDENR in other events; their job is to assess data to help through regulatory problems and be a facilitator; Pam Townsend in charge of this operation and John Funk Project Manager will assist; local number for folks to call 854-6229 or visit Town website.

Mayor Weatherly had a conversation with the President of E.Q., and ask he respond in writing about rebuilding, and read a letter from David Lusk, President, EQ Industrial Services, Inc. Highlights of the letter: EQ is distressed by the event of October 5, commending town on their emergency response; immediate priority is safety of the residents, community and environment; nothing in the test results conducted by state and federal regulatory officials and air monitoring experts leads them to believe there are intermediate or long-term health risks to human or animal in Apex area; unlikely there are soil or surface water contamination outside of the EQ facility; are cooperating with various agencies and departments, focusing on cleanup efforts at the facility; after cleanup will assess options and plans for Apex and committed to discuss plans before moving forward; EQ facility has been a member of the community for 20 years, and provides valuable and needed services; employees work hard to protect human health and the environment; will continue to work hard to earn back trust.

Mayor Weatherly called on Town Attorney Hank Fordham for the Town's legal position regarding the possibility of E.Q. rebuilding on site at 1007 Investment Boulevard. Attorney Fordham stated he had been asked if the Town's Code of Ordinances allow Environmental Quality to restart hazardous waste handling activity at the site of the fire. He reviewed provisions under the Towns Unified Development Ordinance. Article 10 provides that if a structure that houses a non-conforming use is damaged by 60% or more, then the non-conforming use can't be restarted; the purpose of Article 10 is to put a limit on restarting a use that does not conform to today's ordinances. Hazardous materials handling was a permitted use at EQ's location under the Town's prior zoning ordinance in effect when the activity was first started. The zoning ordinance has since been changed – when the Town passed the UDO hazardous waste handling was no longer a permitted use; EQ's hazardous waste handling activity became a non-conforming use under the UDO; the use was not illegal prior to the fire because it was grandfathered in by the old ordinance; before the fire the use was what the law calls a legal non-conforming use; this brings us to the affect of the fire and destruction of the structure at 1007 Investment Boulevard.

The structure was obviously damaged more than the 60% threshold because it was totally destroyed. Since the structure was damaged by more than 60% hazardous waste handling activity no longer qualifies as a legal non-conforming use. To say it more simply, E.Q. lost it's grandfathering for the structure and use that the fire destroyed. In conclusion with the caveat that he does need to add, the Town's zoning ordinances does not allow EQ to restart hazardous waste handling activity at 1007 Investment Boulevard. He informed Council that an important caveat to this conclusion, Mayor and Council should be aware that there is a state statute that allows a hazardous waste operator to apply to the State Department of Environment and Natural Resources for an exemption from local zoning laws; to obtain an exemption, the waste handler must show several factors including that the operation of the facility would not pose an unreasonable risk at the proposed location. He wanted Council to know about the state statute so they can take any action they deem necessary to advocate their point of view to the state in the event EQ seeks a state exemption from Apex's ordinances. In conclusion with respect to the Town of Apex's ordinances, the Town's zoning ordinances do not allow EQ to restart hazardous waste activities at 1007 Investment Boulevard.

Mayor Weatherly introduced Scott Maris, Vice President of Regulatory Affairs for the company. Mayor Weatherly appreciated the letter of response from the President, and asked him to deliver a message from the Apex community to the management of EQ. He addressed the legal opinion to rebuilding, and beyond this, said the concern and point they will not forget is that EQ exposed Apex community to an unprecedented threat to the safety of every family in Apex and will not and can not tolerate continued operation of hazardous waste materials in our town. Message is the Council and all people of Apex will resist with every authority available to them, any attempt by this company to restart its operation in Apex. He asked his company officials consider this matter quickly and expediently give an answer as to what their plans are and communicate this to the citizens. He trusts their decision will be consistent with that and would have no intention of trying to resume operation; his answer will be helpful to come quickly so the community can put this incident behind us.

Mr. Scott Maris responded he understood the position and appreciates it; his focus stated in the EQ letter is to cleanup the site, cooperating with local/ state/federal authorities in a quick and safe manner. They have not made a decision beyond this. He personally wants to assure Apex and the community they sincerely regret the accident and are doing everything they can to get back to normal. They recognize many were inconvenienced, including those evacuated from their homes; they empathize and understand the concerns raised regarding safety of homes and families; they began to test air quality from the sky and the ground; EPA's advanced monitoring aircraft conducted extensive testing in the surrounding area, October 6 and found no evidence of contaminants from the fire. Extensive ground base air monitoring system was put into place and continues to test air quality in a vast area around the facility. To date more than 1 million readings have been collected from the surrounding area, and absence of airborne contamination it is unlikely there is any soil or surface water contamination outside of the EQ facility. Nothing in test results conducted by state/federal regulatory officials along with third party air monitoring experts would lead them to believe there are any intermediate or long term health risks to any human or animal in the Apex area; as the investigation continues, rest assured they will have and continue to cooperate with the various agencies and departments. Should the situation change, they will keep everyone apprised. Toll free information line is put into place to take questions and requests for assistance from evacuated residents; they have returned the calls from these residents and follow up for lodging reimbursement and other requests. In the future, they will continue to be available to answer any question and respond to comments. They thanked all emergency responders, city officials that oversaw the evacuation, Red Cross, state/federal regulatory officials who continue to assure the environment is safe. Thanks to schools for opening their buildings to provide shelter and to volunteers that helped those affected by the circumstances.

The facility has been in Apex for more than 20 years and live and work here and watched the town grow from a distant neighbor to a community that surrounds their operations; this situation was unfortunate, but the pride their selves in being a leader in the manager of hazardous waste. EQ processes waste that are buy products of goods and services that allow people to live a life style they enjoy today, they work to provide a clean and safe environment for the people in the communities and care about Apex and are working hard to earn back trust.

Mayor Weatherly opened the floor to public comment:

Robert Evans, 404 E. Chatham Street, reported he has asthma and could not breath in his home; he and his pregnant wife evacuated; went to an emergency room and decontamination due to chemicals; had breathing treatments; next day respiratory problems with prescription medications; had his baby at Duke; EQ has not returned his calls, called EPA and no response; doesn't know the air quality for the new born; no swipes were done for contamination; knows front line folks were sick.

Linda King, Shepherds Vineyard asked what documentation is available and asking where the air tests were taken, what for and levels received; asked since EQ did not release the list, are there some contaminants not tested for.

Tony Forbes, New Hill, former business owner on Investment Boulevard, appreciates EQ facilities to protect us from wastes our society generates, and a failure on the part of EQ, and planning and zoning. EQ predates the housing around it, residential development was permitted multiple times in close proximity of the facility; zoning and permitting is suppose to protect from this type event and should have been in place; applauds steps to prevent EQ from building; similar event in Indiana caused death to folks in the building, no other impacts because it was in an industrial zone, not surrounded by residential development; request as ETJ expands south and west into New Hill remember Harris Plant the worse case if evacuation occurs is six hours, more people moves that way, time will increase and greater risks from exposure; it's not an area for high density development. Mayor Weatherly stated the changes referred to were made in 2000 with the UDO, which made the facility a non-conforming use – seven years ago.

Resident of Haddon Hall did not get a call and at home until the am hours, asking how hazardous the cloud was and breathed it for six hours. Asked how others would be contacted in an emergency. Earth Tech will help on these type questions, what was in the air. Mayor Weatherly addressed notification, police went to doors and WC Emergency 911 has a reverse 911 calling by street location and didn't work perfectly. Council contracted with Code Red in September, second town in North Carolina to have such a system which loads data base, business and residential in town, that could within minutes record emergency message to evacuate and where; tests results were 70% - within 20 minutes everyone with a listed data base was called over the weekend; if no called was received, log on town website Code Red Icon and load and confirm numbers home and alternative; update the data base for accuracy. Test will run soon again on the enhanced notification system.

Ron Ragland, 203 E. Chatham Street, has eaten from his garden and asked if it's ok; he was recommended not to eat from it now; left message with EQ and has not responded.

Wolf Wendlandt, Surry Meadows, was evacuated while watching fire and smoke come over their homes, were scared and left; he noted the Governor has not been a part of this, represents what's going on over North Carolina with hundreds of facilities, and expressed concern Apex people are saying not just to ourselves, and the media, but to the state, and would like to see more concern and activity from the Governor who's twenty minutes away in Raleigh.

Susie Smith, Haddon Hall did not get called, only two neighbors received the reverse call, Time Warner Cable was out and didn't know what was going on, a neighbor called to evacuate, notified others, one family stayed all night, glad to have Code Red. She read the system calls did not come to them, however registered this morning; on the citizens to update; concerned an hour to do 50,000 calls may not be sufficient asking town look into a siren system; concern with how many trains coming through town has hazardous materials and if town is notified when a car comes through and something the town should check in to, and notify police and fire to be on alert during that time period; hopes council will hold an information session for Apex folks on how to prepare a grab-and-go bag, most left with nothing.

Mayor Weatherly noted the system was launched. Chief Haraway gave an update on the launch with a 76% success rate; will never find a system that will be 100%; will not break in on road runner computer, or other internet access on a phone line, will not break in on a phone call; list number through the data base for caller ID; most systems block 999 number thinking a telemarketer, this technology has to have access to residence nationwide system otherwise can't get through, can't place 911 in front of it. The County system was the only system available and works the same way. He had Code Red activated at 3:30 Friday morning, so during the event, dispatch was on alert, if anyone else needed to be notified.

Dan Polowski, Scotts Mill, would like to know why no one from state toxicology has come into his home and sampled air or soil, thinking protection for their children, and homes the state will test homes.

Michael Borrow, Walden Creek, left messages for EQ and not received a response; was not doing a good job on calling back; has heard no testing of heavy metals, mercury, lead, arsenic, cyanide, nickel which do not incinerate in a fire; VOC's might have incinerated; calls to various departments gave him conflicting answers on what was tested; local companies next to the plants are finding mercy, nickel and compounds; asked county/state what they are measuring for and to release information. Ask EQ pay for the testing, they made the mess. He thinks we have legal rights to keep a company with fires out. Caller ID for Code Red: can sign cell and home phone numbers done manually and updated correctly. Mayor Weatherly stated the goal is full disclosure, a bit released was not accurate, and why Earth Tech was hired, having first meeting will release all data as soon as they have information to report. Report on DENR Air Quality should be available the end of the week.

Jim Sauls, Olive Street, asked what would have happened if this was kids getting off buses; described the smell in the air; police told him to evacuate; called some neighbors; EQ has a bad track record, they have to go; health is more important than any company they have; 95% of folks didn't know this company was there; how do they know what's on trucks; he doesn't trust EPA – has not seen anyone check anything and this was ground level, with officers out of breath; has sick wife, left with clothes leaving medicine, and need emergency medicine; was not right to be run off because of this company and they need to be displaced, telling them to head out.

Rick Ahmed, Dream Sports, is down and across the street from this site, all breathing the air; worked hard for his business and is taking a beating, and may loose everything; he was told it was all clear, and was told children could come in and he believes it, breathing the air, perception is it's not; he has years tied into this business; lowest week in his career; he can't sell the building and get anything for it; this is where kids come; regardless of tomorrow, there will be a certain percentage of folks that will not come to this area, and decide which way to send a child and cripples him in a manner he will never recoup. He blamed EQ and Town Council; eight years ago Town didn't know where to put him and said they had to create a zone for him to build; he and all the children were put down the street from this facility and he's angry; everything he's worked for is up in the air; other facilities on this street pay folks to come in – these folks pay him to let their children come in this facility and will not continue to do this, if they feel they are not safe. He's done nothing wrong, and has run best sports facility for the children, and made his business for town, children and his family. His back is against the wall and no where to go. He can't get answers, he opened his business, and now he hears metals at Apex Gymnastics are not hazardous, he hopes this is true. He noted the fire has crippled him.

Kimberly Ford, Shepherds Vineyard, wanted to know what to do to clean up homes, and not gotten an answer; contractors are afraid to pressure wash their house putting chemicals into the ground, some forced to wash their homes; wanted clean ducts for good air, two places will not clean wanting for DENR to release results and all is shocking to her, since they are suppose to be clear. Emphasizes lack of communication since this incident; thinks a website should be dedicated for release of tested proven information and what they should do; if DENR tests or EPA and found something entire HVAC might have to be replaced; she sees fear and miscommunication, asking what they should do; knows dust mask want keep out chemicals. Asked where cloud went and when; how much shifted to her neighborhood; how much should she be worried about her soils; what temperatures mercury can be vaporized and by the time they did their tests. Thinks timeline and understanding what was in the cloud and risks – lots to do to decontaminate the body of heavy metals; should medical testing be done to avoid long term affects; child exposure could be life altering. She noted personal air quality tests are expensive for a home owner and should have a collaborative effort on this.

Robin Smith, Assistant Secretary for NCDENR responded there is no protocol regarding pressure washing of homes; issues are related, but not from them; one area out door air quality is what they monitor for; indoor air quality is being addressed through the local health department and department of health and human services. In terms of residue such as metal will be using swipe tests to look at surfaces and soil tests to look at residues, and knows no advice that has been given; she can safely say no one from their department has given advice in pressure washing their homes.

Hope Blackford, 104 S. Tunstall, commended public service folks; didn't watch news at the shelter; thanks Council Member Gossage for coming out and giving an update; recommends if this happens again, all take time to coordinate efforts and come do short update as to what goes on. She couldn't go home, only wanted to get her cat out, her husband was working.

Resident owns property at 1100 Center Street and could walk through the woods to Investment Boulevard where explosion occurred. She grew up in "Whops" community and graduate of Apex school; lots of residents live there and have been there forever; her uncle ran a store there for 50 years; blames EQ for this, but Apex was responsible to allow this to come, there for 20 years, asking if those people there were not considered, were they not important. She lived there until 1985 and has the property for sale, and the real estate agent says people aren't considering it now; people are calling wanting to move here, asking how close this is to Apex. She noted this was a long time ago, but Apex needs to take responsibility for what's happened, and if they had not been allowed to come in there, this would not have happened.

Walter Bourer, 302 Interior Court, noted the seriousness of this event, with Police/Fire trying to suppress something they did not know what it was; noted prevention should be the main component; noted a fine would bring attention; no one was talking with each other; hopes we've learned from this event and maintain the logo Peak of Good Living.

Laurie Nash, Lexington Subdivision, out of the evacuation area; daughter goes to Apex Gymnastics and owner went above the call of duty to assure the facility was safe; 500 plus kids go through there and testing was done and facility was clean; what's done to assure schools are ok for the kids to go back to. Mayor Weatherly stated the schools had air testing done, with Manager Radford confirming this.

Clark Addie, Homeowners President Surry Meadows, questions:
What can they do about potential property value?
Can town make a list of hazardous materials sites available to the public?
Is the Town going to mandate better hazardous waste keeping because of the fines prior to the fire?
Neighborhood security during evacuations.
Make sure EQ returns calls and reimbursements to residence.
Residents noted town did a wonderful job and commended Council for their efforts and responses to emails. They are with the town 100% in prevention of EQ rebuilding in Apex.

Shepherds Vineyard resident, Mayors neighbor and Chemical Engineer, was concerned about heavy metals and noted conflicting information; asked why we are not proactive and assuring playgrounds and backyards are clean; he doesn't understand how Apex Gymnastics could have professionals come out in a matter of 24/48 hours and say their place is clean, and it's taking weeks, with no timeline; asked how long his children going to play in their yards, if there's mercury on the slide and yard. He knows things volatilize, but heavy metals fall some where, in their yards; he asked why it takes so long to get data; he wants to know where the data is being generated. Two weeks have passed and there's no clear report where they will access these points, where will they swipe. He does think this was handled in a great manner in terms of response and commends those people up 24 hours with no sleep, answering questions; took lots of mental courage and stamina to do this giving an A- but a C on follow up. He's lived here all his life and wants to continue to do so.

Wendy, Wadell Court, was first to be evacuated and last let back in; noted children affected by this in years to come; air quality in schools, asked about swabbing and are they safe; EQ should test the homes of the people in the zone and have not done this; commended police for coming to her door.

Bill Swartley, 1001 Woodbriar Street, Brittany Trace, wanted to look at Earth Tech and Mayor Weatherly; he's heard a lot of discussion in regard to analysis, keeping in mind our environment has many metals and in looking at this hopes they will look at the environment as meteorology dictated where the plume went; metals do come out – look at landscape, drains, stormwater channels, natural areas; have good controls – go to neighborhoods not impacted (Cary) – there will be a natural residual from herbicides, and pesticides in their yards; wants to see a scope of work from Earth Tech posted on the website and will know what the plan is.

Melanie Fornes, if testing is of heavy metals and is a matter of a swipe, she challenged at least the public play grounds in Shepherds Vineyard and the schools, asking to go out tomorrow and swipe them before rains wash this away – missed information is valuable and can collect them now.

Heather O'Sullivan Canney, Olive Street and downtown merchant, was affected both personally and professionally, and proud to be a resident of Apex and business owner. She didn't know EQ was there and not excited about it, doesn't know what can be done to assure there's no hazardous materials in Apex; has confidence to assure we are kept safe; we can't get rid of all Home Depot's Lowes, and hospitals, and contents under her sink can be considered hazardous. Noted deodorant contains heavy metals, not knowing, but does know she's proud to be a resident, and amused at the reports, interviewing folks and could only find good things to say from residents. As a real estate broker, there are folks moving to Apex, not seen any property values change; has had calls from Raleigh and New York that wants to move to Apex because they want our Town Manager.

Ron Margiotta, Wake County Board of Education, fighting for families in Apex, is a member of the community and impacted with the fire and evacuated with their dog in their vehicle; he couldn't say enough nice things and show respect for Apex. Family and friends felt Apex should be proud of our representation during the crisis. He's sure Council and Manager will respond to concerns; he thinks the response given by Council and sorry to say they can't get from the School Board that he serves with, it's a completely different response and not one responsive to the community. He also thanked Council for resolution opposing mandatory year round schools and school board rescind schools to a year-round calendar; he thinks this is a concern of everyone in Apex community and will impact property values in the community, noted this a negative impact on families and appreciates position council has taken, hope school board is willing to listen, and if they listen may get a bond approved.

Mayor Weatherly thanked the school system officials for being cooperative in opening the schools for folks, and their pets. Mayor Weatherly called for a recess at 9:15 with the meeting reconvening at 9:30 p.m. The meeting reconvened.

RECOGNITIONS

Mayor Weatherly recognized the Annual Tree Award recipients Joseph and Lynda Federowicz and the Commercial Appearance Award recipients Haddon Hall Commons Shopping Center.

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 for approval.
Action: Motion by Council Member Gossage and second by Council Member Jones to approve the consent agenda. Motion carried unanimously.

1. Minutes of October 3, 2006 Council meeting.
2. Minutes of October 3, 2006 Council Closed Session meeting (separate cover).
3. Statement of October 4, 2006 Seagroves meeting.

4. Annexation Petition # 401, Joel F. Schnoor and Michelle M. Barry, owners/petitioners, petitioning to annex 4.038 acres being all of Lot 7 Castlewood Subdivision, Section III, into the Town's corporate limits, and located north of Persimmon Place; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for November 7, 2006.
5. Power transmission easement for Progress Energy Carolinas, Inc.
6. Approve closing Commerce Street for Academy of Performing Arts Parent Association for a Halloween Event (same event as last year), October 25 – 29, 2006 evening hours after 6 p.m.
7. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items, with Manager Radford asking it be amended to include a date for a special meeting and with Attorney's advice to advertise for a special meeting to review Trackside South and Trackside North. The agenda was set as amended.

PUBLIC HEARINGS

Presenter: Candace Davis, Transportation Planner

Public Hearing # 01 – Apex Transportation Plan Map (Bicycle, Pedestrian and Equestrian Plan)

Parks, Recreation and Cultural Resources Advisory Commission on September 27, 2006 unanimously recommended approval of changes to the Parks, Recreation, Greenways, and Open Space Plan map; recent map changes and UDO Amendments prompted updates for the Bicycle, Pedestrian, and Equestrian Plan map. Planning Board reviewed these changes October 9, 2006 and recommended approval of the changes, with one addition proposing sidewalk symbols Surrey Meadows to Seagroves Farm Subdivisions, by unanimous vote. Planning Staff agrees.

Candace Davis presented proposed changes to the Parks, Recreation, Greenways, and Open Space Plan map promoted changes to the Bicycle, Pedestrian and Equestrian Plan map. She briefed on the changes written in the staff report and incorporated as a part of the minutes. Planning Board reviewed these changes to the BPEP map at their October 9, 2006 meeting and recommended approval of the changes, with one addition by unanimous vote. Planning Board requested proposed sidewalk symbols be added to Rainesview Lane and Samara Court in Surrey Meadows Subdivision to connect with future sidewalks in the Seagroves Farm Subdivision. Planning staff agreed with this request. Brown answered questions regarding Beaver Creek Greenways completion, with Council Member Sutton assuring this would be all the way to Kelly Road and eventually to the American Tobacco Trail and will be completed in phases because of grant funding. He noted two years ago folks voted on the bond issue which included construction of the Peakway and wants to get them constructed and wants to move forward to ease traffic. Brown response was regarding the three bond sales and the projects that would be accomplished; projects were phased because of the lack of NCDOT funding.

Council Member Gossage assured Council Member Sutton understood the bond issue. Council Member Sutton stated two sections of the Peakway should be underway, with Council Member Jones agreeing they should be.

Mayor Weatherly opened the public hearing and with no one addressing the changes, closed the public hearing and opened the floor for a motion.

Action: Motion by Council Member Jones and second by Council Member Sutton to approve the changes to the Parks Recreation Greenways and Open Space Plan map and updates to the Bicycle, Pedestrian and Equestrian Plan maps as proposed. Motion carried unanimously.

End of Public hearing # 1

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 02 – UDO Amendments

Planning Board considered the UDO Amendments October 9, 2006 and unanimously recommends approval with typo corrections; staff recommends approval.

Public hearing and possible motion regarding possible amendments to various sections of the Unified Development Ordinance.

Dianne Khin presented amendments and made clarification to various sections of the UDO which are provided in the staff report and incorporated as a part of the minutes. Planning Board considered these UDO amendments at their October 9, 2006 meeting and unanimously recommends approval with typographical corrections. Staff recommends approval of these amendments.

Through out the presentation clarifications were made: Khin noted under the tree removal amendment section, one does not need to get a permit if clearing for agricultural use; if they do not get a permit they must wait for completion of the timber harvest in order to submit for a development approval. The point is people don't use the permit in order to get a start on development, and in most cases this is what they have seen, and want to limit uses allowed under the permit.

Khin commented on pedestrian paths: should be in a dedicated right of way between cul-de-sacs or end to another street; trying to have interconnectivity with streets and pedestrian, sometimes it's not feasible to do connecting streets, however feasible to do a pedestrian connection; it did not specify it could not be on an individual house lot.

Mayor Weatherly opened the public hearing and with no one making comments on the proposed amendments to the UDO, called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Schulze to approve the amendments to the UDO as presented. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Old Business item # 1

Manager Radford recalled several weeks ago, Trackside projects were discussed with the original concept being a large mixed use development that included office and institutional, commercial and residential properties. The way the property was purchased turns that Trackside (North) is planned primarily residential development portion and Trackside South is planned primarily O&I, residential and commercial district. Because Trackside (North) was viewed first, it gave more of an appearance that Trackside itself was becoming more and more residential and less O&I and less mixed use, less commercial. Based on this he felt it was important Council be able to see and hear about both projects simultaneously, Trackside South before Trackside (North) in the process to show the mixed use components. At the same time or later consider Trackside South proposed developer agreement they have requested of us. At the same time to further scrutinize Trackside (North) to answer questions about density. They have talked about a special meeting to do this, to not be distracted by other items potentially on any forthcoming agenda. He asked Council to determine such a time to do this.

With Trackside South being continued to November 7, 2006, Council decided both should be reviewed on November 14, 2006.

Action: Motion by Council Member Sutton to review both Trackside (North) and Trackside South to November 14, 2006 at 7:00 p.m. Second by Council Member Schulze. 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.

Deborah Lanuti, 1003 West Saint Julian, Vintage Grove, commended the responders for actions taken during the fire; she is not opposed to growth but with growth without responsibility. Developer paying fair share of the Peakway comment was developer couldn't make the profit needed if this were to happen; she said "so what", asking why be concerned as a citizen with their profit; she stated if the numbers doesn't work, don't do the deal; they will increase her taxes due to more roads and schools. How many developers will live with pollution they are creating; guessing most do not live in Apex; we should not do a deal because its good for the developer, it must be good for all citizens.

Trees make Apex desirable place to live and have responsibility to protect our environment, including air and water, affecting our health and wallet and natural habitat housing rare species of plants and animals and birds. She asked when an environmental impact study was done on Apex that clear cutting is doing to our environment; clear cutting is not necessary, and driven by money, and noted negative impact on the Seagroves property. We are obligated to protect rare species and suggests before anything over one acre is allowed to be cut, environmental impact study is made mandatory for each acre to be cut. Council makes decisions that will impact Apex now and years to come; each decision has a ripple affect good and bad, pleads to evaluate each decision made in the future that will impact the town way beyond money. An example was the affects of EQ and the ripple to allow the facility that will have a far reaching impact on the town.

Kathy Gubar, 1020 White Oak Creek Drive, Homeowners Association for Green Level Farms, adjacent to Beckwith; Toll Brothers has approached land owners in their subdivision and plans to put a sewer easement to their properties for the entire 303 homes in the subdivision and doesn't understand why.

Bill Garvey has a horse farm in this subdivision and understands when the vote was taken was upset as they had been in every meeting and were not notified of this meeting and specifically asked they be notified of any meetings they may attend. Mayor Weatherly asked if he were referring to the Planning Board; David Rowland, Director of Planning responded a rezone is a public hearing, and are notified within 300' of it. Mayor Weatherly responded he specifically asked to be notified and thought we provided courtesy to do so. Rowland stated the consultant for the subdivision was supposed to be in touch with those folks, and that these folks had taken down names and numbers.

Cara Lacey, stated people were notified and held a neighborhood meeting and those that did not attend, did let them know they were holding one, not a requirement of the UDO for a subdivision and not a public hearing for the subdivision; they did notify those in the area and the adjacent property owners, Mayor Weatherly confirmed she was talking about the Planning Board meeting with Lacey responding yes, and those that show up, they answered their questions and let them know what was going on at that time. Mayor Weatherly stated Planning Board meeting is advertised and normally on the agendas are on the website; way folks are normally informed is by website or calls to the Planning Department.

Justin Chin, 1005 White Oak Creek Drive, stated it's his property where the Town of Apex proposes to build a utility easement through to Toll Brothers and have contacted him and sent a letter. He noted Attorney Fordham is involved in this. He expressed concerns that they are against condemnation of their land and to have the utility easement going across their property. He asked Council reconsider this and not allow Toll Brothers and the Town to allow having the utility easement go through their property. Their Attorney George Autry will represent them and will contact Attorney Fordham. Along with folks in the neighborhood have attended numerous meetings and expressed concerns with the development; they will be building next to their property about 25 to 50 feet and have made a number of requests indicating there should be a buffer between the two developments; looking at the decision made in the Planning Board, they have decided the buffer is not required even though they have made numerous requests, and unfortunate they were not invited to these meetings, even though they had made requests to be invited and informed. Felt the decision was made without them being informed and a part of the process. They requested Council reconsider and the Planning Board reconsider allowing having a buffer between the two developments.

Glenn Williams, 8017 Green Level Church Road, lives adjacent to this development and was not informed about tonight, told by someone. Toll Brothers employee told him they did not need or want any of his property; he received a letter offering $3000 to let them go through his acreage for a sewer line – he noted 40' wide through 7 acres is not worth $3000; he will give all of them $200 a piece for their home. At the same time he made up his mind he would give Toll Brothers opportunity and be fair; he will give them what is on the right hand side of the creek for the property that is on the left hand side of the creek that joins him - even swap, and they can do what they want to with it. Otherwise, that's the end with him.

Randy Hefner, 1008 White Oak Creek Drive, stated this does not impact him directly, with concern that he has had lots of contact about information meetings and when it came time to vote, they did not hear anything and had to do their research to find the Planning meetings; he's sure it's his responsibility, but as far as common courtesy thinks they have asked and weren't informed. The thing that bothers him the most is someone will make a profit on development and are looking at private homeowners to give up their land for a septic and sewer easement and not the right way to condemn land and doesn't know of any condemnation proceedings that has been made against this land, and doesn't think any private home owner should be asked to give up their private land without proper condemnation proceedings.

Lance Olive, 2102 Waters Glenn Drive, is a member of the Planning Board, and explained the issue with the Beckwith property came up and he added to the summary that it was approve 3/2 with the issue of connectivity. Detail: first motion did not receive a second; second motion failed talking about it for an hour, with lots of discussion and issues. He addressed interconnectivity – living in Waterford Green, 300+ homes similar in size to the proposed Beckwith project; for over 12 years one way in and out of Waterford Green; fee attempts were tried to make things better; Waterford East proposed talk of a Greenway or stub street, and there is a stub street that goes onto commercial property in the Town of Cary; there's not a lot that can be done there. With Seagroves Farm built out, there is a stub road connection; an idea is that interconnectivity is not well done when both of the alternate entrances are within 100 yards of each other and should be further apart to provide more reasonable alternate paths. Interconnectivity was discussed at Planning Board meeting and safety was the only aspect of interconnectivity that was addressed; safety – how can the fire department, police, EMS get in and out; the way they were addressed were stubs close to the entrance on both sides; there is no interconnectivity being proposed from what they saw at the meeting between the eastern section and the western section; in between the two sections is a creek and north of the creek you get close to Green Level West Road and to the south of the creek area, you get close to the Jordan Lake Floodplain; neither provides reasonably good access for interconnectivity between the streets. This project that encompasses all the property that includes this area of the creek is the ideal location in his personal opinion for an interconnection between those two neighborhoods. Interconnectivity is also about traffic congestion relief and not just safety when you have multiple cars that have to go out one way or another and if you have a problem, or breakdown, cars and go out another way, that can't happen with interconnectivity. Alternate paths is the other aspect and would give the ability if there is an accident on a major road that's clogging up traffic, people can come around and get back into their neighborhood through a different path.

Pat Smith, 2629 Schieffelin Road, spoke for herself and her father. A couple of years ago Public Gas came through and told them if they were using gas they could hook up and not cost them anything, her Dad hook up to the gas service. Water came through and they were not alerted it was coming through, and both have wells, and with the explosion are concerned about using well water because the comment was made all water was safe because the water was pumped in from Jordan Lake, a subsidiary of Cary, and they are concerned because they are on well water. Her Dad worked for Town of Apex and fell while cleaning a 13 foot reservoir, and is disabled and can't provide $4,000 to hook up for water; she asked the town let them hook up to water until they are sure of what will happen from the explosion. He lives at 2621 and she lives at 2629 and have talked with Planning but $4,000 per house is steep. Mayor Weatherly referred this matter to staff.

Mayor Weatherly closed Public Forum and moved into New Business at 10:20 p.m.

NEW BUSINESS

Presenter: Lee Smiley, Director of Finance

New Business Item # 1 – Financial Summary

Lee Smiley presented highlights of the 1st Quarter FY06-07 Financial Summary which is attached and incorporated as a part of the minutes. The benchmark for the 1st Quarter financial performance is 25% for revenues and expenditures. Significant variances are noted. Council accepted the report as presented.

End of New Business # 1

Presenter: June Cowles, Planner

New Business Item # 2 – Beckwith Subdivision

Planning Board recommended approval 3 to 2 with a concern for lack of interconnectivity.

Subdivision Plan for Beckwith, John R. McAdams Company, Inc. petitioner, seeking a subdivision plan approval for 303 single family lots, and located southwest of the intersection of Green Level West Road and Green Level Church Road; possible motion regarding same.

June Cowles presented the staff report which is attached and incorporated as a part of the minutes. Existing conditions are on page 2. Background information: zoned low density on December 20, 2005 includes all uses allowed under this zone and a maximum of 3 units per acre. Subdivision Plan, RCA is outlined on page 3. Parks and Recreation approved the plan with conditions outlined on page 3. Access and Circulation is outlined on page 4. Applicant is requesting an extension of cul-de-sac length; Council must approve an extension if longer in length than 500 feet. Plats will not be signed for Phase II-B or Phase IV until a second public access is recorded. Temporary emergency access easement and drive shall remain until such time. Traffic Impact Report was prepared and concludes AM trips are 245 and PM trips generated 330; average daily traffic volumes generated 3200 vehicles. No intersections will require improvements due to the construction of Beckwith Subdivision. Staff recommends a four-way stop be installed at Green level Church road and Green level Road West and a left turn lane on Green Level Church Road. Applicant is providing widening, left turn lane and 4 way stop signs and fee in lieu for curb, gutter and sidewalk. Subdivision includes sidewalks on one side of the road. Landscape is outlined on page 6. Cowles showed a map of existing save trees and areas that will be graded and landscaped.

Council Member Jensen addressed the buffer asking clarification of the trees to be saved anywhere around the border. He compared this to the Seagroves development.

Cowles continued the plan is consistent with the 2025 Land Use Plan, UDO, and requested variances from the UDO are noted in the staff report. Plan is consistent with the Transportation Plan. Planning Board recommended approval 3/2. Two opposing votes had concerns with lack of connectivity between the two sections of the subdivision and overall connectivity for future development in the area due to crossing a creek and floodplain. Concerns raised were for connection between the two subdivision sections for vehicle trip reduction, safety, alternate route, circulation within the neighborhood and travel from one section to the future amenity site.

Applicant is reviewing the cost of building a bridge and crossing the environmental impacts on the creek; width of floodplain at its narrow point is approximately 700 feet wide. Staff discussed with the applicant when subdivision was being reviewed about a connection, however, environmental impacts crossing the creek and floodplain and greenway and permitting costs of construction were noted.

Staff requested applicant provide a revised detailed grading plan to save additional and existing trees and they provided that detail. Staff recommends approval with conditions 1 – 6 listed on page 7 of the staff report. Applicant will review plans.

Manager Radford addressed the sewer easement, in that the builder will be required to build a wastewater – a major pump here and have access to it; Attorney Fordham is involved in this. Attorney Fordham did not think this is accurate and has not sent letters out on this; he talked with the Attorney that is handling this for Toll Brothers; town is not directly involved. Council Member Schulze asked if condemnation is premature, with Attorney Fordham not knowing about this, but willing to discuss this in closed session. Council Member Jones noted this would be a separate issue from site plan approval; sewer typically follows lay of the land and the creek regardless of what is developed on the property; not that he thinks they should not consider it, he's wondering at what point and during what forum do they talk about sewer easements; typically do not during site plan.

Council Member Jensen asked if the pump would serve this subdivision, with Manager Radford confirming this, but oversized to serve the other side. Rowland expanded upstream properties would be served by this as well.

Cara Lacey, John R. McAdams Company, represented Toll Brothers on behalf of the Beckwith Property. She oriented to the location, zoning of low density and 3 units per acre, 575 lots could be allowed per the UDO on this property; the property is approximately 1.58 units per acre proposing 303 single-family lots; lot widths are consistent with UDO standards and range between 10,000 square feet and 28 to 29,000 square feet. Lots are large and blend with the area. Entering the site amenities are 3.87 acres with two main entrances into the subdivision with stub roads provided to adjacent properties per the UDO and additional stub roads above the UDO requirements have also been designed and provided. Sidewalks line the streets and in addition other connections are provided between lots to connect between cul-de-sacs and have pedestrian access out to the greenway. Trees and vegetation line the streets throughout the community and additional stands and vegetation are also provided. Open space makes up 40% of the site, a large portion is floodplain and the area that is large and preserved through the clustering of the lots by Toll Brothers and through the design. Toll Brothers will build this portion of the White Oak Greenway and also internal connections for residents to access this greenway; multitude of trails have been designed and located throughout the site, connecting from lots, sidewalks, roads and other areas to each other and to the greenway. There are approximately 21,000 square feet of trails, walking paths, and sidewalks on the site. The design was carefully thought out to capture as many on site amenities for the residents within the community and to also provide open space opportunities on a regional scale. The site meets the perimeters and standards of the UDO and is consistent with the Land Use Plan and zoning map and set backs, dimensional requirements, density and provides additional feature that make this area of Apex unique and will continue to blend with the existing contacts of the area. Toll Brothers has agreed to the six conditions as stated in the staff report.

Council Member Jensen asked if this document map of existing save trees and areas is a formal part of the proposal, with Lacey responding yes it is and are providing approximately 30 foot of buffer to the south and the dept of those lots have been increased to 200 feet, typically 140 feet, but for purposes of some of discussion and questions, have added 200 foot depth and provides an additional buffer to any of the properties to the south.

Council Member Jensen asked if the buffer being described was part of the lots or is it separate from the lots. Lacey responded the buffer is within the 200 foot depth, but typically the lots are 140 feet in depth, it is additional to that; it is a part of the lot.

Council Member Jensen asked how did they know the trees would not come down by the homeowner. Lacey responded they had looked at grading to see where they could selectively grade and where they would be phasing the grading. This came out from the analysis of the grading on a lot per lot basis, but also where they would need to grade by phase; what they are seeing represents how they have analyzed the grading in order to save existing vegetation that is on those sites; what he sees on the back of those lots is going to be saved vegetation and approximately 30 feet wide.

Council Member Jones asked what portion of the property is already cleared. Lacey did not have the actual percentage; maybe 10 to 15% cleared, Council Member Jones did want them to assume that all 191 acres are forest already. Lacey stated there is approximately 30 acres that has been cleared and looking at the site, you see an access easement shown on the site and a portion of where it has been cleared and a larger portion off of that has been cleared. Council Member Jones asked how this coincides with this portion where the largest cluster of homes will be. Lacey responded by showing the area cleared and the access on site; they had additional exhibits as to how it would be phased, what exists now, and how the phasing would work and what would be left on the site through the phasing; they would not be coming in and mass grading the entire site; this will coincide with the grading and wherever Toll Brothers has gone in to develop the site, re-vegetation will quickly come on line. About 168 acres is currently vegetated; patterns of development will how the phasing as it comes on line, Green Level West as well as Green Level Church Road. Access to the final phase was noted. Lacey noted that 40% of the site is open space and approximately 45% of the site will be tree coverage.

Council Member Gossage asked what timeline this represents; approximately 5 to 7 years.
Council Member Jones noted the first condition that plats would not be signed for Phases III-B or Phase IV until the second public access is recorded, and continues that the temporary emergency access easement and drive shall remain until such time… with Lacey stating there are two temporary emergency access easements, and will be built to permanent standards and will remain until other access points are online or about to come to be developed and showed those on the map. Lacey stated they will not be usable by everyday traffic, possibly gated.

Council Member Gossage asked about the second access point required to build Phase III B and Phase IV is in either section or must be in this section. Lacey responded just the larger section.

Council Member Jensen went back to buffers not having a complete understanding, saying the buffer Phase III B is part of the lots and asked how do we make sure that stays a buffer for the folks that have the larger lots next to it; he assumed from the picture they would not be graded as said; they will not be graded into, whatever is there will remain, asking how do you ensure without having some sort of deed restriction that they can't cut those trees for the buffer to stay.

Toll Brothers attorney stated perhaps that could be worked out with staff, at time of construction documents; at this point it does represent on the extent of tree preservation based off the grading plan approved by staff and by Planning Board. He understands the question, but has not been worked out at this point.

Council Member Jensen asked if this is approved he wanted him to commit that this would be worked out with deed restrictions, those will be preserved through deed restrictions or whatever has to be done, asking if this is agreed too. Lacey stated they were discussing the condition and would be willing to work this out through construction drawings.

Council Member Gossage stated they were not clear on this; he's looking at the back of the lot and the line showing the Beckwith property, asking the distance from the back of the property to that line. Attorney stated it was approximately 30 feet and you have a preliminary grading plan at subdivision level that is required; construction document will have more detailed grading plans that are worked out, so upon submittal of the construction documents and working with the staff, basically those lots would be graded out in more detail, potentially allow more tree save.

Council Member Jensen was hearing two opposite things; the way he understood it the lots go to the dark dash line, and when she's saying it there is a space between the outer perimeter of the development and the back lot of the line. The Attorney said that was not what he was saying; he's saying the extent of grading for those lots from the road to the dept of the lot ends basically 30 feet from the rear of the lot which is the extent of the project basically. Council Member Jensen added and the buffer is part of the lot. Attorney stated the buffer or the existing stand of trees that's left based on the grading plan is 30 feet.

Mayor Weatherly wanted to be clear and stated maybe staff should elaborate on this. Mayor Weatherly asked since when have we ever required buffer between residential to residential. Cowles explained any lots 6,000 square feet and over against other lots over 6,000 square feet does not require a buffer, only when it's 6,000 square feet or less against bigger lots that are 6,000 square feet and over would a buffer be required, or a townhome lot. This will be voluntary. Mayor Weatherly stated the UDO has no requirement to maintain a buffer, and they are complying.... with Council Member Jensen stating he understood that, but he's looking at the picture and sees a buffer he wants to say if they show it, he wants to make sure it stays.

Rowland stated they would recommend that be a separate lot owned by the Homeowners Association and not part of a lot; with Council Member Jones asking around the whole perimeter of the site, with Rowland responding on the 30 foot buffer they are talking about. Mayor Weatherly felt that was a good suggestion, a common area, with Cowles adding they no longer include buffers within lots. Mayor Weatherly asked if this would come forward later in a requirement. Cowles stated it would be now, if they wanted to save those trees. Mayor Weatherly understood this, and the Attorney Dave Nell for Toll Brothers spoke with representatives of Toll on ways to address this issue and would like to suggest an alternative that would also work, but would also preserve the large lot size which is a typical from the typical developer that comes to offer small lots; one of the aspects of this development is larger lot sizes for luxury style homes would be to maintain those large 200 feet depths on those lots but to impose a restriction, a conservation easement along the final 30 feet that essentially would empower the homeowners association to monitor that and also provide rights to those homeowners in there to know they can rely upon that restriction; that would then allow the lot to remain at the larger attractive side.

Council Member Jensen stated it was not as good as what staff recommended, but would accept that and thinks its acceptable, so long as they fully know and he understands they want to sell the bigger lot.

Council Member Schulze wanted to talk about the length of the cul-de-sacs, especially the one on the south side. There's a stub street to the south asking why not build another stub street on the west side and thinks it would resolve the cul-de-sac issue – Phase III B. Lacey responded they will not be built until access is… with Council Member Schulze interjecting this contradicts the UDO and is trying to resolve this issue. Lacey explained the main reasons they didn't provide other additional stubs was because of the private lot; and also to the north is a private residence and the south side is open.

Council Member Jensen had no trouble with not having the connectivity there, thinking it's better to preserve the wetlands than connectivity and the costs, cost has to be horrendous.

Council Member Jones added as long as there are provisions for future connectivity and thinks, calling it a compromise for lack of a better term, for delaying Phase III B and Phase IV until there is a second way, thinks is the appropriate way to deal with it.

Council Member Schulze stated maybe they did not need a resolution right now, but the sewer easement, asked if it's typically not a part of the site plan. Lacey stated they had discussed the easement in TRC and had a different location for the sewer which was on the Beckwith property and were asked at TRC by the Town staff to move that sewer easement to the south because typically they are done at a lower elevation and where that would go through the area, there is a stream buffer there, so the town asked to provide that sewer easement and sewer within that stream buffer off site. Council Member Schulze asked for right now, they do not have the easement off site, asking if this was correct. Lacey stated this was correct and being worked out at this point. Attorney for Toll could further elaborate on this. Council Member Schulze stated he may be ahead here, but if not wants to resolve it now.

Attorney for Toll Brothers stated probably a mistake was made in terms of putting the "cart in front of the horse" and that is letters were sent out to neighbors at the time they learned the town would prefer or require that they run the sewer off site and letters were sent, appraisals were done and offers were made to acquire those easements and has triggered the outcry heard in public comment. He thinks typically those offers would not have been made until at least had approval of the subdivision, but that disclosure was made that that was the requirement being placed out there. As far as Toll Brothers is concerned, they do not have a dog in the fight. They put the sewer on their site or off their site, its' the town's choice. If it were to be on their site, it would required that the sewer be located at a greater depth which would be outside the standards of the town prefer for maintenance, and would increase their costs for on site construction, but would be a wash as they would not be acquiring off site easements. Again there is no condemnation in place, this is private negotiations.

Council Member Jensen went back to the buffer, talking about Phase III B south but asked if this would apply, in looking at the picture, would like to see it on the boarders keep that continuity around the site; we talked about the lower L part. Attorney for Toll Brothers responded what they were committing to was essentially a conservation easement of those areas where their property bounds adjacent developed neighbors, those sorts of things. Council Member Jensen stated this covers everything he is concerned about.

Mayor Weatherly called for a motion.
Action: Motion by Council Member Sutton for approval with the stipulation stated by the Toll Brothers Attorney making the conservation areas and also for the Parks and Recreation conditions included. Council Member Jones added allowing the cul-de-sac lengths, with Council Member Sutton adding that, and with Council Member Jones making the second.

Council Member Jensen asked if we require this off site sewer, he assumes we have to get involved with condemnation is the problem he has, obviously toll Brothers does not have a dog in the fight and up to staff to recommend one way or the other because he's concern, can it be done either way and they are saying yes, it can be done either way. Attorney for Toll Brothers stated their initial proposal showed it on site, with standards from public works. Council Member Gossage stated they must hear from Tim Donnelly Director of Public Works on this; he was not at the meeting. Motion carried unanimously.

End of New Business #2

Presenter: Bruce Radford, Town Manager

New Business Item # 3

Manager Radford requested Council extend overtime pay provisions to FLSA exempt employees for hours worked in response to the EQ fire at time and one-half over 40 hours in the work week. Present town policies do not allow for overtime pay to exempt (salary paid employees as is routinely extended to non-exempt (hourly paid) employees. Non-exempt employees accumulated large amounts of compensatory time that he already can not give to them time off and were paid. Given the circumstances surrounding the EQ fire asked approval of $16,400 to grant pay the list of exempt employees attached. Mayor Weatherly stated these costs for non-exempt employees will be sent as an insurance claim to EQ regardless of reimbursement or not with Manger Radford adding as well as exempt pay, feeling strongly this should happen. Mayor Weatherly noted this unique situation, and one never confronted with before and hopefully not again. Council Member Gossage asked what category of pay, over time, comp time, with Manager Radford advising it could be called a bonus if they chose too. FLSA does not require they pay or not pay; FLSA is to insure employees are treated fairly and not a restriction. Mayor Weatherly noted these exempt employees do not get overtime pay and FLSA requires anything time and one-half over 40 hours and what they are talking about. Discussion regarding compensation time followed, with Manager Radford stating he felt the hours of time were far too great to allow for the time off and recommended to pay the exempt employees. Council Member Jensen asked the Manager be considered in this provision as well, since he was in the same situation.

Action: Motion by Council Member Schulze and second by Council Member Gossage to acknowledge the work of the exempt town employees (listed) by paying them time and one-half over 40 hours in the work week and the provision be extended to include the Town Manager Bruce Radford. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session 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 there was a motion by Council Member Schulze and a second by Council Member Sutton to adjourn at 11:15 p.m.

The above minutes were approved on the 7th day of November, 2007.

Georgia A. Evangelist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of the meeting for Tuesday, November 7, 2006 was held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

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

Manager Radford introduced Amy Overfield, Planning Technician who will be presenting a planning item during the public hearing portion of the meeting.

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 for approval. Manager Radford asked items #5 and #7 be pulled and reconsidered on November 21, 2006. Attorney Fordham asked item #6 be pulled and considered at the end of the agenda. Action: Motion by Council Member Gossage and second by Council Member Jones to approve the consent agenda as amended. Motion carried.

1. Minutes of October 17, 2006 Council meeting.
2. Annexation Petition #402, Metropolitan Development at Apex, owners/petitioners, petitioning to annex 0.592 acres, into the Town's corporate limits, being the smaller part of Lot 2 (Creekside) and located north along Olive Chapel Road and west of Kelly Road;
   1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk,
   3) Resolution to set a public hearing for December 5, 2006.
3. Annexation Petition # 403, Edwards Investment Group, LLC, owners/petitioners, petitioning to annex 5.91 acres including former railroad right of way into the Town's corporate limits, and located on E. Williams Street (NC55) south of Lufkin Road (Bojangles/Handee Hugos site); 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for December 5, 2006.
4. Approve Brendie Vega Mkhwanzai and Amy Overfield as Town of Apex review officers and remove Rosetta Radtke as Town of Apex Review Officer.
5. An Ordinance to amend Apex Town Code Chapter 20: Sec. 20-71. Establish and Regulate one-way streets and the conversion of Commerce Street to one-way from Saunders Street toward West Chatham Street. (To be considered November 21, 2006)
6. Amendment No. 1 to Road Improvement Agreement, Apex Peakway Construction.
   (To be considered at the end of the meeting agenda)
7. Award construction contract Apex Peakway Project Olive Chapel Road to S. Salem Street.
   (To be considered November 21, 2006).
8. Order to close Chamber of Commerce parking lot, portions of Salem Street, and small section of Saunders Street at 5:00 p.m. until approximately 10:00 p.m. on Friday, December 1, 2006 for Apex Downtown Business Association's Annual Christmas on Salem Street.
9. Increase Town's per diem rates for meals during work related travel.
10. Blockade certain streets December 2, 2006 to accommodate Apex Jaycee's 49th. Christmas Parade.

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 a Closed Session to receive legal advice regarding Picardy Point and potential litigation regarding land acquisition. Action: Motion by Council Member Schulze and second by Council Member Jones to add a closed session requested by the Town Attorney. Motion carried. The Regular Meeting Agenda was set as modified.

PRESENTATION

Tommy Esqueda gave a recap of the process for the regional wastewater facility in New Hill and gave an update regarding DENR site selection. The Partners will re-evaluate the site selection process weighing in environmental justice factor demographics that must be analyzed for each of the 13 sites, which includes minority population; cost estimates will be applied. Partners agreed to involve affected communities for public input with Esqueda thinking going door to door. Progress Energy land will be addressed through the site selection process. A report of the data/information collected should come before the Council in January prior to the response going to DENR. A copy of the Letter from Division of Water Quality is attached regarding the project statement and responses. Council Member Jensen encouraged a presentation meeting for the community to involve the entire group of folks.

End of Presentation

PUBLIC HEARINGS

Presenter: Amy Overfield, Planning Technician

Public Hearing # 01 – Rezone #06RZ18

Review: Planning Board considered this rezone October 9, 2006 and unanimously recommends approval; staff recommends approval.

Public hearing and possible motion regarding Rezoning #06RZ18 Sovereign Grace Church, petitioner, seeking to rezone from Light Industrial to Office and Institutional district classification, the property located at 411 W. Williams Street containing 0.767 acres.

Amy Overfield, Planning Technician presented rezoning case #06RZ18 per the attached staff report which is incorporated as a part of the minutes. The parcel in question for rezone is for Sovereign Grace Church, 411 W. Williams Street overflow parking; rezone is consistent with the 2025 Land Use Plan. Planning Board reviewed this item at their October 9, 2006 meeting and unanimously recommends approval. Staff recommends approval of this rezone.

Mayor Weatherly opened the public hearing at 7:20 p.m.

Sean Dolle, Jones, Cnossen and Dolle Engineering, PLLC, supports the rezone; this piece is recombined with the church piece, and currently two different zone designations.

With no one else addressing this rezone application, Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the rezone request. Motion carried unanimously.

End of Public Hearing # 1

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 02 – Rezone #05CU20

Town Council at their October 17, 2006 meeting voted to hold a special meeting (Worksession) on Tuesday, November 14, 2006 at 7:00 p.m. to discuss Trackside (North) and Trackside South; due to the timing of this special meeting; Staff requests the public hearing for Trackside South be continued to the November 21, 2006 Town Council Meeting.

Public hearing and possible motion regarding Conditional Use Rezone #05CU20, East West Partners Management co., Inc. petitioners, seeking to rezone from Residential Agricultural to Planned Unit Development-Conditional Use District, property located with Apex Peakway on the north, Hunter street on the south, Laura Duncan road on the east and CSX rail right of way to the west, and containing 50.44 acres.

David Rowland, Director of Planning, stated a special meeting for a workshop regarding the Trackside development area will be held on November 14, 2006 looking at both the south and north sides, and asked this public hearing for Trackside South be continued to November 21, 2006 meeting and would avoid re-advertising.

Mayor Weatherly called for a motion to continue this hearing.

Action: Motion by Council Member Jones and second by Council Member Schulze to continue this public hearing to November 21, 2006 meeting. Motion carried unanimously.

End of Public Hearing # 2

Presenter: Director of Planning David Rowland

Public Hearing # 03 – Annexation # 401

Public hearing and possible motion to adopt an Ordinance to extend the corporate limits of the Town; Annexation Petition # 401, Joel F. Schnoor and Michelle M. Barry, owners/petitioners, petitioning to annex 4.038 acres being all of Lot 7 Castlewood Subdivision, Section III, into the Town's corporate limits, and located north of Persimmon Place.

David Rowland Director of Planning presented this annexation orienting to the property in the Castlewood Subdivision, all of Lot 7. This would allow the owner to tie onto the Town's water system, with the line located along the road.

Mayor Weatherly opened the public hearing and with no one addressing this annexation petition, closed the public hearing, and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Sutton to approve annexation petition # 401 by adopting an ordinance to extend the corporate limits by the 4.038 acres. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Presenter: John Brown, Director of Parks, Recreation and Cultural Resources

Old Business Item # 01- Performing and Cultural Arts Center

Review: August 15, 2006 Council asked award of construction bid for the Performing and Cultural Arts Center be delayed until October 17, 2006 and at that time an update be given regarding the fundraising efforts. Steve Schuster and David Winslow will be available to update council on fundraising efforts.

John Brown, Director of Parks, Recreation and Cultural Resources stated an update regarding the fund raiser would be given by David Winslow, and a recommendation regarding bidding the construction of the Performing and Cultural Arts Center would be given by Steve Schuster, Clearscapes and Associates.

David Winslow, Winslow and Associates, gave an update on the fundraising efforts for the Performing and Cultural Arts Center, sharing gifts received $740,457., and likely will end the campaign at an estimated $900,000. He will continue to work to through the end of the year to maximize money and appreciates all the efforts extended during this fund raiser campaign.

Steve Schuster, Clearscapes, gave a recap that bids were opened July 27, 2006 from five contractors who had experience in this type work. The low base bid of $1,970,000., less alternates, was received by Progressive Contracting of Sanford, N.C. Original estimates for the restoration of the existing building was $1.1 million funded from various sources, Projected Fundraiser Gifts and Pledges shows the town's contribution from general fund $406,832. Total Project Cost was estimated at $2.4 million; as a result of negotiations with the low bidder, a revised estimated cost is $1,885,332 (worksheets attached). Schuster recommended award of bid to Progressive Contracting. Manager Radford advised the numbers does not include fees by the Winslow Group. Bid tabulation sheet is attached.

Attorney Fordham advised the Town had not been able to reach an agreement with the adjoining land owner to resolve several issues related to the adjacent properties; the property now has a new owner and an agreement has been reached; having signed the agreement, these issues are now successfully taken care of. Terms of the Agreement between the Town of Apex and TTFG Property Group, LLC are outlined in the attached signed document.

Mayor Weatherly called for a motion to award the bid as recommended.

Action: Motion by Council Member Gossage and second by Council Member Jones to award the contract to Progressive Contracting at $1,885,332. 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.

Deborah Lanuti, Vintage Grove Subdivision, was concerned with the campaign call received hoping it was not used over the Code Red System, with Mayor Weatherly informing her, it was not. She voiced all the Council's decisions affects everyone for years to come, and addressed the EQ disaster in that had the rain been snow, results would have been different, and inclusion of the Harris Plant should a disaster occur.

Dan Brubaker, 3001 Old US 1 New Hill, noted from the Esqueda presentation, the 13 sites to be analyzed is for all site criteria, not just the environmental justice criteria; hopes the conclusions and findings of the report generated after the analysis of the sites will determine the site selection and conclusions is not foregoing already. He hopes the policy advisory and the technical advisory committees will act accordingly with the results of these findings. Cost items like Holly Springs pumps - Holly Springs will be using the facility and will be cost items there and make sure the data is not prejudged one way or the other. Good community of New Hill as always wants to work with the Town of Apex and be a partner in this process; hopes they get the chance to do this.

Tony Forbes, 3636 Bosco Road, New Hill, thanked the Mayor for insisting rewrites and responses are brought before Council before sending them to DENR; and was one of the issues they had, and that the Council will be informed before things are sent on. One concern about what Esqueda had said – how they plan to get public input; thinks the technique they are planning to use is designed to isolate citizens from one another and prevents them from hearing each others concerns and the responses to those concerns; she doesn't think this is in the spirit of the kind of public input the community of New Hill is requesting and that DENR is suggesting is gathered; she hopes Council will insist they have a real meeting with the citizens of New Hill, where they can ask questions other citizens can hear, and they can hear the responses to those questions. She thinks they have demonstrated they are not a mob and can behave themselves in public, and would do so in that kind of a meeting.

Carolyn Sink, 2301 New Hill Olive Chapel Road, New Hill, echoed Tonya's remarks for asking they have information prior to it being sent to DENR; they are part of the partnership and applauds them for taking ownership for the role they have. The last time she was here, she ask they be wise men and has seen evidence they are following through with this. They have had experience with waste materials in their front yards, and how their lives were disrupted temporarily. She hopes that expands their wisdom and deepens their compassion and heightens their awareness of what they are dealing with in New Hill, who are their neighbors, and how they will be dealing with this permanently, not just temporary stay at a hotel for a few nights. They will deal with the plant there, the odor, and the results of that plant and the spillage from that, not the "if" but the "when" knowing it's going to happen with Cary's history of spills. They prayed tonight for that wisdom and hoping that wisdom will continue to come to them as they challenge the selection process and as they challenge their fellow partners in making the right selection for them, and the people of Wake County. She asked again they exercise that new found wisdom and the earned wisdom from the trauma they had in their own front yard.

David Bristol, 2521 New Hill Olive Chapel Road, New Hill, has concerns about some of the presentation: the definition of the affected area should not be the people who live adjacent to the community; it should be the people who attend church at the two churches close by, that visit the rest homes close by, whose kids play in the playgrounds at one of the churches close by. The affected community is not just those who live adjacent to it, its people who use the facilities in the neighborhood. The fact that public opinion is being gathered now after land has already been condemned and paid for seems a little disingenuous, it's being required by the State, but should have been done early on; that was in the initial plan; a part of the communication plan was to communicate with people in the area, and was never done. Tonight, people from New Hill have volunteered to work with Apex and Cary and has never been an approach. They had a town meeting and was told it was going to happen, but has not been a genuine interaction between the towns and the people who live there. He's also concerned the community that lives closest to the site is predominately a minority community and minority communities in general are not going to respond the same a majority community would respond. Social scientist will tell you a community that has been oppressed who's been discriminated against in the past will often give answers to make those people happy that are asking the questions; he asked does the community believe their answers will make a difference, when the site has already been condemned and paid for, is this process going to make a difference, and if it's not going to make a difference, don't act like it's going to. He's not saying this council is acting that way, but the process has to make a difference if it's worth going through at all, it can't just be trying to justify a decision made that was based on data that.... he questioned the data that was used. He taught at NC State for 22 years and teaches an Ethics and Just-Prudence Course at the veterinary college and when teaching ethics he teaches morally and relevant differences when you have to make a difficult decision, and it's going to affect different groups you look at the morally relevant differences in those groups; advances in society have come as a result of saying there are not morally relevant differences between groups; that's why women have a vote – years ago they decided there was not a morally relevant difference between a man and a woman in the ability to vote, and hopefully everybody exercised that right to vote today; that's why slavery isn't here, there should not be a morally relevant difference between a black person and a white person and one should be able to enslave the other. He asked the morally relevant differences between the people in New Hill and the people in Apex; people in Apex have a more of a right to self determination for the future because they have elected representatives and New Hill has not had that; they have to rely on elected representatives in other areas to think about their best interest, not just the interest of the people they represent. He said the Mayor represented the people of Apex, and elected as Mayor, and asked all of them to represent them as well as this decision goes forward because they do not have the political power the people in Apex does to elect representatives as they have.

Barry Cradle, 2920 Ridge Pine Drive, Apex, on the edge of the New Hill postal district, and has concern with one-on-one discussions and thinks if a person knocks on his door and he's in the middle of dinner, and the first question is what are you thinking about the sewage treatment plant going next door, he's not sure he would give an answer that he's mad about it, and probably not the information, they are looking for. His concern is the whole interview process could be avoided by simply moving an affluent pumping station to Progress Energy land and you don't have any neighbors to have to interview because it's on a publicly condemned area already that was designed to support utilities; this is a utility and his first suggestion and would streamline the process and get it online faster. Second suggestion: have two community meetings, one to solicit input – what do they want to know about the site selection process and what is their input on ways to make it better; he gave one and many can give suggestions as well that wants to partner with them. Have a second meeting, taking all suggestions and met with committees and come up with this – the Western Wake Partners and want to now present their suggestions to them for one more final input – as opposed to again what they saw last time was, here's what is going to happen – the land is about to be condemned and this is the way it is going to be, get use to it. It left them out and gave them a negative start and wants to make it a more positive reaction but thinks they have offered suggestions many times, but fell on deaf ears; they didn't have a role in the initial … and would like to see if they can change this and make it right now that DENR is asking for the reevaluation.

Herman Jaffee recalled the EQ fire in Apex that burned over 30 hours because no one could get near it due to toxin fumes, and recalled the Chernobyl fire in 1986 that burned for 10 days, with 300,000 solders having been exposed to high levels of radiation, costing billions of dollars and uncounted lives. He noted a fire at the Harris Plant in the early 90's the public was not informed on, and encouraged Council to adopt a resolution calling support of bringing the Shearon Harris Nuclear Plant into compliance with Federal fire safety regulations at the plant as they have operated in violation of these regulations; Chapel Hill and Orange County have issued resolutions; called attention to the State Board had confirmed Shearon Harris security violations, and siren failures had occurred at the plant; he asked Town to force the issue of repairs and not play games with citizens safety.

End of Public Forum

NEW BUSINESS

Presenter: Mayor Weatherly

New Business # 01 – Apex Appearance Commission

Mayor Weatherly presented a request to Council to consider the re-appointment of Mrs. Betty Gilbert for an additional three year term to the Apex Appearance Commission that would expire October 15, 2009.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the re-appointment as recommended. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss the items requested by Attorney Fordham: to receive legal advice regarding Picardy Point and potential litigation regarding land acquisition.

Action: Motion by Council Member Jones and second by Council Member Jensen to move into Closed Session at 7:50 p.m. for the reasons stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Jones and second by Council Member Gossage to move back into Regular Session at 8:30 p.m. Motion carried unanimously.

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

Action: Motion by Council Member Sutton and second by Council Member Schulze to add to the agenda, the additions to Amendment No. 1. Motion carried unanimously.

Action: Motion by Council Member Sutton and second by Council Member Schulze to ask the Parks and Recreation Advisory Commission to develop a policy for access to public parks. Motion carried unanimously.

Action: Motion by council Member Jones and second by Council Member Sutton to approve Amendment No. 1 as amended. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further business to come before the Town Council, there was a motion by Council Member Schulze and a second by Council member Gossage to adjourn at 8:35 p.m. Motion carried unanimously.

The above minutes were approved on the 21st day of November, 2006.

Georgia A. Evangelist
Town Clerk

Keith D. Weatherly
Mayor

NOTE: Proclamation Declaring a Town State of Emergency, and a Proclamation Terminating a Town State of Emergency in regards to the EQ Industrial Services fire has been signed by the Mayor and are attached as a part of the official minutes.

TOWN OF APEX, NORTH CAROLINA

Apex Town Council Worksession Minutes and General Account for
Tuesday, November 14, 2006 meeting, held at 7:00 p.m.
in the Third Floor Training Room of the Apex Town Hall, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the Worksession.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the Worksession to order with all Council Members present. Mayor Weatherly gave the invocation and extended a welcome to those present. Town Manager and staff members involved in the proposed project were in attendance.

Manager Radford began the meeting advising East/West Partners Management Co., Inc. had asked to permanently withdraw their rezoning request for Trackside South. Goal had been to review both Trackside South with Trackside (North); proposed projects are by two different parties, with the action remaining: review Trackside (North). Review: Council had addressed density and transportation access with the proposed northern project; agreed to build a portion of the Peakway from Laura Duncan Road over to Salem Street including a bridge over high speed rails. Noted Mike Howington is interested in the property proposed as Trackside South. Worksession: discuss what elements Council would like to see in the proposed development.

Dianne Khin, Assistant Planner had presented this item at past Council meetings; information is the same. Traffic Impact Analysis will be reviewed by Russ Dalton Transportation Engineer at the public hearing on November 21, 2006.

Alan Manase, BBM, addressed changes to density and land uses in the proposed Trackside (North): proposed 790 units vs. 850 units shifting from Phase I to Phase II; leaving more RCA providing over 33 acres, with 6 acres for public park dedication. Phase I has 3.12 dwelling units per acre and Phase II is 526 units or 15 dwelling units per acre. Added uses: 60,000 square foot of retail and 15,000 square foot of O&I (maximum square footage), with no minimum square footage is proposed; market would have to drive retail, and may not be there. Average maximum density is 6.5; working to get a right mix of uses; thinks higher density would create more traffic. Interest was expressed in Trackside South property, but couldn't commit at this time. He was asking for a decision by Council regarding Trackside (North) rezone.

Mayor Weatherly commented there was a guarantee of residential development, however, he was looking for two quality developments that would bring tax base, with Town having committed to a build bridge for a mixed used project and now with broken deal, he did not want all homes. Manase responded he had done what the town had proposed 8-10 years ago: homes to the north and village to the south and could not guarantee more. Mayor Weatherly understood market driven and making investments without returns however, this changes the deal for him not having two pieces to look at as one project, wanting a signature project and evidence of such, and what he had hoped for. Manase understood the Mayor's position, however, his development was still at the table and he wanted to build in Apex and wanted a decision by Council next week. As far as the South, he could not rush to judgment not knowing what was there, with office having to be market driven. Mayor Weatherly understood he should not be held hostage, however, forgetting the south, wants to look at the project as a mixed use and he doesn't see it as such. Council members addressed issues of office space, ratio, maximum vs. minimum square footage, and need of a populated development for retail. Council agreed they want to look at the property south and consider the mixed use element of retail. It was suggested by Council Member Jensen to propose a plan to help get people onboard to lease space or sale space.

Mayor Weatherly stated if they were looking into a purchase of land, asked would a 30 delay help. Manase responded he didn't want 30 days, as it had to do with land price and owner. Manase asked for a way to expedite the project to get on track as they had been tabled twice. It was noted the project had been before Planning Board and TRC and would help with the process.

Council Member Jones stated the north portion has two components and if the south portion of this component were excluded, could they consider the north portion of Trackside (North) Tuesday night. Manase stated this was acceptable to them. Mayor Weatherly stated this may not come back and leaves this portion truly residential and prepared as residential and would not make a big difference to him.

Steve Fleishman, partner of Mike Howington, noted concern regarding residential development and no O&I development, and would have to be a call by Council; is currently planned residential, office and retail. He wants to develop the property and not let it sit vacant; does not want to develop retail and no retailers come – he couldn't pay millions of dollars and leave retail vacant; expressed need of residential development to make retail and office work. He expressed interest in talking with the Duncan's about the south property, however has not studied or seen plans for the south and makes it hard to make decisions.

Mayor Weatherly stated the Peakway would bring some retail shoppers (an example of marketable development west on US64, asking how this compared to that retail space). Fleishman was not familiar with this. Fleishman noted discussions had included putting in retail, like a neighborhood center for residence, however needed people to keep doors open; thinks the Peakway would help retail, but minimum, with the south relating to the retail area. He was concerned about being held up on the rezone; stated there was reason East/West partners gave up; he's not seen their plans, however, wants to move forward with this rezone and if he can, would work on the south, but did not want to be held hostage for the south as he can't control that. He informed Council one of the Duncans may be in town for the hearing and he could speak with him and see what happens. Mayor Weatherly added discussion of prices may make the land more attractive.

Council Member Sutton recalled the concept of Trackside was for a true mixed use, to extend the downtown and blending in the Town Campus to link it together. It was suggested they may want to consider a comprehensive plan. Fleishman gave an example of a subdivision where a town/county had mixed and matched and changed a master plan five times due to market, and he could not imagine in this area that the south property would sit long without development, however doesn't know when, being market driven, but felt it will come.

Manase stated the town had drawn plans years ago, and their plans were consistent, with the north planned for residential development. Mayor Weatherly didn't feel it was fair to approve the northern piece and speculate that retail/commercial would come; it was the concept of a balance and they can't do it; still wanting to look at the whole piece. Manase didn't want to give up on the south piece, offering to do minimum square footages to be brought back for Council to consider at the hearing. Fleishman asked consideration of approval for Phase I, and have minimum/maximums prepared for Phase 2. Square footage of retail space was compared to Town Hall space, thinking there should be minimums with ratio of offices to homes and there should be a balance; it was suggested the developer would have be creative and development of Trackside should be done right. Khin commented on the way the developers were told to present their plans regarding percentages from the beginning.

Mayor Weatherly stated this was short of his expectations, and to complete the Peakway, was expecting great things and hoped this was not a big mistake. Council agreed to look at the project broadly for a balance, not letting it sit. Comments were, that a delay of the development may benefit them, and to pursue trackside south could change the entire equation. Mayor Weatherly stated decision by Council not to approve would cause a one-year delay before the developer could come back to Council with a different proposal.

Manase was willing to propose minimums vs. maximums, stating it was hard to put 60,000 square feet on three tracts. Manager Radford commented a true mix of use is designed for an urban feel. Manase addressed shifting density from the north to the south, where there was greater access, with multi-family towards the north, and still be a mixed use.

Khin explained a particular style for proposed Trackside, not wanting all commercial: Council asking for 60% residential and 40% non-residential split in Phase 2 including minimum square footage for office and minimum square footage for retail (includes land south of the Peakway) and a specific split of residential types in Phase 1, (includes land north of the Peakway). Rowland added there needs to be an abundance of residential to support non-residential including outlying areas.

Fleishman confirmed Council's requests and would have Manase put this on paper. Mayor Weatherly wanted him to have a clear understanding of the mix, what would be in Phase 1, and discretion of percentages – not all townhomes, with Khin responding there was lots of green space, and would have to do single family. Council asked if there were changes, would this have to go back to the Planning Board. Khin responded it doesn't have to go back to Planning Board, but could send it back; rezone did not receive approval because of access, and density however this has changed.

Council Member Sutton would look to staff for a recommendation, and ask they look at architectural design, with Khin noting it was architectural standards, and would have to design it so folks would want to come there. Mike Howington commented this was site plan issue and was now considering a rezone of the property and premature to decide what goes there before a rezone.

Mayor Weatherly had concern with traffic stacking issues. Russ Dalton Transportation Engineer stated service was defined at Level Service D or better except for Salem Street, and some resolve would occur with construction of the Peakway; developer would build from Hunter Street to US64 and give relief to that area. Hunter would have a right-in and right-out with vehicle turn around. Traffic Impact Analysis will be reviewed at the hearing. Dalton noted cities have traded levels of service for development. He recommends the Peakway design long term be multi-lane road way, from Peakway north to US64 be multi-lane. Without development north on Salem, would be over capacity in next five years; noted this development would increase traffic by 10%. Updated trip generation comparisons were discussed and site plan results were compared to as much as 5% - 7% tracked by Ramey Kemp & Associates, Inc.

Tim Donnelly, Director of Public Works, addressed stormwater questions, and noted stormwater drainage from this development was at less than 5% that would drain into Williams Creek; the northern part of the development would not drain towards Shepherd's Vineyard; south development would drain towards Brookfield and the school. Council Member Jensen insisted Shepherd's Vineyard wants volume control and not much more expensive for the developer to implement from a 10 to 25 year storm so stormwater would not get worse. Manase advised the pond could not be used for retention; they would be building six ponds for this development. Mayor Weatherly asked Khin if the stormwater design meets the UDO, with Khin responding yes, conceptually.

Manase felt they had covered all issues of concern. Mayor Weatherly asked if he would be prepared to say one way or another, if he anticipates the votes, would he be ready to respond. Manase asked if there were any problems with Phase I, and Mayor responded he couldn't answer that, it was unfair to them, with Manase reminding he doesn't control the property to the south. Fleishman stated that at every meeting they had heard either Council or staff ask for changes in their ideas of what they want to see and with each change, traffic changes; he asked, "Where does it stop, not wanting to be held back for the south property." He wanted to make an acceptable proposal to Council.

Parks and Recreation areas were addressed, with a suggestion of potentially relocating the site. Manase responded this was noted as the most suitable space for recreation, and they had given up density for this site.

Manase/Fleishman agreed they will consider changes to their plan as they had clarified and will meet with staff early week; staff will also ask for architectural standards for this project; staff will make a formal recommendation to the Council at the November 21, 2006 public hearing.

Mayor Weatherly adjourned the Worksession at 8:45 p.m.

The above minutes were approved on the 21st day of November 2006.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes of Tuesday, November 21, 2006 held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order. Council Member Jones gave the Invocation. Presentation of Colors and Pledge of Allegiance was led by Scout Troop #205. Mayor Weatherly extended a welcome to those in attendance.

PROCLAMATION

Mayor Weatherly presented a Proclamation endorsing the 2006 Luminaria Project led by Scout Troop # 205.

PRESENTATION

Keith Joyce, Joyce and Company, CPA: Town of Apex Annual Financial Report for Fiscal Year Ended June 30, 2006. Town received a "Clean" audit and Certificate of Achievement of Excellence in Financial Reporting from the Government Association for 13 consecutive years. Audit Highlights and Management Letter are attached: study and evaluation disclosed several variances between amounts in stock of specific items and inventory quantities per the Town's inventory system. Recommendation: Town should increase frequency of test counts of actual quantities in stock and continue to investigate future variances in quantities. Joyce answered related questions regarding inventory and electric fund.

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 with no amendments to be made, called for a motion for approval. Action: Motion by Council Member Jones and second by Council Member Gossage to approve the consent agenda. Motion carried unanimously.

1. Minutes of November 7, 2006 Council meeting.
2. Minutes of November 7, 2006 Council's Closed Session (recorded separately).
3. Minutes and General Account of November 14, 2006 Council Worksession.
4. Annexation Petition #404, Gregory Keith Roberts and Rebecca C. Roberts, owners/petitioners, petitioning to annex 5.603 acres and includes 1.996 acres of public right of way into the Town's corporate limits, and located at 6821 Old Jenks Road on the east side of NC55; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for December 19, 2006.
5. Annexation Petition #405, Beth H. & Michael J. Holland, owners/petitioners, petitioning to annex 4.7796 acres including 1.0493 acres of right of way into the Town's corporate limits, and located at 1716 W. Williams Street (NC 55); 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for December 19, 2006.

Consent Agenda continued on page 2

Consent Agenda continued

6. Annexation Petition #406, Thomas W. Ruchdeschel, owner/petitioner, petitioning to annex 3.022 acres into the Town's corporate limits, and located at (SR1160) 1509 Olive Chapel Road; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for December 19, 2006.
7. Sewer line routing in the White Oak Basin.
8. Contract with Progressive Contracting for Performing and Cultural Arts Center at a negotiated low bid and total contract price of $1,985.332.00.
9. Amendment No. 1 to the Progress Energy/Harris Plant Fire Protection Contract No. 52048.
10. Construction contract for Apex Peakway Project: Olive Chapel Road to S. Salem Street.
11. Wake County Tax Report for Town of Apex.
12. Personnel Committee recommendation regarding Committee meeting held November 17, 2006.

End of Consent Agenda

REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 01 – Rezone #05CU20 (WITHDRAWN)

Review: Town Council considered this rezone October 17, 2006 and voted to hold a special meeting (Worksession) Tuesday, November 14, 2006, 7:00 p.m. to discuss Trackside (North) and Trackside South; due to the timing of this special meeting, this public hearing for Trackside South was continued to November 21, 2006 Town Council meeting; November 14, 2006 developer officially withdrew their rezone request for Trackside South.

Public hearing and possible motion regarding Conditional Use Rezone #05CU20, East West Partners Management co., Inc. petitioners, seeking to rezone from Residential Agricultural to Planned Unit Development-Conditional Use District, property located with Apex Peakway on the north, Hunter Street on the south, Laura Duncan Road on the east and CSX rail right of way to the west, containing 50.44 acres.

Dianne Khin, Assistant Planning Director reported this rezone request was withdrawn and no action was necessary by Council.

End of Public hearing # 1

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 02 – Rezone #06CU10

Review: Town Council considered this rezone September 19 and October 3, 2006; October 17, 2006 Council voted to hold a special meeting (Worksession) Tuesday, November 14, 2006, 7:00 p.m. to discuss Trackside (North) and Trackside South; due to the timing of this special meeting, this public hearing for Trackside North was continued to November 21, 2006 Town Council meeting; November 14, 2006 Council ask petitioner to make changes to the plan; staff will report recommendation to Council at this public hearing.

Public hearing and possible motion regarding Conditional Use Rezone #06CU10, Apex First Development, LLC and Douglas W. Duncan, Trustees petitioners, seeking to rezone from Light Industrial and Residential Agricultural to Planned Unit Development-Conditional Use District, property located at US64 on the north, Hunter street on the south, and CSX rail right of way to the east and west, and containing 119.2 acres.

Public hearing # 02 continued

Dianne Khin, Assistant Planning Director gave sworn testimony regarding this conditional use rezone #06CU10 Trackside North. A letter from BBM & Associates asks this hearing be continued to December 5, 2006 due to unresolved design issues and withdrawal of Trackside South.

Mayor Weatherly opened the public hearing to allow those who had come to address this rezone to speak; Attorney Fordham advised the hearing could be opened and continued to a date certain.

Alan Manase, BBM & Associates was sworn in by the Clerk, however did not speak to the rezone.

Penny Smelter, 1107 Fallen Oak Drive, Brookfield Subdivision, gave sworn testimony, urging Council to deny the rezone in its present form preventing 850 residences due to increased traffic, no access on US64, children crossing US64, effects on existing services (electric, garbage); called attention to the reverse 911 system notifications regarding the EQ event; calling for adequate storm drains and protection to the creek from run-off; overcrowded schools: asked route high school students would take to school; crossing tracks, using yards and she doesn't want kids crossing her yard; kids hide in the woods, scale fences, etc. She was not opposed to the development, however thinks 850 residences on 199 acres is too dense and creates an urban feel; she will hold Council accountable for the decision made.

Mayor Weatherly called for a motion to continue this hearing as requested to December 5, 2006.
Action: Motion by Council Member Gossage and second by Council Member Schulze to continue this hearing to December 5, 2006. Motion carried unanimously.

Public hearing # 02 continued to December 5, 2006

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 03 – WakeMed Apex Healthplex, Phase 1

Review: Planning Board at their November 13, 2006 meeting unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding a major site plan for WakeMed Apex HealthPlex, Phase 1. WakeMed Health & Hospitals petitioner, seeking a major site plan approval which includes a three-story, 86,817 square foot building, associated parking, two retention ponds, the paving of Zeno Road, and the construction of a public street on the west side of the property located at Hwy 55 and the Apex Peakway.

Dianne Khin, Assistant Planning Director presented the site plan for WakeMed Apex HealthPlex, Phase 1 (staff report is attached and incorporated as a part of the official minutes). November 13, 2006 Planning Board unanimously recommended approval of the site plan for a modern facility to be located on 16 acres on NC55 at Apex Peakway; elevation drawings were shown, adjacent zoning and land uses were stated. Required buffers and buffer plan meets all landscape requirements; WakeMed plans a garden at their main entrance; project will not disturb the buffer along NC55; pending Town of Apex NC55 road widening project will take out a portion of this buffer, including both large pines and large hardwoods. Staff will work with Engineering Department to find ways to save as many trees as possible by pulling sidewalk closer to NC55. Buffer will be significantly impacted by the town project; no additional plantings are shown on the WakeMed plan; no funding was included in the NC55 widening plans to replace buffer vegetation that would be removed. Plan is consistent with the Town's UDO, 2025 Land Use Plan, and Thoroughfare Plan.

Council Member Jones asked to be recused from participation and voting due to a conflict of interest.
Action: Motion by Council Member Gossage and second by Council Member Schulze to honor the request. Motion carried unanimously.

Public hearing # 03 continued

Mayor Weatherly opened the public hearing 7:25

Alan Manase, BBM & Associates stated street access will be provided off NC55 with the construction of a new public street, directly off Zeno Road, and off the new public street; no access to the Apex Peakway is proposed; will widen the portion of Zeno Road for this site; noted the necessary ambulance drive to the building. Phase 2 will be for a future project. Retention pond serves Lowes Home Improvements and built for a ten year storm event meeting the Town UDO requirements; there will be a new pond to the north and well landscaped (Council Member Jensen addressed the pond, encouraging greater build out for a larger storm event). They are committed to grant easements for NC55 and to maintain the trees.

Doug Hall, BBH Design, addressed the maintenance package noting existing wetlands, and buffers; the building is modern architecture (elevation drawings were shown) ambulance service entry is on the backside, noted main entry into the building, and the public street to the south. There will be a full service entrance with center turn lane.

Council began their question and answer session. Buffer on NC55 will not be disturbed; town widening project includes sidewalk to be moved closer to the curb, with grade into buffers to lessen the impact; staff is working with engineering to save l/3 to l/2 the buffer; required 30' width with some tree removal for road widening; staff did not recommend any addition additional plantings as the town will be removing the trees; no additional money was budgeted for re-vegetation of the trees removed; any additional plantings would have to be placed on the WakeMed site. Attorney Fordham advised if additional plantings were to be placed on site there would be need for the owner's permission, without an easement. Manager Radford noted access at NC55 at Haddon Hall was a full right in with no deceleration lane off NC55 (Council Member Schulze was concerned with traffic stacking at this area, wanting traffic to move). Manase noted the Transportation Impact Analysis did not warrant this and there would be two wide through lanes.

Mayor Weatherly closed the public hearing at 7:40 p.m. and called for a motion.

Action: Motion by Council Member Schulze and second by Council member Jensen to approve the site plan. Motion carried unanimously with Council Member Jones having been recused.

End of Public hearing # 03

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 04 – Salem Street Arboretum

Review: Planning Board at their November 13, 2006 meeting unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding major site plan – amendment to Phasing Plan for Salem Street Arboretum. Sam Ashford, petitioner, seeking amendment to a site plan to do road improvements to North Salem Street as part of Phase 2 rather than Phase 1; located north of Hwy 64 and south of Salem Woods Subdivision.

Dianne Khin, Assistant Planning Director, presented the staff report regarding request to amend the site plan for the proposed office park located at 1930 North Salem Street as stated above (staff report is attached and incorporated as a part of the official minutes). Planning Board at their November 13, 2006 meeting unanimously recommended approval of the major amendment to the site plan. Staff recommends approval of the major site plan amendment to the phasing plan. Original site plan was approved June 21, 2005; major site plan was approved July 20, 2006 to increase square footage of office space. During this time, "Schedule of Installation" section of the UDO was amended stating road improvements must be completed prior to the first CO in the development, except in cases where Town council approves phasing plan. During July 2006 approval, applicant was not aware of this change and did not know they needed to request a different phasing plan from the Town Council. Applicant now requests road improvements to North Salem Street be done as part of Phase 2 rather than Phase 1.

Mayor Weatherly opened the public hearing:

Sean Dolle, Jones, Cnossen, and Dolle Engineering, 106 W. Chatham Street addressed the reasons for delay, due to utility relocations with Bell South, and PSNC delaying road construction and on-site paving improvements; relocations have been done; he anticipates the work will be complete by mid-December. Occupants are ready to occupy the first building; there will be no large volumes of traffic generated. Request road improvements Salem Street widening and on-site paving be amended to Phase 2.

Council Member Sutton confirmed road improvements were to be completed before a CO to keep construction traffic off main road; Khin stated this to be true, however, advised they are working on the road improvements now. Dolle noted applicant was not aware of the ordinance change when it came into play. Khin could not find mention of this back in February to the applicant. Dole noted relocations had set them back six weeks however widening would be done before Christmas. It was noted the first building is to be used for office space.

Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve the request for phasing plan amendment as requested. Motion carried unanimously.

End of Public hearing # 04

Presenter: Brendie VegaMkhwanazi, Planner

Public Hearing # 05– Orchard Villas

Review: Planning Board at their November 13, 2006 meeting unanimously recommended approval; staff recommends approval with conditions; Public Works Director does not support the proposed Gate House at the west entrance.

Public hearing and possible motion regarding major site plan for Orchard Villas at Peachtree, Bass, Nixon, & Kennedy, Inc., petitioner, seeking major site plan approval which includes 86 condominium units, a clubhouse, and recreation area and located south of Hwy 64 and north of Haddon Hall Subdivision.

Brendie VegaMkhwanazi, Planner, presented the site plan for Orchard Villas (staff report is attached and incorporated as a part of the minutes). Planning Board on November 13, 2006 unanimously recommended approval of the Peachtree Traditional Neighborhood District Plan (mixed use commercial, office, and high density residential). Adjacent zoning and land uses were noted. Plan for eastern portion of the property includes 86 one-story/2 car garage condominiums, clubhouse, pool, and recreation; cornerstone Homes is marketing towards senior citizens. Landscape and buffers are consistent with Peachtree TND Plan. Resource Conservation Area includes existing pond and buffers consistent with the UDO, and maintained by the Homeowner's Association. Parks and Recreation Advisory Commission recommended a fee-in-lieu based on density estimates. US64 access is proposed right in/right out, with right turn deceleration lane, and left over access to Castlewood Subdivision; site includes a stub street to the east as required in Peachtree TND Plan. Plan is consistent with 2025 LUP, Transportation Plan and UDO. Staff recommends approval with conditions: 1 – 6 located on page 4 and 5 of the staff report regarding arborist certification letters, and construction traffic entering/exiting on Hwy 64, barricade located at Blackburn Road stub at Haddon Hall and removed with first Certificate of Occupancy and a "No construction traffic" sign located at Blackburn Road internal to the site. Public Works Director does not support proposed unmanned Gate House in right of way at the west entrance.

Public hearing # 05 continued

Council Member Jensen addressed the right and turn and deceleration lane; park for proposed Peachtree Plan and concern for kids playing in Haddon Hall and this not being a part of the southwest park (park developed on other side has separate land ownership; wanted a grass playing field). Council Member Jones addressed construction traffic, timing/issuance of first Certificate of Occupancy. Council Member Sutton confirmed the stub road would eventually extend to Salem Street (correct).

Mayor Weatherly opened the public hearing at 8:00 p.m. Attorney Clyde Holt, Smith, Moore Law Firm, Raleigh, stated staff comments were "marketing for seniors", preferring "active adult community". Condominiums are marketed for adults 55 and older who maybe have downsized or followed children from another state; private streets were switched to public streets; one entry was proposed, but now provides stub street to the east over to Salem Street; creation of a neighborhood look for visual identity includes brick stamped pavers to the east and entrance from the west, leaving main entrance as thoroughfare and entry into the development with proposed gate house; an encroachment agreement would address liability issues and gatehouse could be removed if unforeseen issues arise that are not appropriate; feels gatehouse is important to the development concept and asked Council to allow it; noted Planning Board was unanimous that the gatehouse was appropriate and would be protected by the encroachment agreement. Will work with staff on color schemes; plan meets all requirements and urges Council for approval. One issue: water bills will be paid by the homeowners association - town code requires separate meters for condominiums, however allows master meters for apartments - this creates unnecessary work and expenses; adult community consumption is about 30/40% - not big water users; will submit a proposed code change to staff for one meter per building vs. one meter per dwelling to be considered.

Harry Mitchell, Bass, Nixon and Kennedy, Wake Forest, addressed storm water drainage: applicant has designed retention pond and bio-retention pond for post-development and pre-development run-off stage for a 100 year storm vs. 10 year storm to minimize, and recognizes already there are drain issues onto Haddon Hall, and proposes there will be no additional drainage on Haddon Hall residents. (Council Member Jensen greatly appreciated this control design).

Council Member Jones addressed the condition for restriction of construction traffic entering and exiting off US64, and traffic in/out of Haddon Hall and barricade to be placed at Blackburn stub at Haddon Hall to be removed when first Certificate of Occupancy is issued. Staff explained the reasoning behind this condition, and confirmed US64 has a 9 foot shoulder and temporary stripe will be taken off, and "No Construction Traffic" sign will be located at Blackburn Road internal to the site. Discussion occurred regarding removal of the temporary signage at build-out 50%, and noted there was a phasing plan for build out; the 50% was not a condition of the site plan; applicant will work with staff regarding this concern.

Mayor Weatherly asked Director of Public Works Tim Donnelly to address gatehouse concerns. Donnelly does not support proposed Gate House at west entrance because placing it in right of way is not best served; setting precedent and potential liability issue that could create problems. Attorney Holt noted encroachment agreements are used elsewhere and could include provision where a cash bond could be offer, and if Council should decide gatehouse should be removed. Manager Radford added gatehouse gives impression of a private community; if allowed others would request same, and placing it in right of way would open flood gates.

Mayor Weatherly closed the public hearing at 8:20 p.m. and called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve the major site plan to include the gatehouse, that applicant provide a cash bond to remove the gatehouse if it should become necessary, and the six recommended conditions proposed by staff included in the staff report. Mayor Weatherly understood concerns regarding gatehouse, streets, access, all being legitimate reasons. Council Member Jones understood access and safety, if it could be worked out. After a discussion regarding an encroachment agreement to address concerns noted, Attorney Fordham advised if Council agreed an encroachment agreement can be drafted to accomplish these things. With no further discussion, the motion carried unanimously.

End of Public hearing # 05

Public hearing # 06 continued

Presenter: David Rowland, Director of Planning

Public Hearing # 06– Apex Hazard Mitigation Plan Annual Report

Planning Board at their November 13, 2006 recommended approval of the report.

Public hearing and possible motion to approve the Town of Apex Hazard Mitigation Plan Annual Report.

David Rowland, Director of Planning, stated the Hazard Mitigation Plan was approved in 2004 and by FEMA; requires an annual report outlining progress on mitigation action implementation. Updates include: Hurricane Preparedness Event, Update of the Neuse and Cape Fear FEMA maps, and updates provided to Hazard Mitigation members. Planning Board at their November 13, 2006 meeting recommends approval of the plan annual report. Staff recommends approval (staff report is attached an incorporated as a part of the minutes).

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: Kent Jackson, Construction Management

New Business # 01– Ordinance Amendment: Chapter 20 Town Code

Review: Engineering recommends amending Chapter 20 of the Code following a recommendation by Police Department.

Kent Jackson, Director of Construction Management presented a proposal for an Ordinance to amend Chapter 20 of the Town Code to include a section establishing and regulating one-way streets and conversion of Commerce Street to one-way from Saunders Street toward West Chatham Street. An aerial photo of Commerce Street was shown: Saunders Street to West Chatham Street. High numbers of children attend the ballet school and use this street; safety concerns were addressed; the street is narrow and obstructions make it in adequate for two-way traffic; staff feels it would be best served to regulate traffic one way from Saunders Street to Chatham Street. Street provides a service alley to the businesses in this one block section of downtown. Parking regulations and patters may be addressed along this street. Police Chief Jack Lewis addressed complaints regarding two-way traffic and parking obstructions observed along this street, recommending best served by one-way traffic avoiding head-on, blocking, and when there are events on Salem Street, this would allow Police access. He visited the businesses along Commerce Street and there were no objections and most welcomes one-way from Saunders to West Chatham Street. Transportation Engineer Dalton agrees with the proposed.

Council Member Gossage doesn't disagree, however, thought one-way from West Chatham Street to Saunders Street for better traffic flow for those headed south, could wrap around on Commerce and to the new parking lot; thinks parking and signs would help; has spoken to his wife and Bonnie Fischer downtown. Council Member Jones thinks the change would discourage public use of the street. Council Member Jensen thinks the flow would best be from West Chatham to Saunders Street.

Chief spoke with Fischer and noted it was easier for her with concern will loose two private parking spaces; she is ok with this proposal; as is, it promotes parking against the buildings. Council Member Gossage will keep an eye on traffic backing on Salem, as the Arts Center is complete. Chief noted two ways to move traffic south from the Arts Center.

Action: Motion by Council Member Sutton and second by Council Member Jones to approve the proposal to amend the Ordinance and establishing and regulating one-way traffic on Commerce Street from Saunders Street toward West Chatham Street. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session 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, there was a motion by Council Member Schulze and second by Council Member Jones to adjourn at 8:45 p.m. Motion carried.

The above minutes were approved on the 5th day of December 2006.

Georgia A. Evangelista, MMC
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes of Tuesday, December 05, 2006 held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order, and gave the Invocation.
Presentation of Colors and Pledge of Allegiance was led by Scouts Pack #216.
Mayor Weatherly extended a welcome to those in attendance.

PRESENTATION

Presentation No. 1: Historic Landmark Designation Public Hearing

Gary Roth, Wake County Historic Preservation Commission recommended the designation of "The Apex Dome" Building, 105 W. Williams Street (NC55) as an Apex Historic Landmark, and presented the designation for public hearing, and recommended adoption of associated Ordinance. The Geodesic Dome noted Architectural significance: Buckminster Fuller's "world architecture." Designer Architect: Dale Blosser, a colleague of Fullers at the University. Historic Significance: known as "Peasedome" built from a kit shipped from Ohio, and the only one in Wake County and the only dome of its kind represents a shift in culture from a railroad environment to a highway environment; built around 1960 and owned by Louis Smith, and used as operation for a fruit stand. Location map shows the landmark and the boundary, with Roth noting only 1.2 acres on the south side of the road is being designated with the remaining portion across NC55 not being designated. Photos were shown of the elevations from all angles the plywood roof would have had a coating, however would not hold up to weather, and has the tin shingles respecting local character, and interior roof detail. Wake County Historic Preservation recommended the designation having met on November 14, 2006. Capital Area Preservation also recommends the designation.

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

Rebecca Osborne, Capital Area Preservation, is author of the application and report for the Apex "Dome", noting it exceptional unique architecture being one of the few examples in North Carolina and important to preserve this character.
Council Member Sutton asked if NC55 were to be widened would this building be moved, asking if a historic building could be moved. Osborne responded it's tricky but happens and recognize NC55 is busy; there would be right-of-way issues. Roth noted the other side is not being designated and would offer allowance if need arouse to widen NC55; he thinks there would be enough room to do what has to be done. Roth also noted issues with the railroad and might not widen NC55.

Mike Vala, Crown Builders and Developers, is the current owner and stated intent to work closely with a local architect to take the "Dome" back to its original state as much as possible, trying to save the pieces. Vala is a structural engineer who appreciated the character of this building, and purchased it for more than the asking price. David Rowland Director of Planning gave him the information for the Preservation society. Vala plans to use the 600 square foot "Dome" as his Apex office. Gary Roth noted the building nonagon shape (a plane figure having nine angles and nine sides) and stated Vala was committed to restoration of the "Dome" using materials that exist as much as possible and as a designated landmark will be done under the supervision of the Wake County Preservation Commission.

Mayor Weatherly closed the public hearing at 7:25 p.m. and asked Council for a motion to approve the designation by adoption of the associated ordinance.
Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the designation of the "Dome" as a historic landmark and adopt the associated ordinance. Motion carried unanimously. Ordinance # 06-1205-16.

End of Presentation # 01and Historic Landmark Public Hearing

Presentations continued

Presentation No. 2: Economic Development Report

Bonnie Fischer, President, Apex Chamber of Commerce presented an overview of the Economic Development Report during the months of July 2006 through December 2006. The Chamber appreciates the Town's support. The Report is attached.

End of Presentation # 2

Presentation/Discussion No. 3: Peakway Project

Manager Bruce Radford updated Council on the Peakway through projects known as Trackside; there had been a constant state of flux regarding Trackside projects. He met with Mike Howington, one of the owners of Trackside North who has had continued interest in all portions of Trackside. Howington has requested he be allowed to consider and the town consider the closing of Moore Street, and has agreed to build the Peakway through the Trackside.

Ability to access the site from the western side, planned as an at-grade crossing of Salem Street to use the right-of-way dedication anticipated to be received free from Guy C. Lee to a point prior to where we would be required to begin to go elevated to a point we made the grade crossing on high speed rail stop prior to going up into the air, and allow Howington to build a road that would access his property to the north that would enable him to have a right-in and right-out off of US64 and a full access movement on Salem Street.

Howington asked Manager Radford to ask Council if they would be in favor of doing this and requesting CSX allow us to build that intersection without having to build the bridge at this time; there would only be one-half the western hemisphere of the Trackside portion that would be accessible until there were development on the south side.

An attached letter from Howington asks continuation of his scheduled public hearing to January 2, 2007, a 30 day delay. Manager Radford asked Council's concerns/feelings about this request and what Council would like the Manager to do; staff and Howington's engineers are not clear what is going to be done, anticipates concerns with access. Manager Radford was asked questions and asked clarification, and responded accordingly: requested street would be in the same location in alignment with the portion of the project which connects Salem Street from NC55 through Haddon Hall; would commit to making high speed line grade separated when the road was built meaning the bridge portion of the road; the road would be stubbed out.

Council Member Schulze clarified the bridge would be built up to a point, and asked the point in time that it would be complete and what would trigger the completion of the road meaning the bridge. Manager Radford responded that one would be development of Trackside South, and two, commitment on the part of the town that we believed it was time to build the Peakway regardless of coming development. Council Member Schulze clarified there would be no commitment on the town's part. Manager Radford responded if and when kind of situation.

Council Member Jensen noted the Peakway was on the Duncan property and how we would handle the acquisition of these properties; Manager Radford responded all right of way is on property not owned by Howington and reason for the request to delay the hearing as Howington would like opportunity to work out these issues by either acquiring a piece of the property or getting a dedication from the owners. Manager Radford was comfortable with the Guy C. Lee contribution.

Council Member Sutton confirmed Howington has offered to build this section of the road and dedicate the right of way; Manager Radford responded they have not discussed that; that would be a commitment council would ask him to make at a later date or even maybe he needs to hear that be part of the deal to build the intersection, cross bucks, the signalization, and the rubber/concrete crossing whichever chosen and the signalization at Salem Street if Council would like.

Presentation # 3 continued

Mayor Weatherly stated we would not know the attitude of the railroad until we have a specific request on the table or could be sometime before we know that. He asked Manager Radford having dealt with the railroad if he were optimistic the request would be granted. Manager Radford responded he was not sure, but sure that it cannot happen in 30 days; he's never known the railroad to operate or even that they received the letter in 30 days much less take opportunity to respond. Mayor Weatherly stated this is a good point, and asked if he had discussions with the developer about what would happen if we don't get an answer and obviously the access issues would still be outstanding until we do; are they willing to keep the project off the table until we get an answer. Manager Radford responded no, his belief is Howington, even this evening has mentioned his willingness and need to go ahead and develop the property to what it's current zoning is which is Light Industrial.

Council Member Jones stated a couple of months ago voted, thinking it's the right thing to do, to build that section of the Peakway, knowing this was coming to the table; they thought it was the right thing to do regardless of Trackside and given dealing with CSX is going to be time consuming, had agreed to their terms, knowing what they would be, closing Moore Street was part of the deal; he said they go ahead and start that conversation with them regardless of the timing of this; if building that section of the Peakway is what we want to do, we are going to have to make a deal with them sooner or later so why not go ahead and start the conversation with CSX... Mayor Weatherly interjected without the bridge... with Council Member Jones saying yes, you don't have to tell them time certain; you have to initiate the conversation. Based on past experience, it's going to take a while.

Manager Radford reported the latest correspondence with CSX was immediately after the meeting in which it was discussed that and told them at that time, that it was our intent to build the Peakway through the project, do it grade separated across the high speed line, to build an at-grade crossing at Salem in exchange for the closing of Moore Street and the three (3) private crossings. They would have to think if it were premature to go back and tell them we want to do the at-grade crossing and willing to close Moore and the three (3) private ones and commit to you that if and when we build the Peakway, we would do it grade separated on the high speed line, and happy to write this letter, if this is what they would like.

Council Member Jones added lots of things are done in phases and perhaps the first phase if it, if that's what they chose to do. Manager Radford added and it was done also on the bases of a performa that showed an immediate return on our money and obviously as a result of Trackside South not being there, that's why we are in this condition know; on top of the $3.5 million we intended to spend, we now have the opportunity to spend more than $1 million for 6.3 acres of right-of-way.

Mayor Weatherly asked the Manager the status of this, knowing the Council took action to commit to build a bridge, and asking if we need to do anything to formally speak to this issue tonight, or let that lay dormant, or if he were under some mandate to proceed with predevelopment on that based on our previous action. Manager Radford responded no, he thinks he's in a position to be able to write CSX and ask them to phase it just as Council Member Jones may have suggested; that we do it in a phased approach and does not have any problem doing that; we know it will take longer than 30 days to get their response and then it would be up to Council as to how they want to proceed with that information; he would not have any answer for them in 30 days. Mayor Weatherly confirmed there would not concur any expenses to prepare for building the bridge; we do not have to take action in regards to the bridge construction even though we may be making a decision to delay it, and we do not have to formalize this in any way, with Manager Radford responding that is right, correct.

Attorney Fordham suggested with the same formality they stated the intent to do that, if they are deciding to delay that or to phase it, with the same level of formality he would suggest they restate their intent; it's not really a commitment that was made earlier, but a statement of intent. Manager Radford added they would not necessarily have to do that tonight, but to do it soon. Attorney Fordham responded, right, if they determined they were going to change direction a bit, spread it out or phase it, he would suggest they make that statement formally as soon as they make that decision.

Presentation # 3 continued

Council Member Sutton addressed Attorney Fordham stating these folks want to go ahead with the rezone for the PUD but need the Salem Street access to make it viable, asking if this were correct. Manager Radford addressed this, stating we haven't heard that yet, but think for it to be enticed with the transportation would be to have dual access. Member Sutton continued the Planning Board did not recommend it based on a right-in and right-out; this would change that. He asked if they could or could not rezone contingent upon getting the crossing and contingent upon this going through. Attorney Fordham responded if they don't have right of way or firm situation where you have access it would not be a good idea to rezone contingent upon something that might not happen.

Council Member Schulze asked the Manager the impact of this decision on the purchase of the Duncan property which they would need for the right of way; should that be a factor in this decision. Manager Radford referred back to the workshop, Howington had explained that he wanted to try and get the Trackside South portion under contract, and opportunity to continue the deal that was discussed which was two month ago required that he seek funding from the right of way from the various owners and he did that and was the thing that had sealed their concerns that night helping make their commitment based on the fact they were receiving right of way for nothing and the payment of transportation impact fees; those were the two issues involved. That obligation has now gone away from East/West Partners and the reason he brings it back, because now there is no free right of way through Trackside South. Member Schulze asked if we purchase it, would we get reimbursed at some point in time when Trackside South decided to develop, with Manager Radford responding only through future impact fees.

Manager Radford stated Mr. Howington would like 30 days to get this south portion under some contract or at least have the opportunity to; if he's able to do this, it's his intent to contribute right of way at no cost to the town.

Alan Manase, BBM, asked if he could address Council on this. Mayor Weatherly allowed him to do so. Manase clarified the piece of the Duncan property that would be necessary to access to the west, Apex First Development is willing to negotiate with Duncan to purchase that and dedicate it if the town needed to proceed with condemnation on that; willing to reimburse the town for that. Manager Radford asked this piece or the 26 acres, with Manase responding they were talking about enough to get the intersection to get us over to… the intersection itself of their entrance road and the Peakway would be on that tract; they would negotiate to purchase that or reimburse the town for any condemnation of that; you are looking at Guy C. Lee which they feel good about; the at-grade crossing of the tracks and then there's the piece between the tracks and Salem that would have to have that right-of-way obtained somehow also.

Manase stated he has not seen an agreement between the town and CSX, asking if there is anything in it that does prevent from phasing it, asking if they delay the bridge and the eastern portion of that tract, do they have to go back to CSX and tell them that; we are still giving them everything they are asking for eventually. Manager Radford asked Kent Jackson, Director of Construction Management if he remembered the phrasing of the letter. Jackson responded the only thing we have as far is a letter, with no details about the timing. Manase asked then what are we asking, we are in the same spirit of that agreement if it were delayed, built this year, or five years from now, if they are going to give the at-grade crossing to get them to Salem Street and close the three private and Moore Street, if they do this, then everything they ask for has been done and are committed to building a grade-separated crossing for the eastern track.

Council Member Jensen felt he was right, they should not ask them, we say per our letter, this is how we are going to do it, rather than say can we, say we are carrying on from that letter, so they don't have a yes or no answer, we are going on.

Council Member Sutton confirmed it was going to take 30 days for him to go back to CSX and obtain one, with Manager Radford stating under the previous scenario would be asking permission or at least acknowledgement of the phasing approach. Council Member Jones added to actually do the at-grade crossing; we have a letter, we do not have an agreement.

Presentation # 3 continued

Council Member Sutton confirmed we could do nothing until the Town has an agreement. Manase responded they need that point of access and doesn't think Council would approve it without this, they need that, but doesn't think what they are talking about violates any agreement already in place with CSX, but he's not the town attorney and hasn't see the letter either. Mayor Weatherly stated they wouldn't approve the project without it. Council Member Jensen asked if they could generate an agreement based on that letter and define it as we wish and see what they say. Manager Radford told him he could tell them, they generate their own agreements; they appreciate the advice and happy to read the letter; they have boiler-plate agreements for various kinds of things that the town has had difficulty changing in the past. Manase asked what interest they would have in forcing the bridge to be built now rather than later.

Mayor Weatherly asked if anyone wanted to entertain a motion for the Town Manager to proceed with this suggestion.

Action: Motion by Council Member Jones that we proceed with discussions with ....

Council Member Sutton interjecting, asking they are going to develop 93.25 acres not anything to the south, with Manase responding that's Trackside North and correct they have revised that, it's not public hearing on this, but have revised their rezone request. Mayor Weatherly stated it should be stated that should CSX approve our request that is not adamant in approving the development we are discussing; that should be made loud and clear to everybody; that's two separate issues. Council Member Sutton suggested he take this back to the Planning Board this month because this is a significant change not doing the south, and not doing the commercial to the south, this will be strictly residential on the north, he thinks with the revised plan; it's a major change since it went to the Planning Board. Manase stated there would be a small portion that could have mixed use; there has been 26 acres dropped from the proposal, yes; Council Member Jones added having the Peakway is a major change also; the potential they hadn't voted to do that. Manase stated they did not have the Peakway then and now have it, and now seems to be slipping away again. Council Member Sutton thinks it would help the project. The suggestion to go back to the Planning Board would not work this month, with David Rowland Director of Planning stating they would have to wait for the January agenda. Manase stated they are way behind schedule already; a commitment from Council to get them to Salem Street would help them with the Planning Board also, because that was an issue at the time; he doesn't know which needs to come first.

Action: Motion by Council Member Jones to authorize the Town Manager to initiate discussions with CSX to get us to a deal with the at-grade crossing; we are going to do that sooner or later anyway; as the Mayor said that is not adamant to saying we are approving the rezoning, but we voted to do this section of the Peakway and have to do it sooner or later, why wait. He elaborated to say: this motion is just to initiate discussions with CSX to get approval for the at-grade crossing.

Manase stated he was unclear; some weeks ago they met and Council did state their intent to build the Peakway through there and we understood we had reached a deal with CSX and now we are talking about another delay to negotiate with CSX again; he's not sure he sees what's changed and why they are going to be further delayed; if they were to the point they could vote on our zoning a few weeks ago, and this issue of the Peakway was put to rest, asked has something changed – he knows Trackside South pulled out, and commitment to building the whole thing may have changed, but a commitment to build just this portion is what they are after now and why are we going to go back to CSX – does anyone know if we need to go back to CSX or is the agreement reached prior would still apply. Manager Radford responded from his perspective, he thinks the business end of this deal doesn't work if it's just part of a road. Manase responded that was a different discussion than the CSX question.

Presentation # 3 continued

Council Member Gossage asked the most current thing we have from CSX, with Manager Radford responding a letter that says they will begin working with us to review plans for the project that we have proposed, that was to close Moore, close the private ones in order to give us the Peakway project with a grade-separated crossing of the high speed line, asking Director of Construction Management Jackson if that was accurate. Jackson responded the first agreement with their engineering consultant to review plans, with Mayor Weatherly saying that was they agreed just to review, with Manager Radford confirming that was right.

Council Member Sutton addressed Manase, stating he also thinks also a change is that they had planned on the right of way coming from them and East/West Partners and they had their portion under contract with Duncans and he had the southern portion under contract with the Duncans, now he thinks Manase told him now that the 93 acres does not include the Duncan property, asking if that was correct. Manase responded that is correct, he completely understands that the equation has changed from what was presented a few weeks ago when Council announced their intent to build the Peakway; he's questioning now why are we going to delay to negotiate further with CSX, asking what had changed on that front; obviously you "council" still has a decision to make about whether you are wiling to build the Peakway to Salem Street to facilitate Trackside North, but asked why are they going to further delay to negotiate with CSX when a few weeks ago thought they had that and could have voted, would their zoning then if passed a few weeks ago, would their zoning have been binding, or were they at risk at that point.

Council Member Gossage stated that's hypothetical, but it seems like maybe the conversation was premature as we don't have something from CSX that maybe we need. Council Member Jensen agreed, that we need to get going with CSX and maybe should have been, with Council Member Gossage thinking we were further along with CSX than we seem to be; he was seeing a lot of nodding heads here. Manase was under the impression that there was a deal with CSX and does not see what has changed with the deal, now obviously there is a different decision to be made as to whether or not they want to build just a portion of that.

Mayor Weatherly asked Manager Radford if that would provide any impetus for an earlier decision, if we "Council" restructured their request or proposal in that way, would it provide an avenue for them to get an answer about timing out of them. Manager Radford responded he thinks they could operate from the Letter that we have by saying we are ready to move into planning design phase, if that's the case, and give them a plan and design that calls for a phased approach. Mayor Weatherly stated we can't deal with a never ending timeline on this; we need to have a response before we can proceed with anything on the north side.

Council Member Gossage asked who actually signs off or gives the green light to close Moore Street and the three private crossings and cross the tracks with the Peakway, asking if it were NCDOT, Rail Division, or CSX. Manager Radford responded its CSX final responsibility; you make a motion to do that and then CSX agrees or grants the request with NCDOT's concurrence. Jackson thought he could clarify as far as the commitment or information we have had from CSX; before the last discussion when they talked about the big project, $3.5 million, their suggestion was based on the public projects manager, engineer for CSX was in Raleigh meeting with the NC Rail Division the week before that council meeting and they asked our contact at the Rail Division to once again ask the question about this concept of closing the three private crossings, closing Moore Street, in exchange for building the two crossings one being the bridge, and the verbal response to that from CSX representative was favorable, so they felt they had not changed their position from a year ago, so it's probably safe to assume they will write us a crossing agreement on generally on those same terms. The meeting was mid/early October, just before the council meeting where they presented they $3.5 million project with the bridge. Council Member Gossage added, so we green-lighted a $3.5 million project based on a verbal from CSX. Council Member Jones added green-lighting and proceeding and authorizing staff to start work on it, with Jackson responding this was right, with Council Member Jones continuing just like any other authorization; there's always some hurdles you have to jump. Jackson, stated they had some history there over a number of years that they had discussed different concepts with them; we had the whole crossing analysis that was done in 2005, so we had had some earlier conversations with them that built their confidence but felt they had reached a point where they had potentially a real time project and wanted to clarify again with them they would, if that project became real, they would still support the concept.

Council Member Gossage thinks Manase concept is that if that was good enough for council to go forward on our "Council's" end, then why isn't it good enough to go forward on their end. Manager Radford added it was not good enough on his end anymore to spend $3.5 million if he doesn't have some payback for it; he showed a pro-forma that showed a seven to eight year pay back based on the $180+ million. Council Member Gossage stated that was the bridge and we are taking the bridge out; we are only talking about the at-grade crossing now.

Council Member Sutton asked Jackson if we need that verbal in writing from CSX now; Jackson responded we would need it before we can physically construct the crossing, yes, a written crossing agreement. Council Member Jensen thinks we should ask for it right away. Mayor Weatherly added presuming we were not going to approve the project of that magnitude with only one access point; he's making that assumption, that's the answer without the crossing, without the access point there is no project.

Manase added they need to get to Salem Street and why they are asking; no doubt they need it. He's not sure what has changed – there's two separate issues – 1) CSX Agreement and 2) What Council is willing to spend to facilitate just Trackside North; obviously the equation changed from what was presented in October and they understand that, but are only asking to get the cheap side, not the bridge.

Mayor Weatherly stated they were cobbling together, a response from CSX in the past, that three for one would be what they would require for an at-grade, Moore and three, with Manager Radford adding it's always been three and one. Mayor Weatherly noted these major crossings and hoping to get by with two downtown and three private to equal the three for one. Manager Radford clarified, it was just Moore and three private ones; what gave the additional leverage was that the town was committing in advance to building the bridge. Mayor Weatherly knew this, but he was saying prior to the bridge idea, it was the idea proposed to CSX with their response three to one; forget the bridge, just wanting an at-grade crossing; Chatham, Center, or Moore, two of the three plus the three – we wanted to make that into three for one; we were cobbling that together saying we build the bridge, would you take just Moore plus three; we advanced that argument to our benefit, because we still can't confront two out three downtown crossings; we advanced that beyond what CSX had formally told us, more or less formally, three for one, Moore, Chatham, Center, two of those three plus the three private crossings was what we were hoping, now, we boil that down to one of those three downtown, Moore, plus three private, plus the bridge to get the one at-grade crossing. Jackson added one for one, with Mayor Weatherly agreeing, that we advanced what they had said to us. Mayor Weatherly said this was beyond what CSX had given us the reason to believe would be acceptable.

Council Member Gossage, noted not only is it a one for one, but the traffic on Moore Street is not going to be like the traffic on the Peakway, with Mayor Weatherly adding on SR1010, or Chatham, either one. Council Member Jensen added if the Peakway was not there, there would still be traffic flow on the other streets somehow; people are going to get from point A to point B, and CSX has to know that. Mayor Weatherly stated rationale has nothing to do with CSX's decision to grant this or not, and thinks that's what's being talked about.

Manase stated what has happened between the October meeting and now is Trackside South has dropped out, and that shouldn't effect the agreement in principal that the town has with CSX; not talking about funding or payback on that building it, that's a different question, but because they dropped out, shouldn't mean that our CSX agreement has to be … we have to be delayed again for CSX.

Council Member Jones stated he was not thinking it is; he was saying lets go ahead and expedite getting the deal done, with Manase adding as long as that's not a hurdle to their zoning; they don't want to be delayed on their zoning to wait for that. Council Member Jones thought they should go ahead… with Manager Radford interjecting the conversation has come full circle, because his original discussion with council was to talk about solidifying our request to CSX to do what it is that we want to do, with Mayor Weatherly and Council Member Jones agreeing; his request to them now was to send a letter to CSX to formalize the agreement that we have dealt with whether they let us phase it or not is a new wrinkle.

Presentation # 3 continued

Council Member Jones added in his opinion that doesn't have anything to do with consideration of this be it this month or next month; it may be and he thinks in talking about contingencies, we've had the Peakway on our plan for 40 years.... He wasn't here when it was first done, on the council, but back in October we assumed we were going to get that and said we would spend $3.5 million. Council Member Jensen added that was the assumed part, is the problem. Mayor Weatherly added without the access point - that makes that project ... with Council Member Gossage interjecting that was the next item to consider. Council Member Jones stated regardless of what's happened here, he was saying lets go ahead and talk with CSX.

Council Member Sutton stated that he seconded the motion. Mayor Weatherly asked Council Member Jones to restate his motion.

Restated motion: Motion by Council Member Jones that the Town Manager be authorized and Kent, or whoever else, to begin discussions with CSX to solidify the agreement we have with them relative to this at-grade crossing. Second by Council Member Sutton. Mayor Weatherly called for discussion. Mayor Weatherly felt sure the Manager would massage the wording, but for history on the intent, he thinks the point just made that we signal to CSX that the intent is to proceed with the pre-construction, engineering, or whatever you want to call it, of the at-grade, so that will precipitate an answer sooner rather than later on that.

Council Member Jones added we may want to think about changing that to go ahead and solidify the entire agreement including the at-grade and the grade-separated crossing, with the Town Manager agreeing, as well as Council Member Gossage, with Council Member Jones adding not just focusing on that, he's not sure that's what he said, with Council Member Gossage thinking that's what he meant. Council Member Jones added we didn't want to loose that part of the deal six months, two years, or five years from now, and they say, oh no, you can't get the at-grade crossing unless you do something else, it all has to be a package deal, with Council Member Gossage saying grade separated, with Council Member Jones responding yes.

Mayor Weatherly added then the acquisition of the real estate is another issue beyond this, but once we get CSX permission to do the at-grade then we have to get the right of way to do it. Council Member Gossage stated it didn't seem to him that there needs to be with CSX any discussion of timing or phasing, or anything like that, we just need the ok from them to go ahead with our plan, that's it... if it takes us six weeks, six months or six years, doesn't matter, they've ok'd what our intentions are, and if our intentions don't change, we don't need to go back to them with any.... with Mayor Weatherly interjecting, what if they hypothetically ... it's hypothetical at this point, what if their response is what is the town's intention to finish the project as far as the fly-over is concerned, what would our response be, with Council Member Jones responding as the property develops, just like we have done in other places.

Mayor Weatherly stated the motion was to proceed with the request to CSX, asking if there were any other discussion, called for the vote. Vote on the motion was unanimous. Mayor Weatherly added anything to do to get an answer out of them, the wording on that would be good too. Council Member Jensen wanted a report at the next meeting, two weeks, to find out if anything is happening. Manager Radford stated he could make the report now.

End of Presentation # 3

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 for approval.

Action: Council Member Schulze asked to consider # 6 separately, with Council Member Jones making the second to this request. Motion carried.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the consent agenda less item # 6. Motion carried unanimously.

1) Minutes of November 21, 2006 Council meeting.
2) Minutes of November 17, 2006 Personnel Committee.
3) Annexation Petition #407, Willie Lee Harris, owners/petitioners, petitioning to annex 60.32 acres into the Town's corporate limits, and located on Blazing Trail Drive, north off Humie Olive Road (SR1142); 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Resolution to set a public hearing for December 19, 2006.
4) Ordinance regarding Rezone #06RZ18, Sovereign Grace Church, petitioner, located at Upchurch Street and W. Williams Street (Light Industrial District to Office & Institutional District).
5) Formal adoption of Resolution recommending the appointment (and removal) of the Town of Apex Staff to serve as Review Officers for the Town of Apex. Resolution # 06-1205-25.
6) Addendum to Contract between Town of Apex and Capital Area Preservation, Inc. to expand The National Register Historic Districts (considered separately).
7) Annual Certification of Firemen Roster.
8) Proposed changes to rental and use policies related to Apex Community Center, shelters, and other outdoor facilities.
9) Authorize staff to submit $273,773 grant request to Parks, Recreation Trust Fund (PARTF) for Phase 1B of Beaver Creek Greenway Project, and authorize Mayor to sign all related Documents, and to adopt attached resolution of support. Resolution # 06-1205-26.
10) Authorize staff to submit $75,000 grant request to N.C. Recreational Trails Grant program for Phase 1B of the Beaver Creek Greenway Project, and authorize Mayor to sign all related Documents, and to adopt attached resolution of support. Resolution # 06-1205-27.

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 the agenda was set.

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 01 – Rezone #06CU10

Review: Town Council considered this rezone September 19 and October 3, 2006; October 17, 2006 Council voted to hold a special meeting (Worksession) Tuesday, November 14, 2006, 7:00 p.m. to discuss Trackside (North) and Trackside South; due to the timing of this special meeting, this public hearing for Trackside North was continued to November 21, 2006 Town Council meeting; November 14, 2006 Council ask petitioner to make changes to the plan; staff reported petitioner requested public hearing be continued to December 5, 2006 with the public hearing having been opened, was continued to December 5, 2006 Council meeting.

Public hearing and possible motion regarding Conditional Use Rezone #06CU10, Apex First Development, LLC and Douglas W. Duncan, Trustees petitioners, seeking to rezone from Light Industrial and Residential Agricultural to Planned Unit Development-Conditional Use District, property located at US64 on the north, Hunter Street on the south, and CSX rail right-of-way to the east and west, and containing 119.2 acres.

Khin stated a letter was received from Alan Manase, BBM Associates representing Mike Howington and their project Trackside North to ask for continuance from tonight, and the public hearing continued to the January 2, 2007 agenda. This request is due to their unresolved design issues and that were result of the withdrawal of Trackside South rezoning request.

Action: Motion by Council Member Gossage and second by Council Member Jensen to continue the hearing… Manase wanted to address Council wanting to make it clear they have no more idea what will happen with Trackside South property than any of the Council, and is not part of what they are planning now, that they need to have decision on the north based on its merits alone, what happens in the future happens in the future. He wanted clarification from the previous discussing asking, can they, their zoning be considered with the agreement that is in place with CSX now or are there additional agreements that need to be reached before their zoning could voted on, asking are they going to be waiting on CSX for this again. Mayor Weatherly responded, no they could entertain his position to rezone it at anytime.

Attorney Fordham stated the prior question was whether you could rezone it conditionally or contingently, and he doesn't think there is any such thing; you either rezone it, or you don't; there could be a condition within the rezoning that said no site plan or subdivision plan could be submitted until access occurs, if ever, which means that the rezoning would happen, there would be a condition consented to that would restrict the submission of plans. He asked if the planning department had any objection to this. Mayor Weatherly asked why would they have to do this. Council Member Gossage stated he was saying this was an option, not advocating that. Attorney Fordham stated he was not advocating anything, but the question was, can you rezone it contingently – that's no, it's either rezoning or not; can you replace restrictions on it, not without the consent of the applicant, but the only condition you could place on it that would assure if it became critical to the council that there be some particular access before any development occurred in conjunction with rezoning, it would have to be a specific condition well defined and consented to by the applicant, that was part of the application. Mayor Weatherly thought his question was more … would we hold up his rezoning request to rezone to PUD to wait for CSX; the answer to that is no, we could entertain that request tonight, could have done it tonight, but obviously the issue of access would be left dangling until we get there, but could rezone without any regard to CSX or crossings or anything because that's a site plan issue. Attorney Fordham advised it was not a site plan issue unless it's a specific requirement in the conditional use zone. Mayor Weatherly stated access would be a site plan issue if it's… with Manase interjecting, but if they proceed with a subdivision plan based on that proposed access… with Mayor Weatherly responding it would be up to Council. Attorney Fordham stated one property is rezoned, you have much less discretion on whether to approve a subsequent subdivision plan or site plan. Mayor Weatherly stated access was a transportation issue and a major part in considering a site plan.

Council Member Sutton asked Manase if he could wait until the second meeting in January the 16th, put it on the Planning Board agenda the revised plan, and maybe would give us time to hear from CSX, maybe they will all come together; we will hear from CSX by then; go to the Planning Board, get their blessing.

Mayor Weatherly stated all we are doing now is clarifying for the petitioner, what happened in a previous conversation, but have not opened the public hearing tonight, no one needs to be sworn in. We are entertaining his request to postpone. Clerk advised Manase was sworn at the previous meeting with the hearing being continued.

Manase responded they could probably take that additional delay, they had rather not, but if Council feels that's beneficial to their cause they will do it; the bigger question is if they are rezoned and cannot submit plans, they have not really accomplished anything – are they able to submit plans for review pending and contingent upon CSX approving that access and the right of way, the whole nine yards, they are looking at a technical review of a proposed roadway, whether they build it or the town builds it.

Council Member Jensen stated to do the development, they would have to build the access, and was what Manase was saying, and that is correct, and what he's saying. Manase stated they were willing to build the Peakway in exchange for their transportation impact fee credits or the town build it and they pay those fees, either way. Council Member Jones stated it's all contingent on those improvements being made, it's the matter who's paying for it.

Council Member Sutton was trying to speed the process by putting it on the Planning Board agenda for January; if they go back through that process and you show the access on the plan to them and if we don't have it, then we can't pass it until we get it; maybe by the 16th of January we would be closer to having it. Manase stated what would truly speed their process would be to at least start plan review prior to that CSX agreement; obviously knowing they can't build it until that agreement is in place, but if they could have the technical details worked out, it will take some time to plan that.

Council Member Jones felt we would have some preliminary response from CSX even if we didn't have a signed deal by the time they develop the subdivision, with Manase responding it's sitting there and ready; it's been done for some time.

Mayor Weatherly asked if that answers his question. Manase thinks so, but asked if it were a town policy not to accept a plan for review if it does not have access. David Rowland Director of Planning stated he would say for a Planned Unit Development, yes; that's a requirement definitely in a planned unit development that you have adequate points of access. Mayor Weatherly added and the zoning has to be … with Rowland saying that's part of the zoning is satisfying that requirement. Manase asked in his opinion, then they couldn't approve the zoning without something more concrete, or the zoning could be approved. Khin responded they think what the Town's Attorney mentioned a slight modification would be acceptable as their recommendation for that; you would have to not allow any site or subdivision plan approval until they knew for sure that they would be able to do the second point of access.

Manager Radford stated they couldn't go through a workshop process nearly a month ago, when we believe all the pieces were in tack with a Peakway plan and still have enough votes to get this project approved; he doesn't know what can possibly change taking the Peakway out that enables it to be a viable project; he doesn't see it. Mayor Weatherly agrees; there were other components of the plan itself that was troublesome; we are just talking about the one access now. Manager Radford continued so the chance and suggestion that it go to the Planning Board to get densities, that we have talked about, transportation issues that we've talked about hashed out prior to coming back to Council, so they don't have to "split the baby" here each time; if it can come to Council tied up in a nice bow from Planning Department and from the Planning Board, certainly makes the job easier. Manase said they could see the merit from that too, waiting until January 16 for the Council if they go through the Planning Board on January 8/

Public Hearing # 01 continued

Action: Motion by Council Member Sutton to delay this item until it goes before the Planning Board on January 8, 2006 and to Council on January 16, 2006. Mayor Weatherly stated this negates the action we just took and move another 30 days to January 16, 2006. Mayor Weatherly stated that motion was on the floor; we're just ready to vote on it; he was asking for a substitute motion, for 30 additional days, or January 16, 2006 in lieu of the motion for January 2, 2006. Mayor Weatherly asked for a second to this motion. Second by Council Member Jensen. There was no discussion on the substitute motion. Vote on the substitute motion was unanimous.

Mayor Weatherly stated this public hearing will be continued to January 16, 2006 after the Planning Board meets.

Manase stated his client had traveled from out of state and has asked if he could address the Council; noted the public hearing never was opened. Steve Fleischman was disappointed because he was under the impression as Mike Howington and everyone else was, that the CSX issue was a done deal; feels now they are being thrown out to the wolves again; we've tried over the past couple of years to give the city everything they've asked for and from what he is hearing tonight they are no where – dead in the water. He's very disappointed and thinks somebody, he can't say who it is, he does not know the city works and their planning staff works, but he thinks somebody dropped the ball. If they had a verbal from CSX or letter from CSX that should have been followed through all the way to make the deal and he for one was under the impression that was done.

Mayor Weatherly didn't think we ever had a verbal on this deal; that's what he was trying to explain before; the verbal we had, his understanding, was we close three at-grades and they give us one new one; a unilateral deal from CSX, take it or leave it; we messaged that, forgetting the bridge as this predates the bridge, but we had a public hearing with members of …the downtown business folks who weighed in heavily on that; that was which of these three streets do you want to close in downtown Apex because we were going to offer to close two of those three and the private crossings in return for one new at-grade crossing and we were going to advance that argument till it blew up with no support for closing the two downtown, so then we … fast-forward now, we were going to offer them one downtown closure, three privates and a bridge and hoped to get one new at-grade crossing.

Fleischman stated again he was under the impression, right or wrong that the CSX issue was done, and thinks they were all working under that scenario and he never heard anything differently even at the work session that he attended several weeks ago, again, he doesn't know how you can approve zoning if you can't approve access to a property and is his main concern. They wouldn't rezone the property knowing they might be 25 years before they could get access to it, which wouldn't make any economic sense from a landowner's standpoint. Mayor Weatherly responded we had been dealing with the railroad for longer than 25 years; Fleischman has been dealing with them for years too and knows they are hard to deal with.

Manager Radford wanted it to be clear, it was obvious that Howington purchased this property prior to the town's commitment to build the Peakway and the bridge. Fleischman responded that what he understood when they purchased the property, there were many discussions made and the town was behind having this done 100% and why they purchased the property in order to … and why they have done plans every time they would come and the town would say we want to see this, and this, and we would change our plans to accommodate and again it's been a couple of years now, so they need to move forward and do something. Again, this is not a threat, and asked they not take it as a threat because that is not their intent to do, but they are not in the business to buy land and hold land, they want to develop the land and sell it to builders whether it be residential/industrial, something, but you continually are paying taxes and paying interest on the loan and the longer you carry the land, no body knows what is going to happen with it the market. Manager Radford asked if he bought this property without contingencies for rezoning; Fleischman responded yes.

Public hearing # 01 continued to January 16, 2006

Public Hearing # 01 continued

Presenter: David Rowland, Director of Planning

Public Hearing # 02 – Annexation # 402

Public hearing and possible motion to adopt an ordinance approving Annexation Petition #402, Metropolitan Development at Apex, owners/petitioners, petitioning to annex 0.592 acres, into the Town's corporate limits, being the smaller part of Lot 2 (Creekside) and located north along Olive Chapel Road and west of Kelly Road.

David Rowland, Director of Planning presented annexation petition #402 for public hearing. This is a strip of Progress Energy territory held out to get power to the site; clean-up of the map.

Mayor Weatherly opened the public hearing and with no one addressing the petition, closed the hearing.
Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the annexation by adopting an ordinance to extend the corporate limits by the 0.592 acres. Motion carried unanimously.

End of public hearing # 02

Presenter: David Rowland, Director of Planning

Public Hearing # 03 – Annexation # 403

Public hearing and possible motion to adopt an ordinance approving Annexation Petition #403, Edwards Investment Group, LLC, owners/petitioners, petitioning to annex 5.91 acres including former railroad right-of-way into the Town's corporate limits, and located on E. Williams Street (NC55) south of Lufkin Road (Bojangles/Handee Hugos site).

David Rowland, Director of Planning presented annexation petition #403 for public hearing. The property is the future Bojangles/Handee Hugos and Fire Station site.

Mayor Weatherly opened the public hearing and with no one addressing the petition, closed the hearing.
Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the annexation by adopting an ordinance to extend the corporate limits by the 5.91 acres. Motion carried unanimously.

End of public hearing # 03

End of public hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

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

No one addressed the Council during Public Forum.

NEW BUSINESS

There were no New Business items to be considered.

Consent Agenda Item # 6

Council Member Schulze had asked separate consideration of this item: Addendum to Contract between Town of Apex and Capital Area Preservation, Inc. (CAP) to expand The National Register Historic Districts. David Rowland Director of Planning explained CAP was a non-profit corporation that contracts preservation activities around the county. Their request is to expand the National Register Historic District, and he thinks this is a good tax incentive and without a designation could not get this.

Action: Motion by Council Member Schulze and second by Council Member Sutton to approve the addendum to the contract as recommended. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked to modify the agenda by adding a Closed Session to discuss the Butler Property.
Action: Motion by Council Member Jensen and second by Council Member Gossage to amend the agenda to move into closed session. Motion carried.

Action: Motion by Council Member Schulze and second by Council Member Jones to move into Closed Session at 8:35 p.m. Motion carried. Minutes of Closed Session are recorded separately. Motion by Council Member Jones and second by Council Member Gossage to go back into regular session at 8:51 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Jensen and second by Council Member Jones to adjourn at 8:52 p.m. Motion carried.

The above minutes were approved on the 19th day of December 2006.

Georgia A. Cravy Hurst
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, December 19, 2006
held at 7:00 p.m. in the Council Chambers on the 2nd Floor,
Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly

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

Web site: www.apexnc.org

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

CONSENT AGENDA

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 for approval with no amendments.
Action: Motion by Council Member Schulze and second by Council Member Jones to approve the consent agenda. Motion carried unanimously.

1) Minutes of December 05, 2006 Council meeting.
2) Minutes of December 05, 2006 Council Closed Session (recorded separately).
3) Budget Ordinance Amendment and Capital Project Ordinance Amendment (Performing and Cultural Arts Center Project).
4) Budget Ordinance Amendment and Capital Project Ordinance Amendment (Kelly Road Bridge replacement project).
5) Wake County Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was presented with an amendment to consider a Budget Ordinance Amendment and Capital Project Ordinance Amendment for purchase of land for site of Town's Fire Station # 4 (NC55 South).

Action: Motion by Council Member Gossage and second by Council Member Jensen to amend the agenda to include this item as stated. Motion carried unanimously.

The agenda was set as amended.

PUBLIC HEARINGS

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 01 – Value Place Hotel Site Plan

Review: Planning Board met December 11, 2006 and voted to unanimously recommend approval. Staff recommends approval provided Town Council approves reduction of 100' buffer along US1 to 60' width (40' undisturbed, 20' existing Town of Apex public utility easement). Public hearing and possible motion regarding a major site plan for Value Place Hotel. Sunridge Holdings, LLC petitioner, seeking major site plan approval; located at Lufkin Road and US1.

Dianne Khin, Assistant Planning Director presented staff report for the Value Place Hotel which is attached and incorporated as a part of the minutes. Site plan includes a four-story, 42,984 square foot, 121-unit extended stay hotel, associated parking and retention pond. Planning Board met December 11, 2006 and voted unanimously to recommend approval of the site plan. Staff recommends approval provided Council approves request from applicant to reduce 100' buffer along US1 to 60' (40' undisturbed). An existing 20' sanitary sewer easement is located within the 60' width. Since the site is triangular in shape, it is difficult to fit the building with a 100' buffer, so staff felt the request was reasonable.

Council Member Jensen voiced his concerns with the building height and the long time it would take the trees to get to their fuller growth; with the request for reduction in buffer, the buffer will be replanted to a Type A buffer per the UDO.

Mayor Weatherly opened the public hearing at 7:07 p.m. and asked those in favor of the proposed site plan to come forward:

Ben Coonce believes use of the site to be appropriate; other properties are similar in zone; the triangular site has Lufkin Road and US1 frontage; believes reduction in buffer is appropriate under the circumstances and will replant; site plan meets UDO requirements. Council Member Jensen confirmed Lufkin Road buffer would be left undisturbed; Project engineer reported the Lufkin Road 10' buffer will be left undisturbed. Council Member Jensen noted the triangle piece shows nothing; Project engineer stated it will be left undisturbed. Council Member Jensen asked if the design of the storm water pond was for a ten year storm. Marty Bezel, Bass, Nixon and Kennedy, responded water storage was designed for a ten year storm and would retain the fist inch of run-off. Council Member Jensen noted it met the UDO.

Mayor Weatherly asked those opposed to the site plan to come forward:

Ethel Sherry, Wake County School bus driver requested a signal light be placed at Lufkin Road and SR1010. Council Member Jensen responded Lufkin Road will be realigned.

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

Council Member Schulze stated as far as the issue of a reduction of buffer, he noted the topography of the site, and stated the applicant knew what they were getting and to get a reduction saw no good reason to reduce it. Council Member Jensen was in agreement and stated if the buffer was not upgraded to Type A it would be a disaster, and it would take twenty years for the buffer to become a full Type A. Council Member Jensen voiced there was too much building and not enough property; the building could be reduced in size to fit the property instead of applicant asking for reduction in buffer. Council Member Jones noted the parking requirement and was not so much the building size. Council Member Jensen felt there could be a redesign and debated the issue and would be 20 years before the buffer would reach maturity if planted to a Type A.

Mayor Weatherly stated it was up to the discretion of Council and that staff agreed it was appropriate and called for a motion.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the site plan as presented and recommended by the Planning Board. Council Member Jensen voiced there should be guidance; he doesn't like approving as many as is approved, hating to see long buildings and reduction in buffer; this is uneconomical and should not do this anymore. Motion carried unanimously.

Public hearings continued

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Public Hearing # 02 – Unified Development Ordinance

Review: Planning Board met December 11, 2006 and unanimously recommends approval with a minor change. Staff recommends approval and has made change as requested by Planning Board. Public hearing and possible motion regarding possible amendment to various sections of the Unified Development Ordinance.

Brendie Vega Mkhwanazi, Senior Planner presented amendments to various sections of the UDO outlined in the staff report and incorporated as a part of the minutes: Watershed Protection Overlay Districts Exemptions; Tree Removal; Pond Drainage Plan and Sign Design and Color. Planning Board met December 11, 2006 and unanimously recommends approval with clarification that 8.7.4 (A) applying to signs requiring permits. Staff recommends approval of the UDO amendments with changes Planning Board had requested (changes have been made). Mayor Weatherly opened the public hearing at 7:25 p.m. With no one addressing the amendments to the UDO, closed the public hearing and called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Schulze to approve the UDO amendments as recommended by adopting the ordinance. Motion carried unanimously.

End of public hearing # 02

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 03 – Annexation Petition # 404

Public hearing and possible motion to adopt an ordinance, approving Annexation Petition #404, Gregory Keith Roberts and Rebecca C. Roberts, owners/petitioners, petitioning to annex 5.603 acres and includes 1.996 acres of public right-of-way into the Town's corporate limits, and located at 6821 Old Jenks Road on the east side of NC55.

Dianne Khin, Assistant Planning Director presented annexation petition #404, orienting to the location of the property, containing 5.603 acres and noted the right of way was actually 1.596 acres. Cary has honored the town's request to waive the 60 day time period for adoption of the ordinance to extend the corporate limits. Land Use Plan calls for high density residential at this location; there will also be a request for a Land Use Plan amendment and with a rezone request. Mayor Weatherly opened the public hearing at 7:26 p.m. With no one addressing the annexation petition, closed the public hearing and called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the annexation by adopting the ordinance to extend the corporate limits. Motion carried unanimously.

End of public hearing # 03

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 04 – Annexation Petition # 405

Public hearing and possible motion to adopt an ordinance, approving Annexation Petition #405, Beth H. & Michael J. Holland, owners/petitioners, petitioning to annex 4.7796 acres and includes 1.0493 acres of public right-of-way into the Town's corporate limits, and located at 1716 W. Williams Street (NC55).

Dianne Khin, Assistant Planning Director presented annexation petition #405, orienting to the location of the property, south of annexation #404, containing 4.7796 acres, and 1.0493 acres of public right of way. A rezone of the property is forthcoming. Mayor Weatherly opened the public hearing at 7:27 p.m. With no one addressing the annexation petition, closed the public hearing and called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Gossage to approve the annexation by adopting the ordinance to extend the corporate limits. Motion carried unanimously.

End of public hearing # 04

Public hearings continued

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 05 – Annexation Petition # 406

Public hearing and possible motion to adopt an ordinance, approving Annexation Petition #406, Thomas W. Ruchdeschel, owner/petitioner, petitioning to annex 3.022 acres into the Town's corporate limits, and located at 1509 Olive Chapel Road (SR1160).

Dianne Khin, Assistant Planning Director presented annexation petition #406, orienting to the location of the property, surrounded by Ashley Downs. Owner is a 20 year resident; Khin noted 2025 Land Use Plan calls for medium density residential at this location, and owner wants to have property inside the town limits for future sale of the property. Mayor Weatherly opened the public hearing at 7:30 p.m. With no one addressing the annexation petition, closed the public hearing and called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Jensen to approve the annexation by adopting the ordinance to extend the corporate limits. Motion carried unanimously.

End of public hearing # 05

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 06 – Annexation Petition # 407

Public hearing regarding Annexation Petition #407, Willie Lee Harris Heirs, owners/petitioners, petitioning to annex 60.32 acres into the Town's corporate limits, and located on Blazing Trail Drive, north off Humie Olive Road (SR1142).

Dianne Khin, Assistant Planning Director presented annexation petition #407, orienting to the location of the property, south of Town's future nature park and contiguous to the town's corporate limits, containing 60.32 acres. Mayor Weatherly opened the public hearing at 7:31 p.m. With no one addressing the annexation petition, closed the public hearing and called for a motion. Manager Radford noted the ordinance will be presented to extend the corporate limits of this property at the January 2, 2007 meeting of the Council. No action was required to be taken at this time.

End of public hearing # 06

End of public hearings

OLD BUSINESS

Presenter: Russell Dalton, Transportation Engineer

Old Business # 01 – Kelly Road Intersection at US64

Russ Dalton, Transportation Engineer for the Town had discussed with NCDOT the complaints received regarding intersection improvements including a partial traffic signal at the US64 and Kelly Road intersection. NCDOT installed a directional crossover eliminating full movement with no signal at this intersection, and with no left turn allowed off Kelly onto US64; volume of traffic at this intersection is too much without a signal. A.M. commute times has traffic waiting 7 to 9 minutes backing up to Wendhurst entrance in Abbington Subdivision off Kelly Road; P.M. hours are the same, with folks turning left off US64 – there's not a lot of storage and stacking capacity on US64 to this entrance and noted it dangerous; square loops are proposed with I-540 but uncertain regarding time and does not know the status. Bar graph indicates delays up to two hours in the a.m. showing a long cue of traffic; a signal could reduce this. Points of concern: improvements to this intersection has to have NCDOT approval; traffic volume will increase over time and will exceed even with a signal at this intersection; NCDOT does not want a signal; estimated total funding for signal with improvements is $250,000; one-half signal only is an estimated $75,000 and would serve only one-half the intersection with the westward traffic continuing to move the entire time with the signal being active and no flashing; unlikely NCDOT would partner as it's not a high priority on their list as they are stretched for funding projects; he will continue to pursue this project with NCDOT; if signal were installed it would be controlled by NCDOT.

Old Business continued

Council Member Schulze began discussion regarding the right turn lane as shown on the diagram; Council Member Gossage asked the time for completion of Beaver Creek Commons Drive over to Kelly Road which would buy some capacity at this intersection. Manager Radford stated the completion of Beaver Creek Commons Drive should be completed within a year and would be an option for traffic, it could turn right off Beaver Creek Commons Drive and go over Creekside Landing Bridge at US64; as far as the reconfiguration he had tried over four years to allow a full movement interchange as a result of the increased traffic at this intersection, even asked DDR to participate in funding, however NCDOT refused, wanting free flowing traffic in both directions. He stated there is no approval for a signal with NCDOT and have not yet agreed to allow the town to do so.

Council Member Sutton felt a commitment from the town may help as the traffic will get worse at Abbington. Mayor Weatherly noted the funding issue from formal conversations with NCDOT, hoping to see a response for partial funding and discussed a legislative delegation formal inquiry. Council Member Sutton recalled a letter to Senator Stevens and Representative Stam where NCDOT would pay half; Manager Radford recalled nothing about the funding and conversations had been in relation to allowing one-half light with no funding; town's obligation would be an estimated $75,000.

Dalton discussed the geometric and shoulder improvements for a 1500' lane prior to a signal and needed for safety concerns. Council Member Schulze stated maybe this should not be rushed, may not be the best solution, and maybe should study this more as it's the first time he had seen this.

Chief of Police Jack Lewis reported on cut-thru traffic in Abbington, from a three week study during peak hours in the a.m. showing back up on Kelly to Wendhurst over a two hour period 7 a.m. to 9 a.m.; commuters become frustrated and some make a left on Wendhurst and cut thru Abbington over to US64. He found 71% of the cut thru cars turn right going east on US64 (Monday: 201 cut thru with 164 or 82% turning right on US64 headed east. Tuesday was similar; Friday had the higher percentage turning west). Concerns addressed rear end collisions as vehicles stack-up on US64 to turn left and impatient factors in. From Kelly Road, there's only the right out on US64 headed east. He noted all of these are significant problems, however, reminded neighborhoods can't have close off streets because they are public streets. He's unsure about how to fix this there is lots of traffic. Bus traffic and child safety was another factor during this two hour window of observation, with traffic at full capacity and heavier from 7:30 to 8:00, and dwindling down after 8:30.

Mayor Weatherly allowed folks from Abbington to address this issue.

Joan Beacham, President Abbington Home Owners Association and husband Bryan Beacham live on Lansbrooke; during a.m. traffic they are not able to get out of the front entrance of Abbington; speeders; four bus stops and safety of children; hope Beaver Creek Commons Drive would help with eliminate part of the cut thru traffic, knowing they can't gate the community, hopes for a solution; would like a full movement signal – one half signal would help cut down on cut thru traffic; traffic is worse at night and with apartments at Olive Chapel and Kelly Ridge will see traffic getting worse.

Kendal Maynard, past President of Abbington Home Owners Association has had several discussions with NCDOT and stated they would not listen and there was no money for funding the improvements nor signal; asked town to put money behind this needed project and noted Creekside will add an additional 3000 trips; concerned with children's safety; this is a big issue.

Ann Mulligan noted it critical to have full movement and light at this intersection, and town should not consider one-half light; town should pull together with Senator Stevens and Representative Stam, and go to NCDOT for priority and take Police Chief with them; traffic has to go eastward and make u-turn to get back to the west and is a mess; noted the many traffic fatalities over the last few days and does not want this to happen at this intersection.

Old Business continued

Mayor Weatherly gave history of NCDOT US64/49 Corridor Study, wanting a freeway to Charlotte with no interchanges or at-grade crossings; felt this was being forced upon us and CAMPO got with NCDOT to change this and they have refused to discuss any access on US64; unfunded needs in Wake County are in the billions of dollars with the I-540 being part of this. Mayor Weatherly expressed willingness to meet with Senator Stevens, Representative Stam, and Representative Herald regarding assistance, at least state the town's position regarding this issue.

Council Member Gossage referred back to a letter mentioned and asked when this was addressed, with Council Member Sutton recalling August and would allow one-half light, however not paying for it, that the town would fund one-half the light up to $150,000. He again felt if Council would commit to spending it would make negotiations easier instead of the same story for help, negotiate paying for it. Council Member Jensen stated perhaps we could pay for the light and NCDOT pay for turn lanes. Mayor Weatherly expressed, should at least make a spirited attempt to step up and what NCDOT would do. Council Member Sutton felt putting up the money was spirited. Council Member Gossage added Council had asked this be funded and it hasn't been and clarified $75,000 was half of the full cost of the signal.

Ethel Sherry, Wake County School bus driver stated fifteen buses go though this intersection between 6 a.m. and 8:30 a.m. and a four way would help more.

Victor Maynard noted speeding, and drivers who ignore stop signs; has seen almost rear-enders on US64 and assured accidents will happen.

Nick Barron, Lansbrooke Lane, Abbington, appreciates the officer's time on this issue and speaking to the problems; his daughter crosses the street and has concerns with safety; with added apartments traffic will increase at this intersection; would like a full light in a timely manner. Manager Radford responded NCDOT had refused a full light with Council Member Gossage adding luck to get one-half light.

Craig _____ stated if they put cut thru traffic aside, traffic builds up to turn and try to race across US64 to get to Kelly and is a bigger problem, with no deceleration lane and delays to turn, a light makes sense; he thinks a time should be placed on this project and plan for it. Manager Radford responded to his comments, stating the town doesn't own this road and has tried and offered up to and including a letter to the Governor, rejecting the corridor study from US1 to Charlotte. Mayor Weatherly suggested 30 days for a time response with the legislative folk's assistance and regarding payment of the project.

Jim_____ is in favor of a full light and noted the other light down the road had set precedence, even if temporary, there's still full access there.

_____ Clayborne addressed traffic westbound on US64 with folks having to drive into the grass at this intersection and traffic backing up one half mile lined up on US64, with other traffic moving at a speed of 65 mph or better – no one obeys 45 mph; there's a need for an extended lane for back up traffic.

Bob Gibbings, Abbington resident for 7 years stated development stretches into Chatham County and with buildup traffic will worsen; there will be more cut thru traffic in the future; reality is for a full light at this intersection; trucks pull onto US64 with 70 mph traffic coming; he addressed Federal funding and how it works, having worked with Federal Hwy Administration and as a Transportation Engineer a light should be put here; he stated, do not let them bully us, noting programs are behind and to wait is stupid, should act before accidents happen here. Council Member Gossage responded, no matter what, NCDOT says no to a full signal at this location.

David Sanders, Abbington, encouraged additional alternatives, to funding, lanes, and light and should look before making a commitment; challenged Council to act and prevent anyone from dying on US64.

Old Business continued

Manager Radford stated that based on conversations council would like something in form of a response in 30 days, and with input to Representative Stam, Senator Stevens, Representative Dollar and Representative Herald. He further encouraged Abbington residents to write all NCDOT representatives and solicit effort from them to get NCDOT to pay for at least one-half the signal; NCDOT should participate in the cost. A copy of the letter referred to and mentioned by Council Member Sutton was asked to be seen. Council Member Sutton wanted to tell NCDOT the town would fund one-half the light. Council Member Jones noted changes have to be made to the lanes and other road improvements to make the light work and that one-half of the light only is $75,000. Mayor Weatherly understood the spirit of participation at a level of funding up to 50% or $125,000 at an estimated cost of one half of the $250,000. Mayor Weatherly called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Gossage authorizing Manger to contact NCDOT, that town would participate at one half of the cost up to $250,000. Manager Radford stated the sources from which the funds could be taken to for this project. Council Member Jensen felt videos may be helpful. Motion carried unanimously.

End of Old Business Item # 1

Presenter: Brent Kirchhoff, Branch Manager, Waste Industries

Old Business #02 – Solid Waste Services

Review: January 3, 2006 Council approved fuel adjustment charge, but with a six month sunset; June 06, 2006 Council approved an extension for additional six months; Branch Manager Waste Industries will request continuation of fuel adjustment charge.

Possible motion regarding the fuel adjustment charge for solid waste services.

Brent Kirchhoff, Branch Manager, Waste Industries reviewed the status of fuel prices and its impact on his operations since the five year contract was approved between WI and the Town. Council approved a request for additional charges in January and June with a six month sunset. Kirchhoff requested a continuation of the fuel adjustment charge for another six months. Contract will be up for possible renewal in 2009. Council Member Jones noted provisions of the contract allow WI to come and ask for CPI increases. Council Member Schulze shared concern with a contract set in place, and asking for changes while Council Member Jensen felt this was a fair deal and a fair price. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to extend the surcharge for another six months or June 30, 2007. Vote on the motion was 4 in favor and 1 opposed with Council Member Schulze voting no. Motion carried.

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.

Ethel Sherry, Wake County School bus driver that spoke earlier, stated buses can not take a left onto SR1010 and have to go around; at Lufkin and NC55 there is no right turn lanes and buses sit in the middle lane sometimes waiting up to 20 minutes. It was noted NCDOT controls this light. She was informed Lufkin Road would be realigned with a forthcoming commercial project and would warrant a light. Manager Radford will talk with NCDOT regarding the right turn off Lufkin onto NC55 – signal does not trigger off the right lane.

Public Forum continued

Jim Oxford stated the ETJ has extended; he lives across from Abbington and that he can't vote for any of the Council; asked Council to consider another ETJ member on the Planning Board as they have a limited voice and this voice would further represent them at Council meetings. Mayor Weatherly explained there was hope to expand the ETJ and the ETJ member is based on the percentage of population in the ETJ, and would take an ordinance amendment. Extension of the ETJ may add one and would know as soon as the Wake County Commissioners approved the extension.

End of Public Forum

NEW BUSINESS

Presenter: Mayor Keith H. Weatherly

New Business # 01 – Appointments to Apex Planning Board and Board of Adjustment

Mayor Weatherly presented for Council's consideration re-appointments to the Apex Planning Board and appointment of Chair to the Apex Board of Adjustment; Staley Smith and Graham Wilson reappointment for three years to the Apex Planning Board with their term expiring December 31, 2009. Terry Rowe appointed Chair of the Board of Adjustment for a one year term expiring December 31, 2007.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the appointments as recommended by the Mayor. Motion carried unanimously.

New Business # 02 – Add on

Manager Radford presented a Budget Ordinance Amendment #8 and Capital Projects Ordinance Amendment that transfers money from two reserve funds to the General Capital Projects Fund to budget for the purchase of land for the site of the Town's next fire station known as fire station #4 to be located on NC55 south across from the Veterinary Clinic. Total cost plus survey, engineering, etc. is $291,000 and allows opportunity to close on the purchase on December 20, 2006, and closes out funds holding this money.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve as requested. Motion carried unanimously.

End of New Business

WORK SESSION

Presenter: Tim Donnelly, Director of Public Works

Work Session # 01 – Wastewater Collection System

Tim Donnelly Director of Public Works presented a current Wastewater Collection System Facility Plan and Status of current pumping stations. The system is designed to move wastewater from four natural drainage basins (White Oak, Williams Creek, Big Branch, and Beaver Creek) to the Middle Creek Basin and accomplishes this through a series of 19 pumping stations and 135 miles of gravity sewers and force mains. The Kelly Road station is at 90% capacity and the Shepherds Vineyard station is at 100% capacity. As the Town grows to the west the system has added a number of double and even triple pumped arrangements in order to accommodate growth. It was noted too many small pumping stations are a huge liability and recommends gravity sewer lines. Since the Middle Creek Water Reclamation Facility has limited capacity and all future capacity will come from the new regional water reclamation facility, the Public Works and Utilities Department has update the 1988 Wastewater Collection System Facility plan to plan for redirecting significant portions of the collection system to the west. In addition a number of pumping stations will be eliminated and sewer line sizing information will be available for use by future developers.

Work Session – Wastewater Collection System Continued

It is recommended Council pressure developers for development to fit and compliment the plan and only accept development that does so. A facility plan map and status report is attached. Examples of future proposed projects were discussed noting the town's plan for orderly growth at 4% rate. It was noted the town will run out of capacity without the regional plant which is supposed to be on line by January 2011, and indicated town could be forced to stop new subdivisions, as there is not enough capacity to fully develop all projects being considered.

Town's contract with Raleigh for pumping additional sewage will expire 2010; option – town could ask for an extension, and would have to explain to Environmental Management and Fayetteville. It was noted the law allows us to budget capacity against the plant and could approve subdivisions that would have to pump directly to the plant. He noted a problem with pushing off the date of the regional wastewater plant; Council needed to know the town is running out of sewer capacity. He noted lots of density with upcoming projects (Assemblage, Poe and Upchurch properties) not being able to say they can't build; proposed Trackside would take a lot of capacity. He stated the regional wastewater plant is not approved, and timeline for approval will barely meet the 2011 deadline; one to two years with no resolution on the regional plant could cause a gap, and the collection system is in trouble and filing up; again noted approval of big projects could force them to pump directly to the plant, but is the wrong way, but could make it work. He encouraged that gravity sewers should be in place and giving weight to the plan, and that capacity fees being on track with surrounding communities.

End of Work Session

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss acquisition of property located on NC55. Motion by Council Member Schulze and second by Council Member Jones to move into Closed Session at 9:30 p.m. Closed session minutes are recorded separately. Motion by Council Member Schulze and second by Council Member Jones to move back into regular session at 9:38 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Council a motion was made by Council Member Jensen and second by Council Member Sutton to adjourn at 9:39 p.m. Motion carried.

The above minutes were approved on the 2nd day of January, 2007.

Georgia A. Evangelist
Town Clerk

Keith A. Weatherly
Mayor